



Cross-border cooperation

PHILANTHROPIC GIVING IS AT THE FOREFRONT OF CLIENT DISCUSSIONS NOW MORE THAN EVER. A RECENT STEP JOURNAL ROUNDTABLE, SPONSORED BY CAF AMERICA, EXAMINED THE CHALLENGES OF ADVISING CLIENTS IN INTERNATIONAL PHILANTHROPY

WORDS: **HELEN SWIRE**, NEWS EDITOR, STEP

In September 2021, seven philanthropy experts came together for a virtual STEP roundtable discussion, sponsored by CAF America, to examine current trends in cross-border giving and best practice in advising clients through the challenges of international philanthropy.

The roundtable Chair, Ted Hart, President and CEO of CAF America and CAF Canada, and CEO of CAF International, opened the discussion by noting that clients must meet the requirements of the ‘three Rs’: regulatory compliance, risk management and reputation protection.

Turning first to the issue of regulatory compliance, he asked the participants how donors can balance their desire to have control over their cross-border charitable giving while understanding and remaining within the scope of jurisdictional regulations. For many around the table, there was a consensus that education on different international regulatory requirements is key.

‘There is a real lack of awareness of the requirements for cross-border philanthropy,’ explained Mark Greer, Managing Director of Philanthropy Services at CAF. ‘Many clients start from a place of assuming there are no requirements whatsoever. The most common challenge we face is taking them on that journey from the assumption that they can give overseas without all the red tape.’

Alana Petraske, Partner at Withersworldwide, agreed: ‘Clients who are internationally mobile and borderless, with wealth that allows them to feel truly global, are often surprised that law and taxation in relation to philanthropy are local to each jurisdiction. Regulation and compliance becomes more difficult as a result of their worldwide mobility.’

REGULATION, COMPLIANCE AND IMPACT

‘There is a trade-off between ease of compliance and impact of giving; both clients and advisors need to be humble

enough to know that they’re not an expert across all areas and that they need the right partners,’ added Brad Bedingfield TEP, Partner at Hemingway & Barnes. ‘To have an impact when giving abroad, clients must be willing to be actively engaged with the compliance requirements. Many think they know what needs to be done and want to set up a charity abroad and run it themselves, but there are partners on the ground already doing this work. We must talk to those partners and learn from them: they know things we and the clients are not going to know, and they know the network of local lawyers needed to start mapping out the requisite compliance.’

‘It’s extremely important for local counsel to be working with counsel in the jurisdiction where the client wants to give or to fund a project,’ agreed Jane Peebles TEP, Partner at Karlin & Peebles. ‘The fallout of getting things wrong can be very serious, and it is critical that the advisor and intermediaries perform the required due-diligence. Clients often assume that their home domicile rules

'What must advisors and intermediaries do to help mitigate the risks and protect the interests of their philanthropic clients?'

'The most common challenge we face is taking [clients] on that journey from the assumption that they can give overseas without all the red tape'

'Clients often assume that their home domicile rules apply ... but a foreign jurisdiction might even have a different definition of charitable purposes'



Ted Hart (Chair)

President and CEO, CAF America and CAF Canada; CEO, CAF International



Mark Greer

Managing Director, Philanthropy Services, CAF



Jane Peebles TEP

Partner, Karlin & Peebles

apply to every jurisdiction, but a foreign jurisdiction might even have a different definition of charitable purposes, and we need to help clients navigate through that unscathed.'

It is not simply the regulation of cross-border giving that clients must understand, but also the tax treatment, said Greer. 'There are significant differences in terms of tax relief on donations between Canada, Europe, the UK and the US: some US clients, for example, can find themselves taxed twice. Clients need to focus on where they're trying to give, where they most need the tax relief and how to structure the giving in terms of the tools and vehicles they use.'

While jurisdiction-specific regulation and tax treatment provides complications for internationally mobile clients, the global transparency initiative of the Common Reporting Standard (CRS) also creates regulatory considerations. 'In principle, the CRS isn't intended to focus on philanthropic structures but to ensure sufficient

and appropriate tax is being paid in a particular jurisdiction, but it can have unintended consequences for philanthropic structures and non-profits, because some of them will be treated as a financial institution,' warned Petraske. 'This means distributions to them will be treated as if they were private distributions for the benefit of that person's own wealth, so they will be subject to an international exchange of tax information.'

RISK MITIGATION

Petraske added that CRS reporting may also entail a risk of punitive scrutiny from authorities: if a charity is receiving funds for a cause not considered 'socially acceptable' in a certain jurisdiction, for example, LGBT activism, it would be counterproductive or even unsafe for their information to be shared with authorities.

Commenting on these risks faced by cross-border philanthropists, Hart asked: 'What must advisors and intermediaries do to help mitigate the

risks and protect the interests of their philanthropic clients?'

'Vehicles such as donor-advised funds operating internationally would be a naturally good choice for a donor to work with, as they have knowledge of the charitable space cross-jurisdictionally,' said Daniel Frajman TEP, Partner at Spiegel Sohmer. 'It's about having "boots on the ground" to give support. One of our clients currently is supporting the building of water wells in a developing country and it wouldn't have been possible if they hadn't connected with a non-governmental organisation on the ground.'

Frajman pointed to Canadian charity law's direction and control rules, under which the Canada Revenue Agency requires that a charity take all necessary measures to direct and control the use of its resources when carrying out activities through an intermediary. Legally, this means that Canadian philanthropists are often obliged to use an agent on the ground in the foreign locale to carry out their instructions, with the real



'Listen to all the parties involved, from what the clients say they want to achieve to what the people local to the jurisdiction say they need'



Alana Petraske
Partner,
Withersworldwide

'Initial alignment is so important and it always comes back to the basics of what the client is trying to achieve and why'



Sianne Haldane TEP
Chief Impact Officer,
Maanch

possibility of liability or reputational issues attributed back to the principal.

'This underlines to the Canadian philanthropist that they've got to think through their project and essentially have a business plan,' he explained. 'That direction and control requirement certainly contributes to them being inspired and excited about the impact of their international philanthropy, but they have to be cognisant of the responsibilities and risks of implementing something cross-border.'

Sianne Haldane TEP, Chief Impact Officer at Maanch, agreed that compliance and risk are the key conversations to be had; however, she commented that it is the role of the advisors and intermediaries to collaborate in order to deliver for the client and the beneficiaries. 'We have to look at how we can come together to facilitate those partnerships and collaborations, so we can bring the clients back to the inspiration and impact piece,' she said.

Participants around the table agreed with this view, with Bedingfield, Peebles and Petraske echoing the need for clients to understand the importance of partnering – whether that be with intermediaries, other advisors in the foreign jurisdictions or with specialist philanthropy-focused advisors.

For Haldane, that partnership and alignment is vital so that the team supporting the client can help them not only navigate the regulation and risk landscapes, but also choose the right charitable organisations to support.

'Initial alignment is so important and it always comes back to the basics of what the client is trying to achieve and why,' she said. 'It's then about making sure from the client's side that the organisation they want to support is a perfect fit for them, especially if the support is publicly visible: it's critical to understand the motivations behind their giving. On the organisation side, it's about ensuring that they have all the right governance and risk-management

processes and donor policies in place. If you get all that right at the beginning of the advisory process, it will give you a good grounding for the rest of the relationship.'

REPUTATION PROTECTION

A large part of this risk mitigation in philanthropic giving comes back to the choice of charitable organisation and the associated reputational issues that may arise if a cause is sensitive, for example, from a political perspective, or if previous donors have been linked to any public criticism or scandal.

'One of the benefits of a donor-advised fund is that the donor can give anonymously, as their gift is to the fund, which then donates to the beneficiary,' explained Greer. 'There are many different reasons why someone might wish to give anonymously, including mitigating reputational risk.'

Similarly, donors may wish to remain anonymous for the security of themselves and their family or

‘Clients and advisors need to be humble enough to know that they’re not an expert across all areas and that they need the right partners’



Brad Bedingfield TEP
Partner,
Hemingway & Barnes

‘If you want to make a real international impact, you must have a way to look into what is needed in the local area and be very sensitive to that’



Daniel Frajman TEP
Partner,
Spiegel Sohmer

so donations to a particular cause do not alter their personal or professional relationships.

Peebles elaborated on one such situation: ‘A client wanted to establish a university in Jerusalem to bring together Israeli and Palestinian students and foster harmony, but when we performed the necessary due-diligence for each member of the proposed board, one of the members had suspected links with Hamas. I advised the client to restructure the board and repeat the due-diligence. The last thing they would want to do is to fund this project and then find out there was a political taint that had gone unnoticed due to a lack of adequate care or due-diligence. The internal politics can be difficult to manage, and it takes an advisor to help with that kind of process; otherwise, the reputational risk to the client is huge.’

Hart also pointed out that tied up with reputational risk in international giving is the issue of cultural sensitivity. He asked the roundtable participants

how they ensure their clients are engaging adequately.

Bedingfield replied: ‘There can be an unconscious colonial sensitivity and a mistrust that we’re not recognising behind a lot of due-diligence demands made of charities in foreign jurisdictions. As well as creating resentment, it can cause practical impediments such as how much of a compliance burden you’re putting on the recipient of funds. We must be sensitive to what is necessary and what isn’t: taking an additional and unnecessary compliance burden off someone can have as strong an impact as giving them the money in the first place.’

‘If you want to make a real international impact, you must have a way to look into what is needed in the local area and be very sensitive to that,’ added Frajman, a view shared by Greer, who noted that, especially in the case of non-financial-asset gifts, it is important to be sure they are needed rather than making assumptions based on unconscious bias.

‘We see again and again how ineffective it is when non-profits go into a situation assuming they know what needs to be done,’ agreed Peebles. ‘The people who are local to the jurisdiction are the best resource for helping advisors and clients understand what’s needed and how to effectively implement a programme there. We always come back to being engaged with the people on the ground in the foreign jurisdiction.’

As the roundtable drew to a close, Petraske encapsulated the key principles behind a successful cross-border giving relationship. ‘Listen to all the parties involved, from what the clients say they want to achieve to what the people local to the jurisdiction say they need,’ she summarised. ‘The vital ingredients are listening and communication.’

#PHILANTHROPY #CHARITIES
#COMPLIANCE AND REGULATION
#INTERNATIONAL CLIENT