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# Estate Planning Update Winter 2022/2023 - The Next Generation of Philanthropists

For many years, the concept of being "charitable" meant simply making cash donations to trusted charitable organizations and giving those organizations broad latitude to use the money for a particular charitable purpose. The next generation of philanthropists, however, have moved away from this trend and, instead, seek to be more active and engaged in their charitable endeavors. Moreover, these change-makers are focused on using their existing skills, networks and resources to effect social change on a local and even global scale, regardless of whether they derive a tax benefit in the process.

As the mindset of these new philanthropists has changed, traditional 501(c)(3) charitable organizations—such as public charities and private foundations—have been increasingly viewed as inefficient or less desirable. Depending on the choice of charitable entity, qualifying for tax-exempt status can mean limiting activities such as influencing legislation, requiring a minimum level of annual distributions or mandating unwanted disclosure to the public. These restrictions in many ways are a "cost of entry" for an organization to enjoy tax-exempt status and receive tax-deductible donations. Tax deductibility is important for charitable organizations that are dependent on public support. For philanthropists who engage in charitable activity not dependent on public contributions, however, the tax benefits of a traditional charitable organization may not outweigh these limitations and burdens.

For example, Mark Zuckerberg and his wife, Dr. Priscilla Chan, opted in 2015 to establish the Chan Zuckerberg Initiative LLC (CZI) as a limited liability company (LLC), rather than forming a traditional charitable organization. Without an expectation of ever seeking tax-exempt status, the Zuckerbergs transferred Facebook (now Meta) stock to CZI to help fulfill their promise to donate 99 percent of their stock to charity during their lives. The decision to use an entity that is not tax exempt allowed the Zuckerbergs to retain complete control over CZI and its holdings. The LLC can invest, distribute or retain funds as the Zuckerbergs see fit. It can support causes the Zuckerbergs deem worthwhile through distributions or direct activities, whether or not those causes could be supported by a traditional charity. The Zuckerbergs can also get their stock back, to be used for any purpose, which would not be possible with a traditional charity. This added control and flexibility came at a cost, however: Contributions to CZI do not qualify for a charitable income tax deduction.

More recently, Patagonia's billionaire founder, Yvon Chouinard, his wife, Malinda Pennoyer, and their two children made headlines when they announced that they transferred all the company's voting stock (which comprises 2 percent of the total company stock) to a trust named the Patagonia Purpose Trust and the remaining 98 percent of the company stock, valued at roughly $3 billion, to a 501(c)(4) social welfare organization called the Holdfast Collective. A 501(c)(4) organization is a tax-exempt, nonprofit organization that operates exclusively to promote social welfare. With this new arrangement, the Patagonia Purpose Trust will oversee the company's operations while the Holdfast Collective will use the company's profits to combat climate change.

The tax implications of this arrangement were not ideal. Donations to a 501(c)(4) social welfare organization like the Holdfast Collective receive no charitable income tax deduction. Moreover, since the Patagonia Purpose Trust is not tax exempt, the transfer of stock to it resulted in more than $17 million in gift taxes. The Chouinard family was willing to pay this price in order to continue to have control of the company, even though its future profits are irrevocably committed to the Holdfast Collective for social welfare purposes. This is in stark contrast to CZI, over which its founders retain full control.

For the Chouinard family, the permanency of the arrangement was part of its appeal. Yvon Chouinard concluded, "Now I could die tomorrow and the company is going to continue doing the right thing for the next 50 years and I don't have to be around."

Of course, different philanthropists will have different desires with respect to philanthropic activities, level of control and tax benefits. It is important to consider the options available and to understand the benefits and burdens of the choice that is made to fulfill charitable intentions.

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