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5 KEY ANNUAL REQUIREMENTS FOR PRIVATE FOUNDATIONS

Private foundations, also known as “family foundations,” can serve strategic wealth planning goals for high-net-worth individuals while also serving charitable goals. However, private foundations require oversight and annual reporting, and administering a private foundation may be more onerous than it first appears. In this publication, we discuss the key requirements and recommended practices associated with administering a private foundation.

1. Federal Reporting: Every private foundation, regardless of size, is required to file an annual tax return, known as a Form 990-PF. This filing obligation resembles a traditional tax return and may require professional expertise, particularly for more complex situations. For private foundations with holdings in excess of \$100 million, annual information returns must also be filed with the SEC. And if a private foundation has employees or independent contractors, it must adhere to Social Security and Medicare withholding

requirements, as well as requirements to issue W-2s and 1099 forms.

2. State Reporting: If Private foundations commonly are organized as non-stock corporations or as trusts. When organized as corporations, they must comply with annual corporate filing requirements under relevant state law, as well as any annual corporate registration fees. Even where a foundation is structured as a trust, it still may be subject to state-level reporting obligations, such as registration for charitable solicitation, which varies across jurisdictions.

3. 5% Minimum Distribution

Requirement: Private foundations must make annual distributions of at least 5% of their net assets from the prior year. This requirement aims to prevent foundations from accumulating assets without utilizing them for charitable purposes. The calculation process can be intricate, necessitating professional assistance to ensure compliance.

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4. Annual Meeting and Best Practices:

Holding an annual meeting of the board of directors typically is required for private foundations that are structured as corporations. For private foundations structured as trusts, an annual meeting of the trustees is strongly recommended. This formal gathering provides structure and formality, and it gives the stakeholders an opportunity to discuss expenses, administration, grant-making, and investment strategies. It often is advisable to engage a professional investment advisor who can help navigate issues that private foundations may face, including the excise tax on investment income. And it can be helpful to have a knowledgeable accountant to advise the foundation, including on issues such as the unrelated business income tax (UBIT), i.e., tax that can be generated from investment activity unrelated to the tax-exempt purpose of the foundation.

5. Grant-Making: Private foundations

generally make distributions to public charities, to other private foundations, or to individuals in the form of a scholarship. When the grant is not to a public charity, the foundation has a duty to monitor and oversee the usage of funds by the recipient. Establishing comprehensive grant agreements and receiving annual financial reporting from recipients are essential practices to fulfill this responsibility effectively.

Private foundations offer significant opportunities for philanthropy, but their administration requires careful attention. Understanding and fulfilling the annual requirements, seeking professional guidance, and adhering to best practices are essential to guarantee compliance and facilitate effective charitable endeavors.

To discuss specifics about private foundations or charitable planning, generally, be sure to reach out to a Wiggin and Dana attorney today.

This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.