USING A GOFUNDME CAMPAIGN TO DONATE MONEY? MORE COMPLICATED THAN YOU THINK.

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Crowdfunding – a mechanism which connects people in need directly to those who are able to provide support – has completely revolutionised the traditional fundraising landscape. But it can come at a cost if the fundraising is not structured appropriately.

In Australia, we have seen some of the hurdles associated with these crowdfunding platforms, such as GoFundMe (GFM) campaigns, in two high profile cases, namely Celeste Barber and Quaden Bayles.

International Considerations

We consider there are five key traps associated with dispersing funds from a GFM campaign in the U.S. to a country in which a beneficiary resides. These include:

1. **Distribution of funds:** GFM campaigns can only distribute funds to a U.S. person. Specifically, to distribute the funds, GFM requires a beneficiary's social security number (individual) or employer identification number (business). If the beneficiary resides offshore, a U.S. intermediary, such as a U.S. law firm (i.e. interest only lawyers trust account) or a U.S. fiscal agent could be used. This agent would receive the funds from the GFM campaign in the U.S. and then distribute those funds to the beneficiary, or beneficiaries, as required.
2. **Withdrawals:** the funds from a GFM campaign can only be withdrawn and directed into a single U.S. bank account, (i.e. partial withdrawals are not permitted). This means that if there are two or more beneficiaries, the U.S. person or agent receiving the funds bears the risk and full responsibility of dispersing the funds to the other beneficiaries (in their respective proportions).
3. **Withholding tax:** there is a risk that the funds may be treated as U.S. sourced income which means U.S. withholding tax may be imposed.
4. **Administration fees:** if the funds are distributed using a U.S. intermediary then an administration processing fee and/or compliance cost may be charged. This can reduce the total amount receivable by the beneficiary and can also delay the transfer process.
5. **Foreign exchange fluctuations:** the funds being distributed from the U.S. to a beneficiary's offshore bank account would be subject to foreign exchange fluctuations. The amount being distributed to the beneficiary would be adjusted accordingly.

Using a GFM campaign, therefore, is not as simple as it may be to set up. It requires carefully assessing who the intended beneficiaries are and where they reside to ensure that the funds can be distributed accordingly. Failure to do so can result in the funds being trapped in an intermediary vehicle or the beneficiary receiving a reduced amount of the total monies raised.

Australian Laws

In Australia, funds can only be distributed to a beneficiary in accordance with the governing document of a not-for-profit organisation (NFP).

This means that if a GFM campaign (or other donor) makes a contribution to an Australian NFP, the NFP must only distribute or use those funds against the charitable purpose(s) for which that NFP was established. This would include using the funds in carrying out any activities which are incidental or ancillary to the charitable purpose(s) of the NFP.

If a contribution is made to a NFP without reviewing the governing document, therefore, there is a risk that the money might not be available for its intended use or for forward distribution.

A possible solution may be to alter the objects of the NFP, but this can result in significant delays and legal fees. There would also be a risk that the NFP may lose its charitable or deductible gift recipient status – an alteration to the charitable purposes in a governing document of a NFP requires a reassessment by the Australian Charities and Not-for-profits Commission and the Australian Taxation Office as to the type and nature of the NFP.

Careful consideration of local laws of the beneficiary's home jurisdiction is, therefore, required, otherwise, there is an inherent risk that the beneficiary may never receive the funds.

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