

Contents

<i>Preface</i>	<i>page</i> xi
<i>Who should read this book</i>	xv
1 Introduction	1
Charitable giving as an American value	1
Charitable giving in America today	2
Magnitude	2
<i>Organizations</i>	2
<i>Donors</i>	4
Scope	5
Causes	8
Motivation	12
2 Fundamental concepts relating to charitable organizations	15
Private inurement	15
Public benefit versus private benefit	16
Public charities versus private foundations	17
Nonprofit versus tax exempt versus charitable	19
3 U.S. legal framework governing charitable organizations	22
Legal structures	22
<i>Nonprofit corporations</i>	22
<i>Trusts</i>	24
<i>Unincorporated associations</i>	26
<i>Limited liability companies</i>	26
U.S. taxation	27
<i>U.S. federal charitable income tax deduction</i>	27
1. Individual donors	28
General rules	28
Nondeductibility of gifts to foreign charities	29
Treaty overrides	31
Practical considerations	32

viii Contents

2. Corporate donors	32
3. Trusts and estates	33
<i>U.S. federal estate and gift tax deductions</i>	34
1. Federal estate tax charitable deduction	34
2. Federal gift tax charitable deduction	35
<i>Exempt status</i>	36
<i>Termination of exempt status</i>	38
4 U.S. legal constraints	40
Private foundation rules	40
<i>Incremental regulatory initiatives</i>	40
1. Tax Reform Act of 1969	40
2. Recent “reform” initiatives	41
3. Future trends	42
Creeping Sarbanes-Oxley	42
Administrative initiatives	43
State legislative initiatives	45
Self-appointed watchdogs	46
<i>Excise tax on investment income</i>	47
<i>Self-dealing</i>	47
<i>Minimum distributions</i>	49
<i>Excess business holdings</i>	50
<i>Jeopardizing investments</i>	51
<i>Taxable expenditures</i>	53
<i>Reporting requirements</i>	54
5 Constraints on cross-border philanthropy	57
Outbound charities	57
<i>Equivalency determinations</i>	58
<i>Expenditure responsibility</i>	60
Pre-grant inquiry	60
Written agreement	60
Reports	61
Reports to the IRS	61
Financial accounts	61
<i>Treasury Department Anti-Terrorist Financing Guidelines</i>	61
Inbound charities	64
6 Why create a foreign charity?	67
The bias in U.S. law against private foundations	67
Increased regulatory intrusiveness is to be expected	68
Advantages of a foreign charitable organization	69
<i>Avoiding the U.S. private foundation regulatory regime</i>	69
<i>Hedging against future U.S. government intrusiveness</i>	71

	Contents	ix
7	Picking a jurisdiction	73
	What is foreign anyway?	74
	Law	75
	Financial services infrastructure	76
	Professional infrastructure	76
	Proximity or access to the United States	77
	Reputation	78
	Language	79
	Political risks	79
	Costs	80
8	Establishing a foreign charitable foundation	81
	U.S. tax considerations	81
	Should the foreign entity apply for exempt status in the United States?	83
	<i>Section 501(c)(3) notice requirements</i>	83
	<i>Tax implications of exempt status for foreign private foundations</i>	84
	1. Deductibility of lifetime gifts and testamentary bequests of U.S. donors	84
	Estate tax deductibility	85
	Gift tax deductibility	86
	2. Excise and income taxes	87
	3. Complying with (or avoiding altogether) the private foundation regulatory regime	88
	4. Grant-making and fund-raising activities	89
	Governance issues	89
	<i>Board of directors or trustees</i>	90
	<i>Committees</i>	91
	<i>Control</i>	92
9	Representative structures	94
	Private foundation organized as a Delaware corporation	94
	"American friends of . . ." organized as a Delaware corporation	95
	Bermuda charitable trust	95
	Generic foreign charitable trust agreement	96
	Bermuda purpose trust	97
10	Further resources	99
	<i>Glossary of terms</i>	101
	Appendices	105
	<i>Form 1023: Application for Tax-Exempt Status, with Instructions, Appendix 1</i>	106

x Contents

<i>Template: Corporate Charter for Private Foundation Organized as a Delaware Corporation, Appendix 2</i>	173
<i>Template: Corporate Charter for: “American Friends of . . .” Organization Formed as a Delaware Corporation, Appendix 3</i>	177
<i>Conflicts of Interest Policy Recommended by the Internal Revenue Service, Appendix 4</i>	181
<i>Form 990-PF: U.S. Federal Income Tax Return of Private Foundation, with Instructions, Appendix 5</i>	183
<i>Form 4720, U.S. Federal Excise Tax Return for Private Foundations, with Instructions, Appendix 6</i>	228
<i>Revenue Procedure 92–94 [Equivalency Determinations], Appendix 7</i>	252
<i>U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities, Appendix 8</i>	258
<i>Form 3520, Annual Return to Report Transactions with Foreign Trusts, with Instructions, Appendix 9</i>	274
<i>Form W-8EXP, with Instructions [Withholding on U.S. Source Income], Appendix 10</i>	293
<i>Template: Bermuda Charitable Trust, Appendix 11</i>	301
<i>Template: Generic Foreign Charitable Trust, Appendix 12</i>	321
<i>Template: Bermuda Purpose Trust, Appendix 13</i>	337
<i>Index</i>	359