

Planning Matters

Introduction to Private Foundations

Private foundations can be an interesting choice for those with philanthropic intentions. They can play a significant role in an individual's estate and succession planning and can also create a long term philanthropic legacy after the sale of a business.

When considering the creation of a private foundation as a vehicle for charitable gifting, there are three broad issues that must be explored: choice of structure, control of the structure and the activities it wishes to conduct.

A. Choice of Structure

In creating a registered charity there are two structure choices: a non-share corporation (usually termed a "society" in British Columbia and Alberta) or a trust.

Incorporation

The vast majority of private foundations are incorporated entities. A society has the advantage of perpetual existence and offers limited liability to its directors. It is created by the preparation and execution of a constitution, which sets out the purposes of the organization; and bylaws that deal with how the organization is to be governed. A society structure is generally recommended given its relative ease of operation and the familiarity most clients considering foundations have with the operation of an incorporated structure.

Trust

A foundation can also be created using a trust. The settlement of a trust does not involve a regulator such as the Registrar of Companies and there are no filings required with anyone other than the Canada Revenue Agency (the "CRA"). Typically, a trust operates in a less formal manner than a society and there can be a sole trustee if desired. A trustee does not have limited liability protection but can indemnify him or herself from the assets of the trust. The issue of property transfer tax varies by province and can be a consideration. If the foundation is based in BC and is going to hold real property, a trust would not be desirable because of certain technical positions of the Land Title Office relating to property transfer tax. Registered charities are exempt from the application of the tax but the BC Land Title Office refuses to recognize the exemption for a registered charity structured as a trust.

B. Control

"Private foundation" is one of the three classifications used by the CRA when registering entities as charities. In essence, a private foundation is under the control of a single family or related group and is funded by a single donor or by a closely connected group of donors. Private foundations are subject to more stringent rules than the other two types of charities (public foundations

and charitable organizations) because the CRA wishes to avoid the possibility of individuals using these structures to personally benefit beyond the government's intentions. When control of the organization, as well as the timing and type of gift are complex issues, a private foundation is usually the favoured response.

A minimum of three directors are required to establish a private foundation using a corporate entity. The directors may all be related to one another.

Once a decision is made to proceed with a private foundation, the incorporation of a society or the settlement of a trust can be completed within a number of days. However, the CRA's typical response time for completing a registration

application is two to six months, even in the most straightforward of applications, so a certain amount of forward planning and patience is required.

C. ACTIVITIES

A private foundation is also typically the preferred option when an individual, or a family, wishes to create a long term solution to fulfil his, her, or their concept of personal philanthropy. There are three broad types of private foundations. The first simply makes grants to other Canadian registered charities on an annual basis upon some selection criteria. The second type generally chooses to focus on funding one or two other organizations, or those organizations that operate within a particular sector: for example, environmental organizations. The third type is directly involved in operating programs. As you might imagine, foundations in the third category involve a significant time commitment and the employment of staff and professionals. Many of the most interesting developments in Canada on the frontier of charitable giving are initiatives of private foundations in this third category.

Keep in mind that private foundations are not the only way personalized philanthropy can be achieved. Several donor advised options can be attractive based on flexibility, simplicity, as well as greater leniency with amounts invested. Public foundations would be happy to speak with you about arranging a fund in your name or for your designated purpose. This option may not involve much of the administration of a private foundation but will not allow the same level of flexibility. In either case, be sure to seek expert advice and fully understand the advantages and limitations of your choice.

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