

Grants to Foreign Organizations: New Guidance

01.05.18 | Linda J. Rosenthal, JD



Private foundations have different – more stringent – rules and requirements than 501(c)(3) organizations that are classified as public charities. The reason for this distinction: Foundations don't solicit or receive donations from a wide swath of the general public, so there are special rules and regulations to ensure proper oversight.

This is a particular concern for United States foundations that seek to assist people, organizations, or charitable causes outside the U.S. Many domestic charities have long been connected with successful efforts to help refugees, elevate standards of living, combat epidemics, and promote democratic ideals and institutions around the world.

But because the recipients of this aid are beyond our borders and the normal oversight of U.S. laws, agencies, and officials, there are special procedures for U.S. charitable foundations to use before making any foreign grants.

International Grants

Under existing law, an American charitable foundation must exercise “expenditure responsibility” (ER) or an alternative called “foreign public charity equivalency” (FPCE). Sometimes, the term “equivalency determination” (ED) is used interchangeably with FPCE.

The private foundation grantor must make a determination in good faith and based on reasonable judgment (often in the form of written advice from a qualified tax practitioner) that the foreign charity recipient meets the requirements generally applicable to domestic 501(c)(3) public charities. This information is often gathered by use of an affidavit.

In 1992, the Treasury Department issued Revenue Procedure 92-94, which spells out the procedure to do this the right way; that is, so that the foundation is eligible to include a specific grant to a foreign entity towards its “qualifying distribution” requirement and avoid a penalty as a “taxable expenditure.”

Practitioners and experts have urged that an update is needed since there have been changes since then in the rules affecting public charities as well as in the FPCE procedures.

Revenue Procedure 2017-53: New Guidance

On September 15, 2017, the IRS released a new ruling: [Revenue Procedure 2017-53](#), Foreign Public Charity Equivalency. It addresses identified deficiencies in the existing procedure including setting out more particularly the “preferred written advice” requirement. It also clarifies and updates proper procedures for the foreign grants of U.S. foundations. The full text is [here](#) , but highlights include:

- *English.* “Preferred written advice” from a qualified tax practitioner for this purpose, along with all attachments, must be in English.
- *More attachments explicitly required.* The “preferred written advice” document should attach the foreign grantee’s organizing document (translated to English if needed) as well as other information including support schedules, and any relevant foreign law (translated).
- *Foreign laws.* The U.S. foundation and its “qualified tax practitioner” may rely on translations of, and public information explaining foreign laws.
- *Terrorism.* The “preferred written advice” document should “verify” that the grantee has not been designated a terrorist organization by the government of the United States. Although not required to meet this “preferred written advice” rule, the American foundation should also exercise due diligence to exclude grantees and related individuals who are “foreign persons whose property and interests are blocked pursuant to Executive Order or OFAC regulations.”
- *Simplified update affidavits permitted.* If a grantee has previously supplied an affidavit, it may rely on an updated affidavit attaching the previously supplied affidavit and describing only the material changes.

There are additional provisions in new Rev. Rul. 2017-53 including some that specifically relate to hospitals, schools, and “incubating” or new foreign charities.

Conclusion

These new “safe harbor” procedures should be helpful to the many organizations who make important contributions to international philanthropy and to their advisers. So far, it appears that they view this update by the Internal Revenue as valuable advice and guidance on how to continue with these important grants while complying with all applicable laws and safeguards.