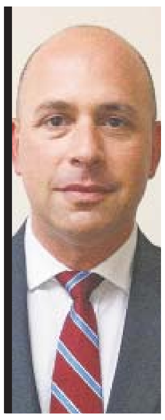
More to philanthropy than writing a cheque



MERRICK WEALTH

By Peter Merrick

Every June, I rave about attending the STEP Canada national conference. I look forward to going for two reasons. One, for the speakers and their supporting materials on estate planning, trust, tax and law in Canada and abroad. Two, it provides me the opportunity to meet seasoned practitioners with incredible insights and where collaborative relationships are either sparked or refreshed.

At the STEP Canada 18th national conference gala, I had the pleasure to sit next to Lorne Saltman, a seasoned lawyer and partner at Gardiner Roberts LLP in Toronto. Saltman has over four decades of in-depth corporate and tax experience in both international and domestic planning involving wealth preservation for high-net-worth clients, cross-border acquisitions and financing, corporate reorganizations, real estate ventures and the establishment of onshore and offshore trusts and private foundations.

Our conversation covered a wide range of topics but for this column I would like to focus on one particular topic: philanthropy. Saltman began by sharing a recent meeting he had with an accountant, whose client had been posing questions on how to structure his charitable donations. Through my discussion with Saltman we can all learn what options wealthy philanthropically-inclined clients have today.

Most wealthy donors can set up charitable giving in two ways, either through a donor-advised endowment fund in a public foundation, or through a family-controlled private charitable foundation.

"In this way, substantial tax savings can be obtained, the gifts can be made strategically to accomplish the family's objectives, and the children and grandchildren can become involved as part of their maturation," he said.

Saltman has observed that strategic charitable gift planning can accomplish multiple goals for wealthy clients:

• Reduce tax payable on death and/or during a person's lifetime;

• Eliminate tax on capital gains by donating marketable securities to a registered charity, including a family's own private charitable foundation;

• Nurture enduring family commitment and direction by donating assets to a family-governed private charitable foundation to serve as a family legacy for following generations;

• Provide an opportunity for family members to take responsibility as directors and/or for program design, implementation and investment management for a family's private charitable foundation;

• Use a planned giving arrangement to establish or enhance a family system of governance and joint decision-making. Plan on how and when to involve the next generation of the family. Teach and coach family members on how to identify worthwhile projects to fund; how to review proposals; and how to monitor and evaluate grants.

• Establish an endowment fund in the family's name with a public charitable foundation through initial seed funding, then allow others to contribute to the family's endowment fund in the future.

Saltman has worked with many accountants and their clients where some clients wanted to make donations to public foundations, while others felt that a family's private foundation was the way to go. I asked him what factors should be considered in choosing one approach over the other. He reminded me that in all tax and estate planning, we find that clients face trade-offs. For many it's retaining confidentiality through a donor-advised endowment fund with a public foundation versus retaining control over the funds and the charitable activities through a private charitable foundation.

Saltman explained that with a private charitable foundation, the donor (and, if they wish, the family) retains control — over assets donated, investments, timing of gifts to the foundation and timing of gifts made by the foundation, quantum of distributions, and activities of the charity.

A private foundation facilitates increasing a family's donation, i.e. by making a donation with greater impact financially than if done by an individual directly, because 100 per cent of the income from an investment held by the private foundation can be donated by the foundation, whereas the individual or private corporation is limited to 75 per cent of such income being tax-deductible.

A private charitable foundation can be used to build up an asset base for charitable work. In addition, a private charitable foundation can hold endowment funds from the family or make endowed gifts chosen by the family.

"However, in a private charitable foundation important issues of succession should be dealt with concerning directors and officers in order to continue the original donor's program of giving," said Saltman.

Through our collective experience, Saltman and I acknowledge that a prime concern of successful people is confidentiality. Saltman explained that the form T3010 filed with the CRA each year by a private charitable foundation discloses directors, officers and grantees; however, there is no such disclosure for a donor when using a donor-advised endowment fund with a public charitable foundation.

Administration responsibilities and costs incurred are relevant considerations. Use of a public foundation offers simplicity, ease of administration and some cost savings.

"A public foundation, however, will charge the donor an upfront, administrative fee ranging from 2 per cent to 7 per cent, plus an annual investment management fee of 0.3 per cent to 0.5 per cent in respect of the endowed funds. Alternatively, some may charge an annual administrative fee ranging from 1 per cent to 2 per cent times the current value of endowed funds held by the public foundation. The annual maintenance costs of a private foundation payable to accountants and lawyers would be covered by the public foundation's charges," Saltman explained.

Public foundations generally have an arm's length board which will consult with the donor but not be controlled by them.

Public foundations often have a broad focus, and in many cases act as an umbrella foundation for numerous operating charities on a local, national or international scale.

Year-end gifting is assured, whereas if the client wishes to establish a private foundation and make charitable gifts toward year end, they may encounter delays at the CRA.

"With a public foundation, there is little concern as to whether future generations will have the same zeal and vision as the initial donor. However, the personal satisfaction of operating a charity and the opportunity to instill charitable values in family members may be lost, when administration is relinquished to a public foundation," Saltman has observed.

When making a gift to a public foundation, flexibility is offered because the donor can direct, through use of donor-advised fund agreements, that the gift be used to create a fund for a purpose, and can also direct the gift to be held in perpetuity or for a period of time, and the donor can also give directions as to distributions of income/capital.

Donor recognition is possible through a public foundation but it is easier with a family's own private charitable foundation.

A public foundation offers fewer advantages of timing and scheduling of charitable distributions. If a gift is made to a private foundation the eventual charitable use of the gift can be determined later, while with public foundation decisions must be determined at time of the gift.

As I left the STEP gala, I reflected on our conversation with the firm grasp of why it is so important to work with a trust and estate legal expert with years of expertise in structuring large charitable gifts. It was a good educational night.

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Security is a pressing issue, says Kamal

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both in terms of culture change, but also understanding the human roots of the cyber issues that we're facing right now."

She said incorporating the human component can help organizations better understand what hackers are after, and it is important to balance between technical expertise and understanding the motivation behind a hack.

"You need all these different perspectives beyond the technical component," she said.

According to Stephen Cheeseman, general counsel at Cheeseman Law, knowing the language is the first step in building any strong cybersecurity system.

"It's quite common that they don't know what happened. If you don't know what went wrong, then you can't really fix it. There's no way to learn."

Dina Kamal, Deloitte Canada

"We as compliance professionals need to really rethink technology ... We've got to learn about it," he said.

Technology has enabled money laundering schemes, but Cheeseman said it's important to remember that these problems are most acutely felt in developing countries. "We're the starting point; it's the Third World where this is unfolding," he said.

"Cyber has to be thought of globally ... Technology is so global, so consuming and so impacts us, and again plugs into money laundering."

Meanwhile, Steadman said that like technology, security must be an enabler for business.

"Look at what are the areas of highest risk and we [can] start to establish controls and security mechanisms around those to make sure that those things that are important or imperative to keep the business running are protected accordingly," he said.

He said, however, hackers could lie dormant in your organization's system for a long time, which poses a unique challenge in that a firm may sometimes only realize that its security has been compromised after the hacker has finished the job.

"They can be in for a long period of time and they can be out again and you can never know about it, so you have to make sure that you're trying to detect what's going on," he said.

Kamal added that organizations often do not analyze what went wrong when a breach occurs unless they are forced to do so for regulatory reasons or when the incident draws public attention.

"It's quite common that they don't know what happened," she said. "If you don't know what went wrong, then you can't really fix it. There's no way to learn."

Ultimately, the bottom line is that cybersecurity can no longer be ignored, and it is crucial for Canadian stakeholders to be prepared, Butlin said. "Like it or not, cyber now has to be managed," she said. "It's not an emerging issue … It's upon us now."