COMMITTEE REPORT:
PHILANTHROPY

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Creating and Operating Charitable Entities

Help clients choose their philanthropic paths through a private foundation or donor-advised fund

Private foundations (PFs) and donor-advised funds (DAFs) can be thought of as large bodies of money surrounded by those who want some. That's from the perspective of would-be beneficiaries.

We'll tell you about PFs and DAFs from the perspective of advisors who counsel on the creation and operation of those entities. (See "Glossary of Terms," p. 18.)

Donor's Goals

Should a client create a PF or a DAF—or contribute directly to a public charity (PC)? No surprise here: It depends on the facts of each client's situation. Most donors will contribute directly to PCs or do so through DAFs. Sometimes, PFs, DAFs and PCs are all used to achieve a donor's philanthropic goals.

It doesn't go without saying that to help clients in choosing their philanthropic paths, you've got to have more than walking-around knowledge.

PFs

Factors to consider in creating a PF. These include: (1) the donor's primary purpose for making gifts (for example: support of pet charities, generational planning or income tax charitable deductions); (2) assets available to give; (3) size and timing of gifts; (4) desired level of control; (5) appetite for administrative and compliance requirements, governance, tax compliance and other federal and state filing requirements; and (6) investment planning.

A PF in a coco de mer shell—one of the world's largest nuts.[1] A PF is a privately funded charitable entity controlled by an individual, family, corporation or small group of individuals. Generally, its primary purpose is to start and accumulate an endowment from which it can make grants to other non-profit organizations, qualified individuals and governmental entities.

Some history. The PF is an American invention. The first PFs were created in the early 1900s. By 1915, there were 27 PFs and by 1930, over 200.[2] As of 2017, there are 82,516 U.S. PFs.[3] Any way you slice it, PFs outnumber pizzerias.[4] PFs appeared in Britain in 1936 and in France and Japan in 1969. China, the Middle East, Russia and India are now beginning to copy our PFs.[5]

PFs often appeal to donors who want to maintain control over their assets. They get an income tax deduction now for assets that are invested and ultimately distributed to unrelated charitable entities. PFs, as stand-alone entities, can structure grants to be complex and multi-year. PFs run very much like businesses with employees, a governing board or trustees. And, PFs can market themselves and their charitable operations.

How PFs differ from PCs. PCs generally receive all or a great part of their financial support from the general public and have greater interaction with the public. PFs, conversely, are generally supported by one individual or family. Because PFs typically aren't subject to as much public scrutiny as PCs, PFs are subject to additional rules. Excise taxes are imposed on rule violations. The Tax Reform Act of 1969 (celebrating its 50th birthday this year on Dec. 30—the date on which it was signed by President Richard M. Nixon) singled out PFs by enacting anti-abuse rules because of the growing Congressional belief that PFs

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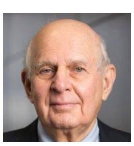
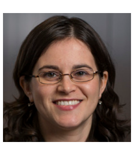
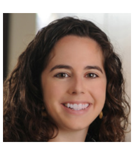

were more susceptible to abuse than PCs.

PF excise tax rules are in Chapter 42 of the Internal Revenue Code. PFs must distribute yearly a specific portion of their income for charitable purposes. They can't do business with their substantial contributors, and they face penalties for self-dealing and having jeopardizing investments.

PFs aren't for all donors. The cost of administration and annual filings makes sense only if the PFs will have significant assets. Additionally, some donors can find

DAFs are helpful for donors seeking anonymity.

a PF's administration and excise tax rules intimidating and costly. Violation of excise tax rules can be expensive, time-consuming and costly to unwind. For those reasons, donors often prefer DAFs.

Criticism. PFs have been criticized for years. A major criticism: PFs are funded with monies that would otherwise be given directly to PCs, and accumulating endowments aren't immediately benefiting the general public. (DAFs, as noted below, face similar criticism.) While PFs are required to distribute approximately 5% of their annual fair market value (FMV), some critics maintain this amount isn't enough. Others say the wealthy use PFs to take advantage of tax savings while continuing to amass wealth and wield influence and power over policymaking and the political process.

The flip side. PF funds can be accumulated to assure that funds aren't spent all at once. Many PFs view themselves as responsible for not just cutting checks but also for providing resources to PCs and as watchdogs to assure that funds are spent efficiently and work toward particular goals. PFs hold PCs accountable for following through.

DAFs

A DAF is a grant-making entity offered through sponsoring organizations (SOs)—investment companies, community foundations (CFs) or national charities. The SO, usually qualified as a PC, establishes a contractual relationship with a donor who contributes to the DAF. The SO has full legal control of the contributed funds, invests those funds and determines whether to make grants advised by the donor. A donor's advice is rarely not followed.

The different types of SOs for DAFs include national SOs and CFs. The national SOs are often affiliated with large investment firms (for example: Fidelity, Schwab, Vanguard and National Philanthropic Trust). Their main activity is sponsoring DAFs. CFs, conversely, have a more local focus and often use DAFs as one of many tools to raise funds. Historically, CFs exist to pool public funds for the benefit of a particular community and make grants to support charitable initiatives in that community.

DAFs appeal to donors who want to make gifts to PCs and want to receive the maximum income tax charitable deductions for direct gifts to PCs, but they're unsure of the charities they wish to support. Frequently, they desire the convenience of making one large gift and then

Glossary of Terms

Charitable entities in a nutshell

Donor-advised fund (DAF) is a fund or account that: (1) is separately identified by reference to contributions of a donor or donors; (2) is owned and controlled by a sponsoring organization (SO); and (3) with respect to which a donor (or any person appointed or designated by the donor) has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in the fund or account by reason of the donor's status as a donor.[1]

Public charity (PC) in broad terms, is: (1) an institution (such as a church, university or hospital); (2) an organization that has broad public support; or (3) an organization that functions in a supporting relationship to such organizations described in (1) or (2).[2]

Private foundation is a charitable organization described in Internal Revenue Code Section 509(a) that doesn't qualify as a PC under IRC Section 170(b)(1)(A).

SO is a PC that maintains a DAF.[3]

Endnotes

1. Internal Revenue Code Section 4966(d)(2)(A).
2. IRC Section 170(b)(1)(A).
3. Section 4966(d)(1).

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advising on smaller gifts to a number of charities. DAFs are also helpful for donors seeking anonymity. Because the SO is responsible for handling administration—such as record keeping, due diligence on the charity recipients and filing requirements—little responsibility is placed on the donor. Donors can pass on to family members the right of gift advice for amounts remaining in their DAFs when they shuffle off this mortal coil.[6]

Under the Tax Cuts and Jobs Act, the standard deduction has almost doubled, a cap has been placed on state and local tax deductions, there have been changes in the mortgage interest deduction and miscellaneous itemized deductions have been suspended. In response to these changes, many donors who previously itemized will take the standard deduction. But wait, there's a workaround. Those otherwise standard-deduction donors now make a large gift to a DAF in one year and find it tax advantageous to itemize in that year. In the next year or two, they take the standard deduction. With the DAF, they can spread out their gifts to PCs over a few years. They then plan to repeat the process: itemize, standard deduction, itemize, etc. This is called "bunching."

DAFs go back to at least 1931, with the establishment of the New York Community Trust.[7] Before 2006, DAFs operated without specific statutory definition and scant administrative and tax guidance. Congress awakened as DAFs grew in number and asset holdings. In 2006, Congress defined DAFs and specified excise tax rules for compliance in addition to the general PC rules. The federal excise tax rules applicable to DAFs are similar to those of PFs. Some DAF excise tax rules are stricter than those applicable to PFs. Some are less strict. Some are the same.[8]

Popularity. In 2017, 463,622 individual DAFs in the United States had charitable assets totaling more than $110.01 billion.[9] For years, the threat of additional regulations resulted in DAFs being treated more similarly to PFs. The Treasury Department and the Internal Revenue Service issued Notice 2017-73 (the Notice) shedding light on topics that proposed regulations being considered might address.

The Notice gives insight on whether a fulfillment of a donor's personal pledge by a DAF results in a more than incidental benefit to the donor/advisor. The Notice indicates that provided the DAF SO doesn't make reference to the pledge, and the donor/advisor doesn't claim a deduction for the satisfaction of the pledge, the fact that a donor/advisor has made a charitable pledge to the same charity (regardless of whether the charity treats the distribution as satisfying the pledge) shouldn't by itself result in providing a more than incidental benefit to the donor/advisor.

But, the purchase of tickets for charity events through the use of a DAF, according to the Notice, results in more than an incidental benefit to the donor/advisor. Further, the Notice indicates that proposed regulations would likely address the public support computation for PCs to prevent the use of DAFs to circumvent the excise tax rules applicable to PFs under Chapter 42 of the IRC. To date, proposed or final regulations haven't been issued. If past nonperformance is indicative of future events: Don't hold your breath!

> To maximize income tax charitable deductions, be mindful of the varying percentage limitations and the property being contributed.

Not all rosy. Although DAFs have grown in popularity since their inception in the 1930s, they've been criticized and questioned recently. A major concern is whether DAFs are being funded with monies that would otherwise be given directly to PCs.[10] Are DAFs actually harming PCs by depriving them of funds they could use now? Would a donor have instead contributed that full amount directly to the food bank, homeless shelter or library rather than to a DAF?

Another criticism: DAFs provide donors with an immediate income tax deduction; however, their gifts defer charitable distributions because there aren't mandatory payouts. Critics have suggested that Congress address these concerns, including: (1) requiring a mandatory annual payout;[11] (2) delaying the charitable deduction for contributions to a DAF until the DAF distributions are made;[12] and

(3) imposing a maximum time period for DAFs to be fully distributed.[13]

Rebuttal. Others believe that these requirements would harm charitable giving—arguing that DAFs aren't used to hide or shelter assets but to address PCs' goals and provide continued support.[14] Particularly, donors use DAFs, and especially CFs, to make long-term commitments to sustain support for local needs.[15] Some argue that if DAFs were subject to mandatory payouts or a termination period, donors would be likely to turn to other methods of giving and no longer use DAFs as entities to allow consistent and sustained giving over a period of time.[16] Additionally:

> DAFs provide a ready reserve to sustain charitable activities during times of need, such as economic recession or natural disaster. Indeed, when the markets declined in 2008, DAFs provided an important and reliable pool of dollars to maintain funding for a variety of otherwise unmet needs for charities throughout the country.[17]

Lastly, forcing payouts or requiring a term limit on DAFs could disrupt the ability to engage other family members and instill philanthropic values in younger generations.[18]

Fidelity lawsuit. A recent major lawsuit by donors against Fidelity's Investments Charitable Gift Fund (Fidelity)[19] deals with how much control donors can retain when making irrevocable gifts to DAFs. In this case, the donors were a husband and wife who sued Fidelity, claiming it failed to follow their investment advice on a $100 million gift to Fidelity's DAF. The donors allege contract and tort claims resulting in diminution of their charitable deduction and funds available to benefit charity. Fidelity denied all the donors' claims and moved to dismiss; a U.S. District Court in California denied Fidelity's motion. The donors demanded a jury trial, and the trial is set for Spring 2020.

Both DAFs and PFs are subject to the excess business holdings rules limiting how much of an operating business they can own.

Facts asserted by the donors: In 2017, the donors were facing a substantial income tax payment and decided to donate $100 million to charity—the bulk of which would be directed at fighting Lyme disease. On Dec. 26, 2017, the donors contributed holdings in Energous, a publicly traded company, to their Fidelity DAF. The company's stock had skyrocketed, and by contributing shares of their stock to the DAF, the donors maintained they would have a much smaller tax bill and more money available to fight Lyme disease.

The donors claimed Fidelity made four representations on how it would handle the stock's liquidation: (1) it would employ sophisticated, state-of-the-art methods for liquidating large blocks of stock; (2) it wouldn't trade more than 10% of the daily trading volume of Energous shares; (3) it would allow the donors to advise on a price limit (that is, a point below which Fidelity wouldn't sell shares without first consulting the donors); and (4) it wouldn't liquidate any shares until 2018 (the gift was made at the end of 2017). Based on those representations, the donors transferred their Energous stock to Fidelity's DAF.

More alleged facts. Fidelity liquidated 1.93 million shares in a 3-hour trading window on the last business day of 2017. The donors alleged that in so doing: (1) Fidelity traded approximately 16% of the daily volume rather than the 10% promised; (2) Fidelity used incompetent and inappropriate methods—not the sophisticated and state-of-the-art trading strategies promised; and (3) Fidelity failed to allow the donors to advise on a price limit. As a result of this liquidation, the donors alleged the shares were liquidated for tens of millions of dollars less than they would have been worth—and the donors were able to deduct millions less from their taxes. Fidelity denied all the allegations.

For the donor-plaintiffs and the rest of the DAF and SO world, this case could answer how much control donor/advisors can retain when making irrevocable gifts to their DAFs. For Fidelity, a loss would be a blot on its escutcheon.

Income Tax Consequences

Not all charitable deductions are the same. "How Much

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Can an Individual Deduct?" p. 24, outlines the various income tax charitable deduction percentage limitations applicable when donors make contributions to PFs and DAFs based on the type of asset donated. Generally, the income tax deduction depends on a number of factors: the donor (whether an individual or corporation[20]); the tax status of the recipient charity; the donor's adjusted gross income in the contribution year; any carryover years; the type of property contributed (cash, ordinary income property, capital gains property, tangible personal property); and other donor gifts made in the same tax year or past years and contemplated in future years. The individual income tax charitable deduction for gifts to PFs (except for operating and pass-through (conduit) PFs) is less favorable than for gifts to PCs and DAFs. Private operating foundations (POFs) are more than grant-making entities—they operate their own programs, spending at least 85% of their adjusted net income or minimum investment return, whichever is less, directly for the active conduct of their exempt activities.[21] Those organizations must also meet the requirements under an assets, endowment or support test. Contributions to PFs that distribute 100% of their contributions to PCs no later than three and a half months after the close of their taxable year—also known as pass-through (conduit) foundations—also have higher percentage limitations.

PFs are independently operated entities and must file annual returns with the IRS.

The lesson: To maximize income tax charitable deductions, be mindful of the varying percentage limitations and the property being contributed.

Preaching reminder. The amount deemed contributed and the deductibility ceilings aren't ceilings on generosity. And, often tax savings enable donors to contribute more than initially imagined.

For the ultra-wealthy still subject to the estate tax: Amounts given during life—whether or not income-tax deductible—aren't includible in the donor's federal gross estate.

Administration

DAF administration is relatively simple. The SO administering the DAF handles it for each account. The SO holds legal control of DAF assets and is solely responsible for administering the DAF program. Compensation to donors isn't permissible, nor are expense reimbursements. A donor/advisor (and other authorized advisors) can recommend grants to PCs. But, the SO has the ultimate responsibility of vetting and approving the charities and making distributions to them.

Administration of PFs is much more involved. A PF, its own stand-alone entity, can be established either as a trust or corporation. Each entity comes with its own governance responsibilities. PFs established as trusts are governed by the trust document and require trustees to carry out the specified obligations. Trusts are required to fulfill state and federal fiduciary duties to administer the PF while obeying those duties. PFs established as corporations are governed by their boards of directors and are subject to state level requirements and fiduciary duties. Those duties typically include the holding of annual meetings, the keeping of corporate records and the filing of annual reports. Whether a PF organizes as a trust or a corporation depends on the state laws governing each and the ease of administering an entity under that state's corporation or trust laws, the activities to be conducted and personal preference of the donors.

A PF allows legal and financial control to remain with its manager who's responsible for administering the PF and can receive reasonable compensation for services. Also, the manager can be reimbursed for reasonable expenses—for example: transportation to board meetings and expenses incurred in connection with a grants program. With more responsibility comes more freedom to control the funds and to structure grants. PFs can hire their own employees and implement their own charitable programs—including restricted grants and program-related investments or recoverable grants—each of which allows the PF to specify how grant funds shall be used and allows the PF to even recover some of the funds that are no longer needed.

PFs are required to distribute at least 5% of the average monthly FMV of their investment assets each year.[22]

Under current law, DAFs aren't required to do so, but it's important to review the DAF's contract with the SO to determine if the SO has a minimum activity policy.

Investment Planning

Some SOs allow donors of DAFs to recommend investments and offer a range of options, including investing in socially responsible enterprises. Depending on the amount involved, the SO may allow investing in closely held businesses for a short time (but typically will look to unwind the investment in the long run because of excess business holding rules and concerns about private benefit).

A PF has more control over its investments. As a stand-alone entity, the governing corporate board or trustees have the ultimate say on selecting investments. This includes investing PF funds in alternative investments and implementing creative structures that work to achieve the PF's mission. Larger PFs seeking to put more of their dollars to use in achieving their philanthropic goals are structuring some investments to have a more mission-driven goal through social-impact investing.[23]

Both DAFs and PFs are subject to the excess business holdings rules limiting how much of an operating business they can own.[24] In determining how much, the rules treat the DAF and PF as also owning what the donor and her family own.[25] While both DAFs and PFs are allowed to indefinitely hold a certain portion of a closely held business, DAFs typically liquidate those interests. A PF may continue to hold those interests provided it complies with the excess business holding rules and other Chapter 42 excise tax rules, along with state fiduciary standards.

Tax Compliance/Filing Rules

DAF compliance is easy for a donor. She doesn't have to file a separate return for her account. The SO reports all contributions to the account and distributions in the aggregate from the account to other charities on its own Form 990.

PFs, conversely, are independently operated entities and must file annual returns with the IRS—Form 990-PF. Also, under federal law, the PF is required to send a copy of Form 990-PF to the Attorney General in the state where it was organized, the state where it has its principal office and any other state it reports to—each state where it's authorized to do business. PFs are subject to a 2% excise tax on their net investment income,[26] while DAFs aren't. For any year a PF's excise tax liability is expected to be $500 or more, the PF must make estimated payments to avoid estimated tax underpayment penalties.

PFs may have additional state filing requirements—for example, state Attorney General registration and reporting, annual corporate filings and annual trust accountings.

Anonymity

A DAF donor is usually able to maintain anonymity with her giving because an SO reports all DAF activity on its own annual return (by aggregating the information from all of its accounts). When a donor uses a generic name for the account, all that will be reported is a gift from Ann O'Mous Charitable Gift Fund to ABC Charity. PFs can have some level of anonymity through structuring and contracting with grant recipients regarding publicizing the grant; however, it's difficult to obtain complete anonymity because of the public disclosure and reporting requirements applicable to PFs. For example, if a donor contributes funds to a PF directly, that donor's name will be listed on the PF's annual return for the year of contribution. A PF's application for tax exemption and three most recent years of annual returns must be available for public inspection.

Permissible Grants

Both PFs and DAFs may make grants to IRC Section 509(a)(1) and (2) PCs (for example: churches, schools, hospitals and other publicly supported PCs).

PFs can also make some grants to individuals. Scholarships may be awarded to individuals selected by a PF on an objective and nondiscriminatory basis under procedures approved in advance by the IRS. PFs may also make other types of grants to individuals. For example, a PF may buy and distribute toys to children in a hospital at Christmas, purchase blankets for the homeless and provide prizes and awards to individuals for outstanding achievements. Provided proper procedure is followed, a PF can have absolute discretion and control over those programs.

DAFs can't make grants to individuals. However, it may be possible for a donor to create a different type of

How Much Can an Individual Deduct?

The answer is provided in Internal Revenue Code Sections 170(b) and (e)

Types of Property	Private Non-Operating Foundations	Public Charities (including Donor-Advised Funds)
Cash	30% adjusted gross income (AGI); 5-year carryover	60% AGI;[1] 5-year carryover
Ordinary income property (held one year or less)	30% AGI; 5-year carryover; contribution limited to lesser of cost basis or fair market value (FMV)	50% AGI; 5-year carryover; contribution limited to lesser of cost basis or FMV
Long-term capital gains property (held more than one year)	20% AGI; 5-year carryover; contribution limited to lesser of cost basis or FMV (except for certain publicly traded securities[2])	30% AGI; 5-year carryover; FMV deduction[3]
Short-term capital gains property (held one year or less)	30% AGI; 5-year carryover; contribution limited to lesser of cost basis or FMV	50% AGI; 5-year carryover; contribution limited to lesser of cost basis or FMV
Tangibles held long-term (artwork, antiques, collectibles, books)—related-use[4]	20% AGI; 5-year carryover; contribution limited to lesser of cost basis or FMV	30% AGI; 5-year carryover; contribution is valued at FMV with some exceptions
Tangibles held long-term—unrelated-use	20% AGI; 5-year carryover; contribution limited to lesser of cost basis or FMV	50% AGI; 5-year carryover; contribution limited to lesser of cost basis or FMV

Endnotes

1. *See* Internal Revenue Service Publication 526, revised March 2019, for the IRS' position on calculating the charitable deduction when contributing both cash and property to a charity in a tax year. Cash contributions may limit the deduction for property contributed to a public charity such that to get a deduction in excess of 50% of a donor's adjusted gross income (AGI), the donor has to give more than 50% in cash. The American Institute of Certified Public Accountants recommends Congress provide a technical correction to Internal Revenue Code Section 170(b)(1)(G)(iii) as changed by the Tax Cuts and Jobs Act Section 11023 for the 60% of AGI charitable deduction limitation to function as intended, as outlined in a letter to Congress dated Feb. 22, 2018. *See also* The Joint Committee on Taxation Bluebook, JCS-1-18 (Dec. 20, 2018).
2. There's a special rule for some contributions of publicly traded long-term appreciated securities to private foundations. Under Treasury Regulations Section 1.170A-13(c)(7)(xi)(A)(1), a full fair market value deduction is allowable if the security falls within the definition of a "qualified security." However, the deductibility ceiling is 20%, not 30% of AGI. IRC Section 170(b)(1)(D)(i).
3. Note that a donor may make an irrevocable election to limit his deduction to the tax basis of the donated property. The income tax deduction is then increased to 50% of his AGI with a 5-year 50% of AGI carryover. Section 170(b)(1)(C)(iii).
4. It's related when the charity uses the gift in a manner consistent with its exempt purpose. Section 170(e)(1)(B)(i).

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fund at the SO, one that can make grants to individuals selected on an objective and nondiscriminatory basis under procedures approved by the SO's board, with the recipients selected by a committee whose members are appointed by the SO and a majority of whom aren't the donor and family members. CFs may also offer to work with donors to administer a scholarship program for a class of individuals, but the donor's involvement in the selection of the individuals is limited.

Both PFs and DAFs can make grants to any entity for a

charitable purpose, even if the receiving entity isn't exempt under IRC Section 501(c)(3), if they exercise expenditure responsibility over the grant. That means performing pre-grant due diligence regarding the organization, using a grant agreement restricting use of the funds, requiring funds to be held in a separate account and obtaining grant reports on use of the funds from the grantee organization and providing them to the IRS. However, with a DAF, the SO must agree to exercise oversight, which typically comes with a price tag that may vary depending on the location of the organization selected.

PFs must exercise expenditure responsibility over a grant to any other PF, including POFs. DAFs typically don't make grants to grant-making PFs, especially those controlled by donors. If they do, they must also exercise expenditure responsibility. The IRS considers this as potentially abusive because a donor would be receiving a PC deduction advantage for funding a PF.

DAFs must exercise expenditure responsibility over foreign grants. PFs can also exercise expenditure responsibility or obtain an equivalency determination. Generally, that requires current written advice received from a qualified tax practitioner[27] and giving sufficient facts about the foreign charity from which the IRS can make an equivalency determination.

The PF must also comply with U.S. anti-terrorist and withholding tax laws when making grants to foreign charities. Some DAFs specialize in making foreign grants. Query: Is it more or less economical for a donor to use one? Part of that price tag depends on whether the SO already has a relationship with the charity and the charity's location.

Before making grants through a DAF, review the DAF's grant policy to determine whether it will make grants to the organizations the donor wants to support. Grant-making policies can vary greatly—with geographic or purpose restrictions and with required percentages to go to certain groups of organizations. Also, consider whether there's a minimum amount per grant, a maximum number of grants per year and the restrictions that can be recommended (for example: grant to the library, grant to the library endowment fund or grant to be used by the library to buy audio books).

Family Legacy Planning

PFs and DAFs allow for multi-generational planning. PFs can exist in perpetuity and are often used to provide an organized structure for a family's charitable giving. Donors who want to create and leave a personal or family legacy of giving are attracted to PFs. PFs can be a way to involve and teach younger generations about philanthropy. PFs can have a project that a family undertakes together and brings the family together regularly.

DAFs can also exist for generations with a donor selecting successor grant recommender-individuals with advisory privileges. However, review succession planning with the DAF's SO. Often, the SO will have policies limiting the number of successor advisors that may make grant recommendations. It's also possible that the SO requires the account to terminate on the donor's death—or if the fund decreases below a minimum amount.

Termination

PFs. The complexity often depends on whether the entity is structured as a trust or a corporation; also, the PF must meet state law requirements for termination (and dissolution of the corporate entity if in corporate form).

When a PF is terminated, its assets—after payment of reasonable expenses—must be distributed for charitable purposes. PFs must also terminate in a way that avoids the termination tax under IRC Section 507. Typically, to avoid that tax, the PF should distribute assets to a PC described in IRC Section 509(a)(1) that's been in existence for at least the past five years.

DAFs. They can be terminated and funds transferred outright to PCs or to another DAF account quite easily. Because a DAF account isn't a stand-alone entity, there's no wind-up procedure under state or federal law for closing a single account. Typically, it can be done with the click of a mouse.

Association Aficionadas

Americans of all ages, all stations in life and all types of disposition are forever forming associations. There aren't only commercial and industrial associations in which all take part, but others of a thousand different types—religious, moral, serious, futile, very general and very limited, immensely large and very minute. Americans combine to give fêtes, found seminaries, build churches, distribute books and send missionaries to the antipodes. Hospitals, prisons and schools take shape in that way. Finally, if they want to proclaim a truth or propagate some feeling by the encouragement

of a great example, individuals form an association. In every case, at the head of any new undertaking, where in France you would find the government or in England some territorial magnate, in the United States, you're sure to find an association.[28]

Endnotes

1. The coco de mer, also called a "double coconut," is native to the Seychelles Islands in the Indian Ocean. It's one of the largest known nuts and can take up to 10 years to ripen. *Encyclopedia Britannica.*
2. Karl Zinsmeister, *The Almanac of American Philanthropy,* 38 (Philanthropy Roundtable, Washington, D.C. (2016)).
3. "The 2018 DAF Report," National Philanthropic Trust, *www.nptrust.org/reports/daf-report/.*
4. In 2018, there were 75,243 pizza restaurants in the United States. "The Pizza Power Report: A State-of-the-Industry Analysis," *PMQ Pizza Magazine, www.pmq.com/the-2018-pizza-power-report-a-state-of-the-industry-analysis/.*
5. *Supra* note 2.
6. When one has "shuffled off this mortal coil" is to die, as used in Shakespeare's "to be or not to be" soliloquy in *Hamlet.*
7. The New York Community Trust, "How to Give," *www.nycommunitytrust.org/giving/how-to-give/donor-advised-funds/.*
8. Internal Revenue Code Sections 4943(e), 4958, 4966, 4967.
9. *See supra* note 3.
10. Roger Colinvaux, "Donor Advised Funds: Charitable Spending Vehicles for 21st Century Philanthropy," 92 *Wash. L. Rev.* 39 (March 2017), at pp. 40-85.
11. *Ibid.,* at p. 58.
12. *Ibid.*
13. Ray Madoof, Boston College Law School, and Roger Colinvaux, Columbia Law School and Catholic University of America, "Donor Advised Funds—Tougher Rules Ahead?" *Taxwise Giving* (August 2017), at pp. 8-10.
14. "Donor Advised Funds—Response to Critics," *Taxwise Giving* (October 2017), at pp. 8-10.
15. *Ibid.*
16. *Ibid.*
17. Edward J. Beckwith, co-chair, The Jewish Federations of North America Charitable Giving Subcommittee, and Steven M. Woolf, senior tax policy counsel, The Jewish Federations of North America, "Donor-Advised Funds: Separating Myth From Fact."
18. *See supra* note 14.
19. *Emily and Malcolm Fairbairn v. Fidelity Charitable,* U.S. District Court, Northern District of California, Case No. 3:18-cv-4881 (Nov. 28, 2018).
20. Corporate charitable contributions are subject to a 10% "contribution base ceiling." A corporation's contribution base means the corporation's taxable income without regard to charitable deductions, net operating loss carryback (under IRC Section 172), deductions for certain trade corporations (under IRC Section 922) or capital loss carrybacks (under IRC Section 1212). For more details on the nuanced rules that apply to the charitable income tax deduction, *see* Conrad Teitell, Stefania L. Bartlett and Cara Howe Santoro, "Charitable Deductions for Gifts by Individuals, Partnerships and Corporations," *Trusts & Estates* (October 2018).
21. IRC Section 4942(j)(3).
22. IRC Section 4942.
23. "Social impact investing" refers to investments that are made with the intention of generating, in addition to financial return, a positive social or environmental impact.
24. Generally, 20% of voting stock. IRC Section 4943.
25. *Ibid.*
26. IRC Section 4940. The 2% tax can be reduced to 1% in certain cases. For tax years beginning after 1984, the tax rate on net investment income is reduced from 2% to 1% for any private foundation (PF) that meets the following distribution requirements: (1) the PF makes qualifying distributions during the tax year at least equal to the sum of (a) the assets of the PF for the tax year multiplied by its average percentage payout for the base period, plus (b) 1% of the PF's net investment income for the tax year, and (2) the PF wasn't liable for PF excise taxes for any year of the base period.
27. A "qualified tax practitioner" is defined in Treasury Regulations Section 53.4945-5(a)(5) and includes attorneys and certified public accountants. *See also* Revenue Procedure 2017-53.
28. Alexis de Tocqueville, *Democracy In America* (G. Dearborn & Co., New York, 1838).

SPOTLIGHT

Golden Hour

Still Life by Frederic Kimball Mizen sold for $7,500 at Sotheby's American Art Online auction on July 26, 2019. Born in Chicago, Mizen was a highly successful illustrator whose work included art for popular magazine covers, billboards and promotional materials. Santa Fe Railroad and Coca-Cola are just some of the major companies for which he illustrated.