Australian charities must not be trumped by Donald Trump's tax changes


Charitable giving in Australia from the rich is low compared with Britain and America. *Fairfax*

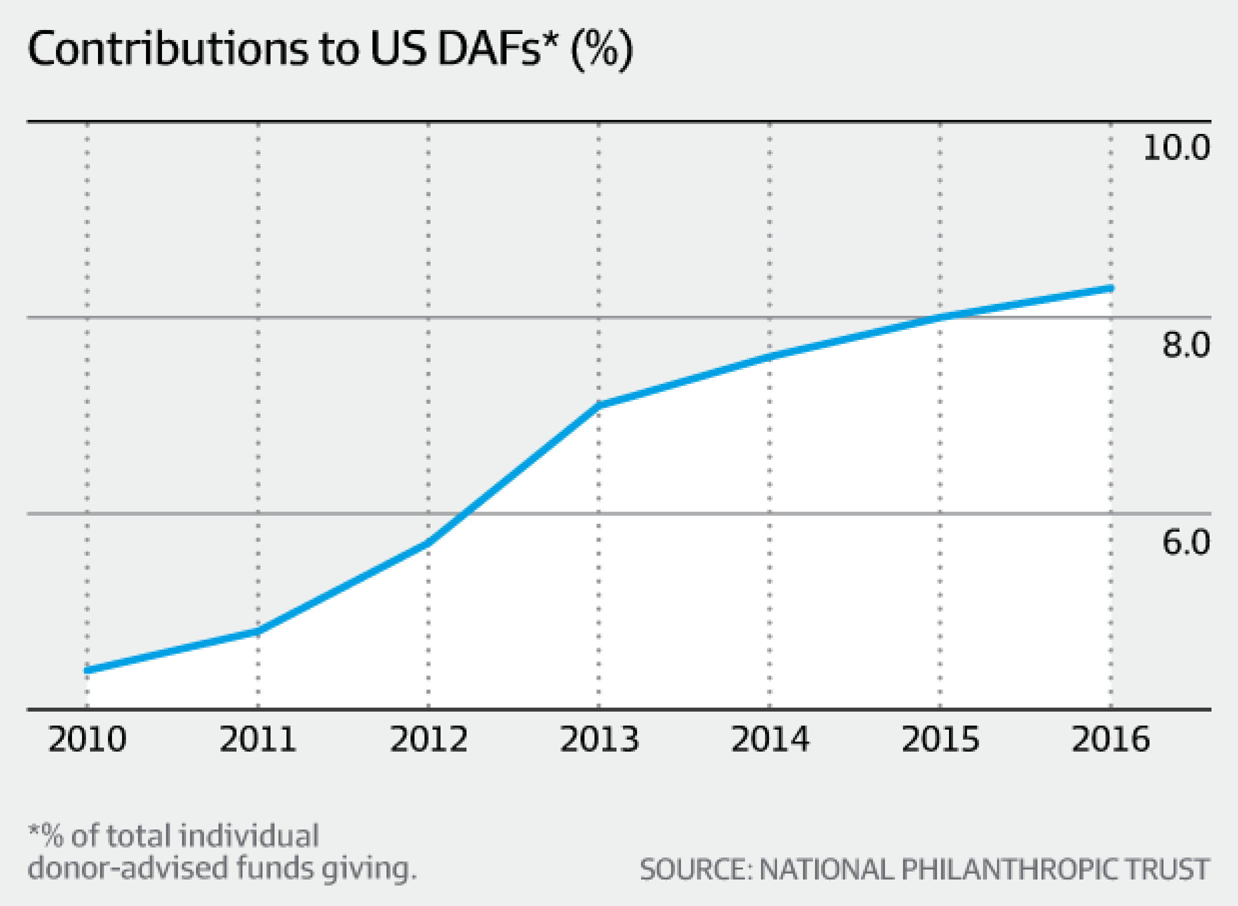
by **Stirling Larkin**

It should not come as a surprise to learn that under Donald Trump, a President who acquires portraits of himself with his namesake's foundation, philanthropic and charitable giving has now become more complex, burdensome and increasingly only for the more affluent higher net worth families of the United States.

Affected in large part by the key provisions of the 2017, "Tax Cuts and Jobs Act", the US's two primary philanthropic structures – Charitable Remainder (CRT) and Charitable Lead Trusts (CLT) – have further shifted the focus of charitable giving to Ultra High Net Worth (UHNW) communities.

This is primarily now because of the heavily reduced tax incentives for moderately wealthy Americans, since the Act passed last November.

As often is the case with US philanthropic trends, such shifts more often than not find their way Down Under, and this should greatly alarm Australian UHNW and broader giving communities alike.



This malefic North American trend hits at a bad time for Australian philanthropy, which lacks independent leadership that is not largely or wholly conflicted by the corporate governance failings evidenced throughout the current Royal Commission.

Since the Act passed in November, a conflation of rising global interest rates and the heavily reduced tax incentivisation has pushed charitable giving into a US specific structure, known as a Donor-Advised Fund, or DAF, and these surmount to charitable accounts sponsored by a recognised public US charity.

This trend must not be allowed to take off in Australia, especially during a time in which it remains uncertain whether financial institution-sponsored products should safekeep charitable accounts.

The rise in US DAF's, is also a consequence of rising US interest rates and this is because CLT's work better when interest rates are low and CRT's, when interest rates are higher.

US CRT's are trusts that pay an annual payment to the donor, with the remainder passing to charity.

This donor can get an upfront income tax deduction for the charitable portion of the transfer and because the value of the donor's retained annuity is lower when interest rates are high, the deductible charitable portion is higher when interest rates are high.

Since Trump's Act passed in November, what this has meant is that to now avoid having to pass all to a charity in any particular year, CRT trustees can setup a Donor-Advised fund, either with a local community charity or with a financial institution-sponsored fund and give the aggregate amount to the DAF.

In this case, the individual would receive a charitable income tax deduction in the year of contribution to the DAF but then, importantly have the funds contributed to the DAF distributed to charities in subsequent years in the annual amounts given by the donor in years past.

Albeit a convoluted but viable "workaround" for US philanthropists now challenged by Trump's legislative vex, an Australian trend following this would be deeply concerning for a number of reasons.

US DAF's were first established during the nadir of the 1930's Great Depression, in direct response to the severe and acute suffering faced nationally across the United States.

They enabled affluent American families, who at the beginning of the Depression faced high interest rates, a way to set aside cash and non-cash assets and invest them, for tax-free growth, until they granted them to specific charities.

Not foreseeing the further depths, the initial 1929 stock market crash would travail, these "non-cash assets", contributed to a national effort to 'prop up' publicly traded securities as well as such complex assets as privately held securities, private business interests, real estate and commercial assets, all thought to be of national importance (what today would be referred to as National Security).

Such DAF investments where, at that time, thought to be completing a patriotic service and most ironically, seen as a form of philanthropy itself.

But since the 1930's and especially following the 2008 Great Recession, DAF's have now included investments into more complicated financial products, synthetics such as Exchange Traded Funds and alarmingly, even cryptocurrencies.

Australian philanthropists face different challenges and even though many progressive, innovative and advanced trends find their way to Australia from US philanthropy, this must not be one of them.

Even with much of Australian Family Office's wealth invested globally, the philanthropic structures of choice for Australian philanthropists – Private (PAF's) and Public Ancillary Funds (PuAF's) – have strict requirements ensuring funds remain within domestic Australian borders.

A scenario whereby US DAF allowable investments such as cryptocurrencies took popularity within Australian PAF or PuAF accounts, managed by Australian financial institutions facing an open Royal Commission, should be censured.

There is much to embrace about American philanthropic trailblazing but for Australians, charity and charitable trends must always begin at home.

Stirling Larkin is Chief Investment Officer of Australian Standfirst www.australianstandfirst.com.

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