

MATHESON ORMSBY PRENTICE



# ENGAGING IN PHILANTHROPY: LEGAL AND TAX ISSUES

PARAIC MADIGAN

MATHESON ORMSBY PRENTICE

70 SIR JOHN ROGERSON'S QUAY

DUBLIN 2

IRELAND

TEL + 353 1 232 2000

FAX + 353 1 232 3333



- *"I still believe in the philosophy - Fortune quoted me saying this 20 years ago - that a very rich person should leave his kids enough to do anything but not enough to do nothing."*
- Warren Buffett, January 2006. Fortune magazine.

## Benchmarking Decisions

- fundamental issues
- narrow or broad ranging focus
- an implementer or a funder
- a trust or a company
- selection of trustees or directors
- communication of the intention

## Company

- company
- limited liability
- perpetual succession
- obliged to comply with company law
- annual returns
- three Irish resident independent directors
- central management in Ireland

# Trust

- trust
- deed
- indemnity for trustees
- three Irish resident independent trustees
- empowered by deed

## Revenue Requirements

- Mandatory standard clauses
  - non-distribution of income, assets or profits to members
  - annual audited accounts available to Revenue Commissioners
  - a majority of officers be resident in Ireland
  - prohibition on payment of fees to officers

## Revenue Requirements

- if wound up surplus assets to a charitable body with similar objects
- prior approval from Revenue Commissioners before amending governing instrument

## Establishment Steps

- Constitution to be drafted
- Statement of Activities and Financial Statement to be drafted
- forwarded to Revenue Commissioners
- company incorporated/trust signed
- applies for its tax registration
- issue charity number (CHY Number)

## Charities Bill 2007

- April 2007 Bill reforming charity law
- first comprehensive system of registration and regulation
- Dáil Report Stage on 5 November 2008
- Bill has been sent to Seanad

## Tax Status of Irish Charities

- exemptions from certain taxes
- objects and powers of charity
- purposes that are legally charitable
- Pemsel
  - Poverty
  - advancement of education
  - advancement of religion
  - other works beneficial to the community

## Charities Bill 2007

- Four categories of charitable activity
  - the prevention or relief of poverty or economic hardship
  - the advancement of education
  - the advancement of religion
  - any other purpose of benefit to the community

## Charities Bill 2007

- non-exhaustive list of purposes that are beneficial to the community
  - relief of those in need by age or disability
  - promotion of health
  - promotion of racial harmony
  - protection of the natural environment
  - advancement of arts

## Exemption

- Income Tax
- Corporation Tax
- Capital Gains Tax
- DIRT
- Capital Acquisitions Tax
- Stamp Duty
- Dividend Withholding Tax

## No Exemption

- No general exemption in respect of VAT
- P.A.Y.E system for its employees

## Tax Issues for Donors

- Capital Taxes Relief
  - available to match donations in full
  - Capital Gains Tax
  - Capital Acquisitions Tax
  - Stamp Duty

## Capital Taxes Relief

- Section 611
- asset is disposed of to a charity
- disposal giving rise neither to a gain nor a loss
- A benefit for public or charitable purposes
- exempt from CAT
- SD relief on transfer of land or designated securities

## Income/Corporation Tax Relief

- approved body
  - a body approved for education in the arts
  - an eligible charity
  - has received a CHY number at least two years previously
  - any institutes of higher education

## Income/Corporation Tax Relief

- cash and/or designated securities
- not be subject to a condition as to repayment
- cannot be conditional

## Issues for different donors

- A company
  - no maximum limit
  - deducted as a trading expense
  - expense of management

## Issues for different donors

- An individual
  - Irish tax resident self employed
  - specified tax reliefs
  - €250,000 or 50% of the individual's adjusted
  - one tax year

## Issues for different donors

- PAYE person
  - amount of tax paid
  - donation is grossed up
  - charity seeks a repayment of the tax

## Regulation

- Charities Bill 2007 long overdue
- important for people active in the charities sector

## The Charities Regulatory Authority

- established to regulate
- administrative functions (registering charities, keeping annual accounts, annual returns)
- law enforcement functions

## Registration and Regulation

- an annual statement of accounts
- annual report
- gross income or expenditure €100,000
- annual accounts audited

## Registration and Regulation

- annual reports and accounts will be available for public inspection, save for those of private charitable trusts, not funded by donations from the public
- failure to comply is an offence
- investigations
- updating Fundraising Regulation

## Conclusion

- economic uncertainty
- income and corporate tax reliefs
- ideal time to establish a Foundation
- 2 year period to be an approved body
- charities holding a CHY number passported through regulatory system

## Conclusion

- more accessible
- strengthen and enhance benefits to the community