

Philanthropy challenges for US and Australia

Structures that work stateside aren't necessarily compatible here, where we face a number of roadblocks.

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Australian philanthropy continues to face structural impediments at the contribution and distribution ends, and recent revelations in the United States on the increasing popularity of US donor-advised funds (DAFs) raise questions for charitable giving across all Pacific Rim ultra high net worth (UHNW) communities.

As [discussed in this column in August 2018](#), US DAFs were established during the nadir of the 1930s Great Depression, in direct response to the severe suffering across the United States.



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They gave 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.

Affected in large part by the key provisions of the 2017 Tax Cuts and Jobs Act, the US' two primary philanthropic structures – charitable remainder trusts (CRTs) and charitable lead

trusts (CLTs) – have further shifted the focus of charitable giving to UHNW communities. This is because of the heavily reduced tax incentives for moderately wealthy Americans since 2017.

Since then, it is thought that \$US110 billion (\$163 billion) sits in 460,000-plus DAF accounts across the continental United States. But there are increasing questions about taxation, charitable distributions and whether these safe harbours are being used for tax avoidance as much as they are focused on helping others.

In January the Californian state legislature took an initial step to require greater disclosure from these DAF accounts when it passed a closely watched bill, AB 1712, through committee.

This measure was intended to standardise DAFs across the US which – unlike Australia’s quasi-similar private ancillary funds (PAFs) and public ancillary funds (PuAFs) which are nationally standardised already – allow state-specific exemptions and vastly varying degrees of accountability and reporting.

Similar to Australian PAF and PuAF minimum annual distribution requirements, the Californian AB 1712 proposal would disclose the “payout rates”, ie details about how often DAF accounts are sitting on money for charity but not awarding it.

This disclosure is necessary to provide some of the first hard data that could settle the unsubstantiated allegations that some DAFs are just another tax-avoidance vehicle disguised as philanthropy.

The rise in US DAFs is also a consequence of lowering US interest rates – this is because CLTs work better when interest rates are low and CRTs work better when interest rates are higher.

Upfront deduction

CRTs pay an annual payment to the donor, with the remainder passing to charity. With interest rates dropping since November 2017, some argue that payouts have shrunk and will only improve when rates "normalise".

The technical justification for this is that the US 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 higher when interest rates are low, the deductible charitable portion is lower when interest rates are zero-bound.

The confluence of these challenges for Australians and Americans sits in parallel with the larger challenge of who plays God when deciding what is and isn’t charity – where does the line sit between something being charitable and philanthropic; who decides the tax redemption levels for varying structures; and what is the ethical but also legal definition of “impact investing”?

In the US, the Democratic left-leaning Californian state legislature is attempting to buttress the Tax Cuts and Jobs Act driven through by the Republican majority of 2017. In Australia, the self-anointed peak body, Philanthropy Australia, continues to “guild” the scope of Australian philanthropy and, in so doing, stifle competition (and competitive ideas), bullnose

government regulations and federate what is and isn't philanthropic under the pretence of solidarity.

Karl Marx taught us that guilds eventually blocked innovation and at every turn exclude those outside of the association. Financial services have seen Continuing Professional Development (CPD) token requirements, ditto professional company directors with Director Professional Development (DPD) requirements.

If left unchecked, an Australian philanthropic peak body may creep into quasi-governmental territory and mandate "Philanthropic Professional Development" (PPD) requirements, narrowing how Australians can contribute in society, give back and champion their own altruistic passion projects.

Finding the balance between how society defines charity, philanthropy and impact, and weighing these against the requirements for fair taxation, oversight and prudential guidelines has and will likely never be an easy process.

But what is clear is that politicking and guild-like possessorship should always be resisted by a society whose focus should always remain on how we all do better for community, our environment and those less fortunate.

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