Complex Organizational Structures/Hybrids

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Agenda and objectives

Current trends, opportunities and challenges

- Impact-oriented entities
- Tandem structures

Impact-oriented entities

- Donor-advised funds (DAFs)
- Private foundations (PFs)
- Public charities (PCs)
- Social welfare organizations (SWs)
- Limited liability companies (LLCs)

Donor-advised funds IRC 501(c)(3)

- Governance and liability
  - Bookkeeping entry or segregated account held by a sponsoring organization (i.e., not an entity)
  - Only advisory rights, no legal control
  - No ability to conduct activities other than making grants and investments
- Taxation
  - Exempt from income taxes (other than unrelated business taxable income (UBTI))
  - Contributions to DAF may generate income tax deductions
  - No gift taxes on contributions/potential estate tax deductions
  - Can hold illiquid assets, but limited ability to hold interests in operating businesses
- Disclosure
  - Identity of contributors redacted (although some states seek disclosure)
  - Grants and investments disclosed on sponsoring organization's Form 990 (intermingled with all other DAFs administered by the sponsoring organization)
- Permissible activities
  - Must be used for charitable purposes (no lobbying/political activity)
  - Not suitable for operational activity
- Regulatory oversight
  - Excise tax rules prevent donor benefits (no de minimis exceptions)
  - Uniform Prudent Management of Institutional Funds Act (UPMIFA) may limit investment flexibility

Private foundations IRC 501(c)(3)

- Governance and liability
  - Separate legal entity
  - No equity ownership
  - Designed to survive into perpetuity with endowment
- Taxation
  - Subject to 1.39% investment income tax (plus tax on UBTI)
  - Contributions to PF may generate income tax deductions (less generous than DAF and PC)
  - No gift taxes on contributions/potential estate tax deductions
  - Can hold illiquid assets, but limited ability to hold interests in operating businesses
- Disclosure
  - Contributors disclosed on Form 990-PF
  - Grants and investments disclosed on Form 990-PF
- Permissible activities
  - Must be used for charitable purposes (no lobbying/political activity)
  - May conduct operations
- Regulatory oversight
  - Complex excise tax rules limit self-dealing, investments, business ownership, grants, etc.
  - Compensation limits
  - State law generally subjects assets to perpetual charitable trust (i.e., assets must forever be used for charitable purposes)
  - UPMIFA may limit investment flexibility

Title search: Complex Organizational Structures/Hybrids

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