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Internal Revenue Service Seeking Comments on Proposed Changes to Donor Advised Funds

INTERNAL REVENUE SERVICE, TAX
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On December 4, 2017, the Internal Revenue Service (IRS) issued Notice 2017-73, wherein the agency describes the approaches it's considering in addressing certain issues regarding donor advised funds (DAFs). The notice discusses three specific situations:

- Certain distributions from a DAF that pay for the purchase of tickets that enable a donor, donor advisor or a related person to attend or participate in a charity-sponsored event.
- Certain distributions from a DAF that the distributee charity treats as fulfilling a pledge made by a donor, donor advisor or related person.
- The development of regulations to change the public support computation to prevent DAFs from circumventing the private foundation rules.

Section 3 of the notice deals with the purchase of event tickets by the DAF in which the donor, donor advisor or a related person attends. The IRS prohibits these transactions if more than an incidental benefit is received. In the notice, the agency indicates that several commentators have suggested the opportunity for payment to an event be split between the cost of the event and the charitable piece. In this quid pro quo situation, the event piece could be paid or reimbursed by the donor/advisor while the DAF would pay the charitable piece. The commentators suggest that this would not be considered a prohibited transaction. The IRS has not indicated that it would agree with the analysis.

Section 4 of the notice deals with the use of a DAF to fulfill a charitable pledge by a donor. The IRS has traditionally taken the view that a legally enforceable pledge by an individual to a charity organization could not be fulfilled by the individual's DAF. As per the notice, the IRS indicates that in certain circumstances they will allow a DAF to fulfill a donor/advisor's pledge.

Section 5 deals with the IRS' concern that DAFs are being used to avoid tipping a public charity into private foundation status. If less than 33 1/3 percent of an organization's contributions come from the general public, an organization could be considered a private foundation. The IRS is concerned that DAFs are being used to circumvent these rules. In the notice, the agency indicates that they are considering adopting a complex set of rules to trace where the original donation came from when applying the public charity test.

If you have any questions on this notice or how it might impact the operation of your DAF, [please reach out to one of our tax exempt experts at Schneider Downs & Co.](#)

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