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Robert W. Wood
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Taxing Mark Zuckerberg's Non-Charity Charity

Mark Zuckerberg and spouse Priscilla Chan have billions of dollars worth of Facebook stock. And they are trying to put considerable amounts of it to good use. They have recently done some selling. In fact, for the second time in a few weeks, they have sold $95 million in stock. That totals to $190 million in Facebook shares in less than a month. They made the sales through the Chan Zuckerberg Foundation, and through CZI Holdings LLC. The Foundation is a real tax-exempt charity, not unlike the Clinton Foundation. But CZI clearly is not.

It may be devoted to good works, to so-called impact investing, but that does not qualify it for a free ride on taxes. And that makes the Zuckerberg-Chan charity planning model a unique one, with not everything as tax exempt as a typical charity. Late last year, the couple announced the birth of daughter Max. And they combined that announcement with revealing their plans to donate 99% of Zuckerberg's Facebook stock. In December, that was worth a whopping $45 billion, and it has gone up since. At the time, Facebook's SEC filing noted that:

> On December 1, 2015, our Founder, Chairman and CEO, Mark Zuckerberg, announced that, during his lifetime, he will gift or otherwise direct substantially all of his shares of Facebook stock, or the net after-tax proceeds from sales of such shares, to further the mission of advancing human potential and promoting equality by means of philanthropic, public advocacy, and other activities for the public good. For this purpose, Mr. Zuckerberg has established a new entity, the Chan Zuckerberg Initiative, LLC, and he will control the voting and disposition of any shares held by such entity. He has informed us that he plans to sell or gift no more than $1 billion of Facebook stock each year for the next three years and that he intends to retain his majority voting position in our stock for the foreseeable future.

In June, the Chan Zuckerberg Initiative made an investment in Andela, a startup training African engineers for jobs in the tech industry. But how the investments will morph into the Foundation remains to be seen. In the past, Mr. Zuckerberg has donated hundreds of millions of dollars to charities, including to the Silicon Valley Community Foundation. He generally donates shares, thus skipping tax on the run up in value. Facebook went public in May 2012, with shares initially priced at $38. They proceeded to dip below $20, but then they rose more than 25% by the time of Mr. Zuckerberg's 2012 year-end donations.

Donating appreciated stock has become the norm of tax efficiency. By donating stock, the gain the holder would have experienced on selling it is *never taxed*. The donee organization can either hold or sell the stock. But since the donee is a tax-qualified charity, if it sells the stock it pays no tax regardless of how big the gain. A donor like Mr. Zuckerberg should be able to claim a deduction on his tax return for the market value of what he donates. Within limits, he can use such deductions to shelter other income.

Donating appreciated stock is exactly the kind of tax planning done by famously tax savvy Warren Buffett of Berkshire Hathaway. In some ways, Mr. Zuckerberg is emulating Buffett. Mr. Zuckerberg and Priscilla Chan signed the Giving Pledge—to give away at least half their fortune during their lives. The Giving Pledge was launched by Buffett and Bill Gates. Of course, some charity tax rules are immutable.

For example, individuals cannot deduct charitable contributions unless they itemize deductions. The donations go on Schedule A to Form 1040. You

can only take a deduction of up to 50% of your adjusted gross income for most charitable contributions (30% in some cases). And in this election season, it is worth remembering: you cannot deduct contributions to individuals, political organizations or candidates.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.