Move beyond the collection tin

by Karen Oliver,
senior associate, private client,
Stronachs LLP

LIKE all sectors, charities have suffered greatly since the pandemic took hold. The latest survey from the Office of the Scottish Charity Regulator (OSCR), published in December, revealed that 70% of charities have seen negative impacts on those they support, with one in six smaller charities indicating that they will be unable to continue the work they were set up to do within the next two years.

While huge numbers of us regularly support charities through cash donations, voluntary work or leaving legacies under our wills, higher net worth individuals may want to consider the option of setting up their own charity. This can be achieved during their lifetime or on death under their will. The charity could provide services itself or become a grant making body donating to other charitable causes. For example, a charity could be set up to support the arts in a local area and could provide funding to community art projects or to a struggling theatre.

As well as offering vital support to the sector, there are tax advantages to charitable giving.

- Any gifts made to charities during lifetime or on death are exempt from inheritance tax
- Where a set percentage of the estate is left to charity on death, the remaining estate benefits from a reduced rate of inheritance tax – great news for the charity but also for the family too

There are a number of forms a charity can take. Which vehicle is most appropriate will depend on a number of factors, including the purposes for which the charity is being set up, the activities it will engage in and who is running it. Once established, charity trustees have a number of duties, including to report annually to OSCR and to act in the best interests of the charity.

One of the most common options is a charitable trust. This is a good option where the charity is to be run by a small number of people and will not be undertaking substantial business activities. A trust allows the founder to retain an element of control as he or she can be named as a trustee of the charity. This form is particularly suitable for grant making charities.

Where business activities are anticipated, a charity can be incorporated under the Companies Acts as a company limited by guarantee. This is a more expensive option both to establish and operate but it gives the key advantage of separate legal personality. Unless directors or members engage in deliberate fraud, they generally cannot be called upon to contribute towards any company debt.

A further option to consider is the Scottish Charitable Incorporated Organisation (SCIO), which is essentially a hybrid. A SCIO is set up by way of a constitution put in place by two or more people. It offers the convenience of corporate personality but without the need, or expense, of complying with company legislation.

Whatever route is taken, benefitting the ailing sector while securing crucial tax advantages makes charity creation an option worth exploring.