Philanthropy: How to structure your giving

Many people seek to make a real difference and give back to their community through philanthropy.

If you would like to make gifts to charity on an ad hoc basis, the most obvious option is to donate directly to the chosen charity. Provided the charity is listed as a Deductible Gift Recipient ('DGR') for tax purposes, you should be entitled to receive a tax deduction for the monies donated.

Alternatively, if you wish to have access to your funds during your lifetime, you may instead choose to make a gift to a charity in your will.

However, if you wish to go beyond simply writing a cheque and seek to create a long-lasting legacy for you and your family, there are various options available for ongoing philanthropic giving both during your lifetime and on your death.

Family Trust

If you hold investments through a discretionary family trust, you may use the trust to boost your gifts to certain organisations by taking advantage of the tax savings.

If you personally make a gift to an organisation that is income tax-exempt but does not have DGR status (for example, your local football club), you can't claim a deduction for the gift and it will effectively come out of your after-tax income. This may mean that every $1 you donate will cost nearly $2 of your pre-tax income (assuming you are taxed at the top marginal rate).

Instead, if you make a distribution to that same football club via your family trust, it will achieve a similar tax outcome as a gift to a DGR. This is because your family trust should operate as a flow through vehicle whereby neither the trustee nor the tax-exempt organisation are taxed on the distribution.

Before making distributions from your family trust you must check whether it is permissible under the trust deed. If your chosen organisation does not fall within a listed class of beneficiaries (for example, a charity) you may need to amend the deed to add them as a beneficiary. Advice would however need to be obtained to ensure that such a variation does not cause a resettlement of the trust.

Charitable Trust

If you wish to support a particular cause, for example by setting up a scholarship fund, one option could be to establish a charitable trust. This can be established during your lifetime or via your will and can be controlled by an individual (i.e. you), family members or a company acting as trustee. Donations to the trust are not tax deductible, however the trust could apply for tax-exempt status. The trust could be used to donate to a wide variety of organisations within the purpose of the trust, as its beneficiaries are not limited to DGRs. The trust may also exist in perpetuity, allowing you and your future generations to make gifts over the long term.

Ancillary funds

Ancillary Finds offer a flexible and tax-effective way to structure your giving over time. There are two types of Ancillary Funds, Private and Public. The key differences between the two being: legal control and the ability to fundraise publicly.

Private Ancillary Fund

A private ancillary fund ('PAF') is used by family groups to undertake private philanthropy by pooling resources and distributing donations to DGRs of their choosing.

A PAF is established as a trust, either while you are alive or via your will. PAFs are governed by complex rules and generally, the fund must have a corporate trustee and at least one director of the trustee must be a 'responsible person' in the community (i.e. a local councillor, member of parliament, accountant, lawyer, doctor, school principal etc.).

The fund may apply to the ATO for DGR endorsement. This means any donations you make to the PAF will be tax deductible and investment returns can be accumulated in the fund tax-free. Each income year (except the first year) the fund must distribute either 5% of the market value of its assets or $11,000, whichever is greater.

Establishing a PAF provides you with the flexibility to immediately enjoy the tax advantages, whilst growing the fund overtime and involving your family to make ongoing donations to charitable causes. However due to their private nature, PAFs cannot solicit donations from the public.

Public Ancillary Fund

If you wish to engage in public fundraising for your chosen cause, a public ancillary fund may be more suitable. Public ancillary funds are structured similarly to PAFs, however they are required to solicit donations from the public.

Generally speaking, the trustee must be a corporate trustee (i.e. a company) with the majority of the directors being responsible persons. Each income year (except the first 4 years) the trustee must distribute 4% of the market value of its assets (or $8,800, whichever is greater) to DGRs.

If you don't seek to be highly involved in the administration of the fund, you may instead wish to donate to an existing public ancillary fund, by setting up a sub-fund in your name. This allows you to make ongoing gifts and make recommendations about which causes you would like to support. The trustee will then handle the fund's investments, distributions and compliance obligations.

Which structure do I choose?

When deciding how to structure your philanthropy, there are many factors to consider. These include:

- whether you wish to make a once off lump sum gift or ongoing donations;
- the assets you wish to invest;
- how involved you and your family want to be; and
- the types of organisations you wish to donate to.

The table below briefly compares the various gifting options available to you.

GIFTING OPTIONS	
One-off donation	▪ Quick and simple ▪ Tax deductible (if the gift is made to a DGR) ▪ You have no control over how the money is spent
Leaving a gift in your will	▪ Can be gifted outright or with a direction that it be used for a specified purpose (i.e. for a scholarship) ▪ No tax benefits during your lifetime ▪ Little control over how the money is spent after your death

GIFTING OPTIONS	
Making a gift via your Family Trust	▪ Make donations through an existing structure ▪ Use tax savings to gift larger pre-tax amounts to tax-exempt beneficiaries (if permitted under the deed)
Charitable Trust	▪ Can be controlled by you and your family ▪ Trust income is tax free ▪ Can benefit a wide variety of beneficiaries (not just DGRs) ▪ No tax deduction for gifts you make to the trust
Private Ancillary Fund	▪ Can be controlled by your family group and a responsible person ▪ Donations to the fund are tax deductible and the fund's income is tax free ▪ Must give funds to DGRs ▪ Cannot fundraise from the general public
Public Ancillary Fund	▪ Majority of people controlling the fund must be unrelated responsible persons ▪ Donations to the fund are tax deductible and the fund's income is tax free ▪ Must give funds to DGRs ▪ Must fundraise from the general public
Sub Fund in Public Ancillary Fund	▪ Donations to the fund are tax deductible ▪ You are not involved in investment decisions ▪ You can recommend charities to support