CREATING A CAMPUS:
A DONATION OF FOREIGN REAL ESTATE

GIFTING ILLIQUID ASSETS. COMPLEX, BUT POSSIBLE.

The most pressing questions standing between donors and the fulfillment of their philanthropic visions are often related to identifying the appropriate cause and organization to support. How do you choose a social issue when there are so many and all are worthy? How do you find the organization with the greatest impact? Once these questions are answered, everything else becomes easy. Or does it?

Giving can be as simple as writing a check, however, often times it is a far more complex process that requires extensive resources and the support of a very committed team. When charitable giving involves actors from various countries, the donation is nonmonetary, and is done under considerable time constraints, the donor's most pressing questions are likely to revolve around how it can be done most effectively.

The present case study features a donation facilitated by CAF America representative of the aforementioned factors.

THE CHALLENGE

1. Ownership
Mexico allows foreigners to own property in the country, however certain restrictions apply. While most of the inner-land, including Mexico City, is open to foreign property ownership, the nation's coasts and border areas are off limits. Located on Mexico's Pacific coast, the property in question falls under the so called "Prohibited Zone" where the law does not permit non-Mexican entities to own land. Therefore, the ownership had to involve several actors. The Clients acted as the Settlors of a U.S. Trust. This U.S. Trust owned a Mexican Trust, which owned the Property.

2. International Donation
Beyond the challenges of the compound ownership, the complexity of the process was further intensified by the international character of the donation, as well as the need to ensure that the Clients would benefit from the associated IRS charitable deductions. To fulfill all legal requirements and trigger the applicability of the IRS regulations on charitable donations, the Clients had to donate the Property to a U.S. 501(c)(3) nonprofit organization. However, to achieve the wishes of the Clients to donate said property to the University, the nonprofit

BACKGROUND

The Clients of CAF America, wished to donate a real estate property (the Property) located in a resort area on Mexico's Pacific coast, to a Mexican university (the University). To fulfill the Clients' vision and to ensure that the charitable tax donation was properly applied, the ownership of the property – valued at over $9 million U.S. Dollars – had to be transferred to the University before the end of December 2012. CAF America's services were retained to facilitate this intricate donation under very strict time constraints, ensuring that the U.S. donor benefits from the IRS tax deductions while maintaining compliance with both U.S. and Mexican national laws.

THE CLIENTS

CAF America's Clients in this case were two U.S. citizens residing in the U.S. at the time of the donation.

OUTCOME

All those involved with the transaction deemed it a success: the Clients received full IRS tax benefits as allowed by U.S. law, CAF America was able to facilitate the charitable donation while avoiding any legal or reputational risks, and the University received an amazing new campus allowing it to expand its educational activities.

organization also had to have the capability to make this donation internationally.

3. Logistics & Coordination
As described above, the donation involved three U.S. and two Mexican entities, namely the U.S. Trust, CAF America, the Mexican Trust, and the University, as the final recipient. Thus, the transfer had to be approved by the various Board of Directors as well as the overseeing Mexican authorities. Since the transfer of ownership was finalized and executed in Mexico City, extensive coordination was necessary to ensure that the proper representatives were present in person, while the various Board of Directors were assembled in the U.S. ready to review and provide approval.

4. Risks
For CAF America, the donation presented a significant risk. The Property was deemed substantially valuable, and represented a sizeable donation to CAF America. Stemming from this, two independent elements had to be factored into CAF America's due diligence process: (a) the risk of triggering an IRS review and dispute about the value of the appraisal and deduction, and (b) the risks associated with the physical safety of the Property while in CAF America's ownership.

Since the donation would authorize the Clients to claim a large deduction, a qualified appraisal of the property had to be conducted and attached to the Clients' return form to be in compliance with IRS regulations. Moreover, since the donation was eligible for a tax deduction immediately upon transfer to CAF America at its then-current value, it was paramount for the appraisal to be conducted by an independent and credible 3rd party to avoid the risk of a potential challenge based on the inflated value argument.

Finally, given Mexico's designated status as a medium-risk country for international grantmaking purposes at the time of the transfer, and specifically because of gang and cartel violence reported in the region, the donation also exposed CAF America to considerable risks associated with potential liability for property damage that might occur during its period of ownership. Therefore CAF America needed the period of ownership to be as brief as possible.

KEY SUCCESS FACTORS

Extensive planning & resources
Though the behind-the-scenes work on this donation began in July 2012, the transfer was not complete until the 28th of December 2012, a mere four days before the tax deduction period ended. During this time the Clients invested considerable resources engaging a team of tax and legal experts, as well as three independent teams of valuators for conducting the appraisal of the Property.

CAF America's CEO, Ted Hart, flew to Mexico to ensure that the transfer was completed in time and that CAF America's ownership of the property and the trust did not last longer than necessary due to aforementioned liability concerns.

In the period between July and December 2012, there was constant communication between the Clients and CAF America concerning the logistics of the donation and vetting of the University. CAF America's signature due diligence and vetting process was complemented by the Donor's own legal team's due diligence, both coming to the conclusion that relying on CAF America's facilitation of the donation was the best way to complete the transfer legally and effectively.

Expertise and problem solving attitude
In addition to vetting the University and navigating both U.S. and Mexican laws, CAF America encountered a unique challenge stemming from the provisions of the U.S.-Mexico Tax Income Convention. The Convention states that in order for an entity to qualify for income tax exempt status – such as the taxes on a donation of this size

– the majority of the members, participants, or beneficiaries of said entity (CAF America) would need to be U.S. or Mexican residents.

At the time, the Board of CAF America, representative of the organization's membership in the CAF Global Alliance, was multinational in character and thus did not meet the majority requirement of the Convention. To overcome this challenge, the Board of CAF America revised their organizational documents to allow for the addition of a new Board member, a U.S. citizen, thus bringing CAF America in compliance with the requirements of the Convention.

Finally, in spite of the added pressure of executing the donation during the Christmas season when the presence of the Mexican government official amounts to a small miracle in itself, both the Donor's team and CAF America's Board were on standby in the U.S., while CAF America's CEO and the other signatories were present in Mexico City on December 28th to expedite the transfer. At the eleventh hour, the trust and the property were transferred to CAF America, which had ownership for approximately five minutes, and then the donation was completed with approval from the Mexican government official.