The give-back generation

MATTHEW BRIGGS LAYS OUT HOW PRACTITIONERS SHOULD RESPOND TO A NEW ERA FOR CHARITABLE GIVING, WITH AN EMPHASIS ON ENGLAND AND WALES

We are living in a time when philanthropy has hit the mainstream news in a seismic way.

The founder of Patagonia recently announced that he was giving away the company in a bid to fight the climate crisis. Patagonia will continue to operate as a for-profit company, but proceeds will be donated to environmental causes. The company's voting stock has been transferred to the Patagonia Purpose Trust to protect its values, and its non-voting stock has been given to the Holdfast Collective, a non-profit dedicated to defending nature, the funding for which will come from Patagonia.

Jeff Bezos, founder of Amazon, announced that he will give the majority of his multibillion-dollar wealth to charity. Meanwhile, the Giving Pledge, a movement that invites billionaires to give away most of their wealth, continues to attract signatories.

The number of wills that included a gift to charity increased by nearly 11 per cent in 2021, according to a recent report.[1] This philanthropic shift is having an impact on private wealth practitioners, as it continues to influence clients. There is a growing appetite for 'giving back'; a trend that naturally prompts conversations about the best way to structure and approach charitable giving.

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The range of options open to families and individuals for philanthropic planning can be daunting and, now more than ever, practitioners play a key role in supporting them to decide on the most appropriate structures for their charitable endeavours. Putting in place the right structure from the outset is key to ensuring the client's philanthropic vision is properly realised and the initiative lawfully run.

CHOOSING THE RIGHT STRUCTURE

When ensuring that clients are aware of the most commonly used structures, it is critical that they are clear on the characteristics of each. They must also understand what factors will have a bearing on their choice, including the risk and complexity of their charity's work. Consideration should be given to contractual liabilities or loans, land ownership, the provision of services to the general public, whether stakeholders such as beneficiaries will have a role in the charity's governance, and costs for administration (not only around set-up but on an ongoing basis).

CHARITABLE TRUSTS

It is broadly accepted that it is relatively easy and quick to set up a charitable trust. Charitable trusts may be considered more flexible and easier to administer than, say, charitable companies, because they are subject to less rigorous regulation. However, potential philanthropists should be made aware that the advantages of setting up a charitable trust might be outweighed by the potential reporting obligations imposed on the trustees under the Common Reporting Standard and the UK Trust Registration Service. There is also the potential for unlimited liability for trustees of a charitable trust, if the trust's assets are insufficient to meet its liabilities.

CIOs AND CHARITABLE COMPANIES

The charitable incorporated organisation (CIO) is a relatively new legal structure and one that is well suited to many charitable ventures. As is also the case with charitable companies, CIOs can employ staff, enter contracts and sue or be sued in its own corporate name, the latter being a distinct advantage over choosing a trust structure, given that a charitable trust is not a legal entity. However, CIOs are only regulated by and registered with the England and Wales Charity Commission and should, therefore, be easier and cheaper to set up and administer than a charitable company, which is also registered with Companies House. For larger charities and those that raise funds through issuing debentures or charities that regularly seek to borrow money against the security of their property, the charitable company may be a more appropriate choice than the CIO.

DOING GOOD THE RIGHT WAY

Irrespective of the legal structure, would-be philanthropists need to be clear of their obligations, the registration and reporting requirements and the rules imposed by charity law.

It is fair to say that, at times, trusts have had a less than wholesome reputation outside of the private wealth field, with negative connotations of wealth preservation and tax planning. The reality is a trust is likely to be the favoured route for the vast majority of cases where a client wishes to establish a straightforward grant-making charity that is unlikely to employ staff or carry out business.

High-profile initiatives like that of Patagonia may help to shift negative perceptions around trusts and underline how effective the trust structure can be in a philanthropic context. That said, advisors must ensure that they have helped clients consider all the options.

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