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MY VIEW

Zuckerberg announcement sheds light on philanthropic strategies

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Much attention has been given to the recent announcement by Mark Zuckerberg and his wife, Priscilla Chan, to "give away" the bulk of their $45 billion Facebook fortune. The newly formed Chan Zuckerberg Initiative, a limited liability company, is dedicated to supporting human potential and equality for all children in the next generation. The Zuckerbergs' strategy of forming an LLC to structure their charitable giving sheds light on the various options available to affluent individuals to donate their wealth and the tax implications involved.

In reality, the transfer of their Facebook shares to an LLC is not, in and of itself, a charitable contribution and does not produce a current tax deduction. Additionally, the formation of an LLC allows the Zuckerbergs to use their funds to lobby and influence legislation, which also negates a charitable tax deduction. The Zuckerbergs actually have a low taxable income and are likely not in need of a charitable income tax deduction at this time. Undoubtedly, their tax situation will change and they will utilize strategies to capture income tax deductions as appropriate for their evolving personal income tax structure.

Few taxpayers fit into the unusual situation in which the Zuckerbergs find themselves. Most well-to-do taxpayers who are charitably inclined are mindful of the charitable tax deductions they can use on their personal income tax returns to significantly decrease or, in some cases, eliminate tax on their ordinary income. So how can charitably inclined affluent individuals use their wealth creatively for social good, while still obtaining the benefits flowing from the charitable tax deduction?

First, direct gifts of cash or low basis securities can be made to charitable organizations that the donor feels are effectively promoting the types of social change and benefits aligned with their personal beliefs. Local examples of such gifts include the Pérez Art Museum Miami, which was funded with a $40 million gift from developer Jorge Pérez; and the Frost Museum of Science, funded with a $35 million gift from Patricia and Phillip Frost.

Consideration should be given to donating to fewer organizations and in larger amounts, rather than smaller gifts to a broad spectrum of organizations. Larger gifts will increase the ability of the charity to implement programs in which the donor is interested. The donor needs to clearly focus on the expected outcomes desired when creating a gift program, and carefully consider the charity's capability of implementing specific programs to ensure they mirror the social benefits desired.

Second, for larger wealth transfers for the benefit of charity, donors should work with their financial planning advisors to consider the appropriate charitable vehicle, such as charitable trusts, gift annuities, pooled income funds and other similar vehicles. Each of these must be considered carefully in order to match the donor's charitable intent with the desired tax benefit in a cost-effective manner. Many of these arrangements are private and not publicly recorded, which may appeal to donors who value privacy and wish to avoid public notice.

Third, where appropriate, the creation of a private foundation should be considered for large charitable giving programs. It is likely that the Zuckerbergs will utilize a private foundation as part of their charitable strategy in order to ultimately take advantage of tax deduction opportunities. It is also likely that the Zuckerbergs will engage in some combination of three forms of investing used by foundations to effect social change:

CHARITABLY INCLINED TAXPAYERS SHOULD FIRST DEFINE THEIR PRECISE CHARITABLE GOALS AND STRUCTURE THEIR GIVING STRATEGICALLY IN ACCORDANCE WITH THEIR FINANCIAL AND ESTATE PLANNING.

Socially responsible investments (SRIs): Investing the foundation's assets in securities other than tobacco, gaming or alcohol-related companies, or other areas the foundation finds objectionable and not in accordance with its mission.

Program-related investments (PRIs): Investing in specific programs that promote charitable goals aligned with those of the foundation. These investments typically do not seek income or capital appreciation and qualify for the foundation's 5 percent distribution requirement if all IRS conditions are met.

Mission-related investments (MRIs): MRIs are similar to PRIs, but MRIs seek both financial and social returns. MRIs do not qualify for the foundation's 5 percent distribution requirement.

Thus, while staying within the established framework of permissible foundation investing, foundations can promote social change with much of the flexibility that the Zuckerbergs find essential in order to implement their personal charitable giving program. Local examples are numerous, such as The Jim Moran Foundation, located in Deerfield Beach, which recently donated $100 million to Florida State University, the largest donation in the school's history and believed to be the largest single contribution ever in Florida's higher education system. In addition, The Jim Moran Foundation has handed out more than $8 million in grants this year for a variety of social causes. Another example is the Huizenga Family Foundation Inc., based in Fort Lauderdale, which manages much of the philanthropy on behalf of Wayne Huizenga and his family.

In sum, charitably inclined taxpayers should focus first on defining their precise charitable goals and structuring their giving strategically in accordance with their financial and estate planning.

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