economia

Making a very large donation

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Giving away a large sum of money, by which I mean a really large sum of money, ought to be as easy as falling off a log; but once you start to unpack the issues, it is not quite as simple as that.

"Not as simple as you think"

Unless a number of quite varied issues are properly resolved before the gift is made, the gift can have some very unintended consequences. To maximise the benefits for both giver and recipient several key issues need to be considered.

To whom is the gift made?

The most straightforward gift is one by an English domiciled tax payer to a registered charity. However, it may be possible to make just as effective gifts for tax purposes to a charity dual-registered in England and Scotland, registered in Northern Ireland or Scotland alone, or not registered with the Charity Commission at all. It is often forgotten that many large charitable institutions—for example the

British Museum, the universities and many schools and church organisations—are either exempt or excepted from registration with the Commission. They are just as charitable as a registered charity. They simply don't have a charity number. More recently, gifts made to community amateur sports clubs (CASCs) have gained some but not all of the tax benefits available to gifts made to a charity.

Gifts for work overseas

The English tax system has a number of major incentives for those giving to charities. It is important to remember however that in the main these apply only to UK tax payers, whether individual or corporations, and where the gift is to a charity recognised by English law. In a world where much wealth is international, this can cause difficulties for those who are UK taxpayers but wish to make a donation to benefit a charity based in a different country – for example one in their country of origin.

There are ways to deal with this issue, for example creating a UK based charitable entity to funnel the money on to a charitable activity off-shore; but as one might expect, both the Revenue and the Charity Commission look carefully at the funding of off-shore activities.

Gift or investment?

A straight cash gift is the simplest form of giving, but there are significant advantages for some in giving shares or securities or an interest in land instead.

Increasingly, major donors are looking beyond simply making a gift and are often applying lessons they learnt in business. A small but growing proportion of the support for charitable and similar enterprises is now coming from social investment. A donor may want to look at making a loan, or perhaps a loan which turns into a gift on the meeting of certain conditions, rather than an outright gift.

Pre-gift work

All but the most spontaneous ad hoc givers will want to do some form of due diligence on the charity that they are giving to. If the charity gets wind of the size of the donation, it is likely to have a major donor team who are going to want to woo the potential donor. For smaller charities, trustees or the chief executive often do much of this. There may be a period of visits, introductions and presentations. The donor may wish to commission a more hard-edged due diligence on accounts, effectiveness and outcomes.

Conditions on the gift?

Attaching conditions to gifts has a long and honourable history. Many large gifts to charities, particularly of land or large capital sums, have been given as what is known as “permanent endowment”. Permanent endowment means that the charity is only able to make use of the land, or the income produced by the gift, but is not able to dispose of the capital. In some cases, the gift is given on conditions which will lead to the return of the land or other asset to the donor if it is no longer used for charitable purposes.

Permanent endowment these days is often associated with the capital funding of projects, where a major donor seeks to protect themselves in case an unexpected turns of events leads to their donation not continuing in the use that they had expected.

A more common option is to attach conditions to the use of a donation which mean that it is “restricted funds”: i.e. it can only be used for the specified purpose. This contrasts with an unrestricted donation, where the charity may use the gift for any purposes within its objects.

A Grant Agreement?

Those providing large amounts of funds often want detailed agreements as to the use of the donation, which may include:-

• Restrictions on use

• Reports on the impact achieved

• Rights to visit

• Phasing of the payments on achievement of agreed targets

• Break rights where targets are not achieved or deadlines met

• Claw-back arrangements if a project ends or assets purchased with the donation are disposed of

• A seat on the charity board

Benefits for the donor

It is not uncommon for a donor to envisage that there will be practical or other benefits for themselves. This is particularly true of corporate donors who may be seeking exposure to branding logos and other forms of marketing advantage. This immediately starts to raise issues as whether this is a pure gift or perhaps a gift mixed with the purchase of marketing services. Here VAT starts to raise its ugly head. All these issues can be managed if they are spotted and proper provision is made.

What raises more difficulty, and has recently created considerable scandal, is the situation where the donor is seeking financial advantages for themselves or people connected with them. The Revenue first attempted to crack down on this with a set of rules about substantial donors. These are being replaced by rules on tainted gifts. These need to be looked at very carefully if the donor is to receive a benefit of any sort.

Family issues

In most circumstances, as long as one has full capacity, the law allows a person to make their own decisions about gifts. Where a donor dies leaving heirs who feel that they have been cheated out of their inheritance, they may choose to litigate, for example to claim that the will has not made 'reasonable provision' for them, but this is not that common, and is limited in scope, in England.

The situation is very different if any cross border issues affect the donor. A number of European jurisdictions allow heirs to claim back all or part of gifts that reduce their inheritance, and in some cases they can even recover land or other property that has been given away. As Richard Frimston of Russell-Cooke's private client department has stated, "Any donor with involvement in multiple jurisdictions is going to need to talk to private client lawyers who understand how these sorts of issues play out in different jurisdictions".

Inheritance tax

The last budget introduced a reduced rate of inheritance tax where 10% or more of the deceased's net is left to a charity. It has been the case for many years that gifts to charity in a will, if properly set up, will not attract inheritance tax and help reduce the tax burden on the rest of the estate.

Income tax/corporation tax/capital gains tax

Gift aid allows the charity to recover the basic rate of tax. It also allows higher-rate tax payers to recover at the higher rate where they have paid sufficient tax to cover the donation.
Companies have rights to set donations against corporation tax.

Tax reliefs also exist to cover the gift or sale at an under-value of assets which may be subject to capital gains tax, but again the rules are complex.

Should giving be simpler?

It would be nice to think that giving could be facilitated by simplifying some of the complexities outlined above. However, the research doesn't seem to indicate that people are put off by the legal and tax issues raised, and those who are giving away millions of pounds are likely to be able to access the sort of specialist charity sector solicitors who will be able to guide them through this process. Where large sums of money and the tax system interact with tax relieved entities, it is likely that the rules are going to be less than completely straightforward. This shouldn't discourage anyone from supporting something they believe in.

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