# ENABLING FOREIGN CHARITIES TO SCALE THEIR IMPACT

## The Story of the Tusk Fund

**This case study tells the story of why Tusk closed its US 501(c)(3) organization and established the "Friends of Tusk Fund" at CAF America.**

## IN BRIEF

For many foreign nonprofit organizations, accessing donors from the US is an important goal for financial success. However, applying for 501(c)(3) status and maintaining a charity in the US can be a costly and challenging reality. This case study of Tusk shows why a UK charity chose to close its US public charity and instead worked with CAF America to establish a Friends Fund, a cheaper and more efficient vehicle for receiving tax-effective donations from US taxpayers.

## The Challenge

To be able to offer US donors tax deductibility for their gifts, nonprofit organizations must be registered as a 501(c)(3) organization with the Internal Revenue Service (IRS). 501(c)(3) of the Internal Revenue Code (IRC) governs what types of organizations may achieve this status, Section 170 governs tax deductibility for charitable contributions, and the IRS approves organizations applying for charitable status. The application process is rigorous and often requires legal counsel, and the maintenance of a 501(c)(3) is no simple task, either.

## The Solution

It is widely believed that the only way to successfully engage US donors, and receive tax-effective donations from these donors, is to establish a "Friends of" organization, which is a fully fledged 501(c)(3) public charity in the US. In reality, there is an easier and less expensive way to offer tax-deductible giving solutions to donors in the US and that is opening a "Friends Fund". A Friends Fund is a form of fiscal sponsorship that allows for foreign charitable organizations to receive donations from US donors, and offer those donors a way to receive a tax deduction in the US.

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CAF America

## About Tusk

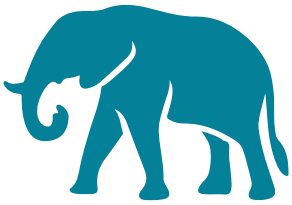
For almost thirty years, Tusk has supported forward-thinking and successful conservation intervention in Africa. From the plains of the Serengeti to the rainforests of the Congo Basin, they're working towards a future in which people and wildlife can both thrive across the African continent.

Poaching, habitat loss and human-wildlife conflict are having a devastating impact on Africa's wildlife. Tusk believes that local people and organizations are best positioned to address these threats, but are often under-resourced and lack the recognition they deserve. By partnering with leading and emerging conservationists across Africa, Tusk secures donor funding to invest in the best local grassroots conservation initiatives, supporting and nurturing their conservation programs to accelerate growth from an innovative idea to a scalable solution. This helps to increase their profile and maximize their impact.

Tusk believes strategic conservation can empower local communities and improve livelihoods. They support and promote effective environmental education designed to provide a more sustainable future for the next generation.

It's an approach that works. Through their partnerships, Tusk has so far provided greater protection for over 10 million acres of land and more than 40 different threatened species, while benefitting more than 1,000,000 people.

With an increased reach and initiatives such as their Safaricom Marathon, which since its founding in 2000 has become one of the world's most famous marathons, Tusk needed an avenue for donors in the US to tax-effectively support their work in the United States. The American donor market is one of the most charitably inclined in the world, according to CAF's World Giving Index. Additionally, Giving USA 2018 states that 3% of all giving by Americans supported the "Environment/Animals", accounting for $11.83 billion. For a conservation charity in the UK, this represents a huge opportunity to increase their support and impact.



Tusk has helped to provide protection to **more than 40** threatened species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## What is a Friends Fund?

After maintaining a 501(c)(3) for a few years, Tusk was looking for alternatives. Like many foreign charities that establish a US 501(c)(3), the challenges of operating and maintaining it had proven to be time-consuming and costly, detracting from Tusk's ability to focus on fulfilling its mission.

Tusk conducted research about alternatives and asked other charities based in the UK how they fundraise within the United States. The verdict: talk to CAF America about a Friends Fund. A Friends Fund is essentially a fund housed at a US public charity through which a foreign charity can receive tax-effective donations.

In general, the foreign charity pays a setup fee and an annual fee to the US public charity, which also takes percentage based fees on gifts the fund receives. In turn, the US public charity serves as the fiscal sponsor for the foreign charity: issuing tax receipts to donors, maintaining state charitable solicitation registrations, and filing the annual Form 990.

## US 501(c)(3) Organization vs. Friends Fund

| | US 501(c)(3) | Friends Fund |
|---|---|---|
| Incorporation as a US Entity | Required | Not Required |
| Form 1023 for IRS Registration | Required | Not Required |
| Staff and independent Board of Directors of at least 3 people | Required | Not Required |
| Legal mechanisms to ensure independent status (address the conduit issue) | Required | Included |
| Yearly Form 990 Submission | Required | Not Required |
| Apply for state-by-state Registration for Gift Solicitation (required in approximately 40 US states) | Required | Included |
| Provide tax receipts to US taxpayers | Required | Included |


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## US 501(c)(3) Organization Registration Process

1. Register your new organization in a US jurisdiction, which includes:
   a. Recruiting and naming a minimum 3-person Board of Directors for the organization b. Get legal advice to create the organization's bylaws and file Articles of Incorporation
2. Fill out IRS Form SS-4 to apply for your EIN number
3. Apply for tax-exempt status using Form 1023, which involves:
   a. Drafting an Organizational Narrative that makes a compelling case for your organization to receive the tax exempt status under Section 501(c)(3) of the tax code
   b. Hiring legal advisors to ensure that Form 1023 is filled out correctly and increase the chances of a favorable ruling from the IRS
   c. Ensuring that your submission to the IRS addresses the "conduit issue", wherein a "Friends of" Organization must be seen as sufficiently independent from the foreign entity and it must have sole discretion over any donations it receives from US donors
4. Receive 501(c)(3) determination letter (often after months of waiting)
5. Register to legally receive donations in each state in which your organization will be soliciting donations. Approximately 40 US states currently require some form of registration
6. Receive first tax-exempt donation, issue tax-receipt

> *A Friends Fund allows for foreign charitable organizations to receive tax-effective donations from US donors*

## The Move to a Friends Fund

One issue that may arise in exploring a Friends Fund as a solution is the issue of "control and discretion". This term often intimidates both donors and foreign charities when they first encounter it. Control and discretion exists to ensure that the US public charity that is maintaining the Friends Fund is exercising the appropriate safeguards and procedures to not be deemed a conduit organization, i.e. a tax receipt issuing, rubber-stamping pass through. In the case of a US public charity maintaining a Friends Fund, that charity must follow the same procedures as if the foreign charity established its own 501(c)(3), as Tusk had. This means that donations to the Friends Fund are donations to the US public charity that are intended, but not in a legally binding manner, for the foreign charity that opened the Friends Fund.

So why open a Friends Fund if the foreign charity can't control it? The answer is in the details. While at first glance the same legal restrictions apply, the actual personnel costs and time are reduced significantly. None of this is the foreign charity's responsibility if they have a Friends Fund, allowing them to focus on their mission and sharing that mission with US donors. The following section details some common challanges often faced in operating a US 501(c)(3).


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## The Challenges of a 501(c)(3)

In an interview with CAF America, The Honorable Stephen Watson, Chairman of Tusk, and Charlie Mayhew MBE, CEO of Tusk, explained the challenges they faced with maintaining a 501(c)(3). Their comments about these challenges reflected many of the common issues that organizations have with maintaining 501(c)(3) status.

### 1. Administrative Costs (*Filing the Form 990)*

Every year, public charities must file a Form 990 (or 990-EZ) with the IRS. If the organization has annual receipts of more than $100,000 or assets of more than $250,000, they must file Form 990. If they have annual receipts of less than $100,000 but at least $25,000 and total assets less than $250,000 they must file a Form 990-EZ.

The IRS and state regulations refer to the Form 990 to verify that the charity still meets the requirements of Section 501(c)(3). Most nonprofits will enlist a professional accountant to help them file the 990, which gets exponentially more complex the larger an organization becomes. Hiring external experts costs money!

### 2. State Charitable Solicitation Rules

Part of the federalized system of government in the US means that states have significant regulatory oversight, and for public charities, this means that each individual US state has the sole authority to determine whether an organization is allowed to raise funds from their residents.

Filing registrations with all the states that require it (about 41 out of 50) is tedious work and must be renewed annually in many cases.

### 3. Public Support Tests

The IRS re-calculates public support every year based on the Form 990 it receives from the charity. If the charity loses a grant from the government or its donor base shrinks, it may find that it no longer meets the public support test requirement the next year.

This can be a difficult requirement to meet for some charities who rely on a small number of wealthy donors. Imagine a charity, such as a museum or orchestra which receives substantial funding from one or two wealthy patrons. The charity likely couldn't function without their support; however, the charity must also demonstrate that they still receive the majority of support from the general public. If a charity can't meet the public support test, they will be classified as a private foundation for the following year and will have the chance to retake the public support test.

### 4. Communications & Independence

A foreign organization that wishes to create a 501(c)(3) in the US must be aware that a 501(c)(3) is a fully independent organization, with its own charitable priorities and its own board of directors. The IRS is historically sensitive about the independence of US public charities and the charity must ensure that it is not serving as a "conduit". Being seen as a conduit by the IRS means that the US public charity essentially exists to pass funding along to a foreign charity without exercising any control or discretion over the funds. To avoid being regarded as a conduit entity, charities should have a board that maintains full discretion and control over the use of the donations, have a majority of board members who are not also board members of the foreign organization, carry out their own charitable purposes other than simply supporting the foreign organization, and their fundraising materials must inform the potential donors that their donations are under the independent control of the US organization.

However, many times this clashes with the goals of the foreign charity, as efforts such as ensuring common messaging or aligning fundraising initiatives can become complicated.

## A Friendly Fund

At CAF America, we have seen 500% growth in the number of Friends Funds we have established over the last 4 years. In many ways, Friends Funds speak for themselves as they are designed to be a simple, tax-effective way to receive donations from US donors, freeing the foreign charity to share their mission and fundraise. However, the foreign charity also relies on the US public charity to fulfill its role.

Our prompt and dedicated service has been a key reason why our Friends Funds have become increasingly popular, and we continue to be pleased by the fact that referrals are the primary way that we can help new foreign charities achieve their missions. In our interview with Tusk, it became clear that the most important aspect of establishing a Friends Fund was, and continues to be, trust between Tusk and CAF America.

Foreign charities must put a great deal of trust in the US charity that they partner with to establish a Friends Fund, as the US charity receives the donations intended for the foreign charity, while also providing tax-receipts, interacting with donors when necessary, processing transactions, and in many cases serving as public-facing partner along with the foreign charity. While the US charity will likely not conduct fundraising for the foreign one, it legally has to have its name on any fundraising materials, and so association with a reputable US public charity is an important consideration.

> *A Friends Fund allows for Tusk to remain "a lean and agile charity", while scaling their impact and spreading their mission in the United States.*

As Mr. Watson stated, "In the last year, we've raised just under £10 million globally. It's a huge amount and it's been deployed and invested to great effect. More than £8.1 million has already gone directly into the field where it's needed most". A Friends Fund allows for Tusk to remain "a lean and agile charity", while scaling their impact and spreading their mission in the United States. This is just one of the many ways CAF America achieves our own mission of enabling the philanthropic spirit across the world.

**QUESTIONS?**

Give us a call at 202-793-2232.