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Basics of International Grantmaking

Written By:
Michael V. Bourland
Darren B. Moore
Bourland, Wall & Wenzel, P.C.
301 Commerce, Suite 1500
Fort Worth, Texas 76102
mbourland@bwwlaw.com
dmoore@bwwlaw.com
817-877-1088

Presented By:
Lori McLaughlin
Timothy A. A. Stiles
KPMG LLP Global Grants Program

MICHAEL V. BOURLAND
Bourland, Wall & Wenzel, P.C.
Fort Worth, Texas

Mr. Bourland is the founding shareholder of Bourland, Wall & Wenzel, P.C., a Fort Worth, Texas law firm which represents individuals, closely held and family businesses, professional practices and charitable organizations within its areas of legal practice. Mr. Bourland was born in Fort Worth, Texas on October 2, 1943. He earned a B.A. from Baylor University and his J.D. from Baylor University School of Law. He earned his LL.M. in Taxation from University of Miami, Florida. Additionally, he was a Captain in JAGC, USAF, 1970-1975.

Mr. Bourland was admitted to practice law in Texas in 1969 and is Board Certified in Estate Planning and Probate Law (Texas Board of Legal Specialization). He is a member of the American Bar Association; State Bar of Texas and its Real Estate, Probate and Trust Law Section (Real Estate, Probate and Trust Law Council, 1993-1996); Tarrant County Bar Association (Director, 1987-1989); Tarrant County Probate Bar Association; Fort Worth Business and Estate Council (Chair, 1992-1993); and a Fellow of the American College of Trust and Estate Counsel.

Mr. Bourland's practice is directed to business, tax, estate planning, probate, charitable entity and charitable giving law. Mr. Bourland is a guest lecturer in estate planning at Baylor University School of Law, Baylor University School of Business, Southern Methodist University School of Law, University of Texas School of Law, and The Center for American and International Law. He speaks regularly throughout the United States on subjects within his practice areas at seminars conducted by, among others, American Bar Association, American Law Institute-American Bar Association, Texas Bar Association, Texas Society of CPAs and Notre Dame, Duke and Tulane Universities.

Additionally, he speaks regularly to churches and church leaders on the creation of church foundations and contributes on subjects within his practice areas to publications including the New York Times, Nation's Business, Business Week and Money magazine and is a co-author of Keeping Your Church Out of Court, first and second editions.

DARREN B. MOORE
Bourland, Wall & Wenzel, P.C.
Fort Worth, Texas

Mr. Moore practices with Bourland, Wall & Wenzel, P.C., a Fort Worth, Texas law firm which represents individuals, closely held and family businesses, professional practices and charitable organizations within its areas of legal practice. Mr. Moore was born in Lubbock, Texas on December 11, 1973. He earned a B.A., cum laude from Texas A&M University and his J.D., magna cum laude from Baylor Law School where he served as Editor in Chief of the Baylor Law Review.

Mr. Moore was admitted to practice law in Texas in 2000 and before the United States District Court, Northern District of Texas and United States Tax Court in 2001. He is a member of the State Bar of Texas; Tarrant County Bar Association; Texas Young Lawyers Association and Tarrant County Young Lawyers Association.

Mr. Moore's practice focuses on the areas of civil litigation and representation of nonprofit organizations. In his litigation practice, he represents both plaintiffs and defendants in cases involving a wide array of claims in state and federal trial and appellate courts as well as various alternative dispute resolution forums. Mr. Moore's nonprofit practice is concentrated on the representation of religious professionals and religious organizations. He advises clients on a wide range of matters including organization of various types of religious entities, obtaining and maintaining tax exempt status, risk management, employment issues, and other business issues.

Mr. Moore is an adjunct professor at Baylor Law School where he co-teaches *Nonprofit Organizations*. Additionally, he speaks regularly to churches and church leaders on legal compliance as a part of Bourland, Wall & Wenzel, P.C.'s lecture program, Keeping Your Church Out of Court.

Mr. Moore serves on the Board of Directors of ServLife International, Inc., a 501(c)(3) organization seeking to bridge resources from the west to the suffering and poor around the world thus alleviating human suffering, hunger, and poverty while being a voice for justice and human rights.

LORI A. MCLAUGHLIN
KPMG LLP
Global Grants Program

Position in the Firm
Lori A. McLaughlin is a Senior Manager in KPMG's Global Grants Program and is the regional manager for the Global Grants Program in both the Southwest and Midwest regions. She is located in the firm's Dallas office.

Professional Experience
Ms. McLaughlin has over eighteen years experience providing services to tax-exempt organizations. Her clients have included social service organizations, institutions of higher education, hospitals, governmental entities, museums, foundations, and other organizations with local, national, and multi-national operations. She focuses exclusively on serving not-for-profit organizations, and particularly family foundations, corporate foundations, and other private foundations. Her experience includes advising these foundation clients on a variety of issues, including domestic and international granting, program related investments, excise and unrelated business income taxes, and other related foundation issues. In addition, she has experience on special projects involving:

- Grant Process Design
- Grantee Evaluation and Assistance
- Program-related Investments
- Tax consultations and other considerations of foreign operations
- Analysis of grant effectiveness and risk management
- Jeopardy investments, self-dealing, and excess business holdings

Prior to joining the Global Grants Program in 2004, Ms. McLaughlin was the Senior Manager responsible for the delivery of services in the Exempt Organizations Tax (EXOTAX) practice in the state of Texas. She has been a member of KPMG's national EXOTAX practice since 1997.

Education
Bachelor of Science, *with distinction (cum laude)* December, 1987
Pennsylvania State University

Professional and Civic Activities
American Institute of Certified Public Accountants
Texas Society of Certified Public Accountants
Certified Public Accountant, Licensed in Maryland and Texas
Texas Women's Initiative, Director
Frequent guest speaker on exempt organization and private foundation issues

TIMOTHY A. A. STILES
KPMG LLP
Global Grants Program

Position in the Firm
Timothy A. A. Stiles is the Partner-in-Charge of KPMG's Global Grants Program. He is located in the firm's San Francisco office.

Professional Experience
Mr. Stiles has over eighteen years experience providing services to tax-exempt organizations. His clients have included social service organizations, institutions of higher education, hospitals, governmental entities, museums, foundations, and other organizations with local, national, and multi-national operations. He now focuses exclusively on serving not-for-profit organizations, and particularly private and corporate foundations, and other organizations with granting and international operations. Mr. Stiles currently heads KPMG's Global Grants Program, assisting organizations making grants for a variety of charitable purposes in over 100 countries on six continents. In addition, he has experience on special projects involving:

- Grant program design
- Program-related Investments
- Micro-credit financing arrangements
- Unrelated business income tax analysis
- Tax consultations and other considerations of foreign operations
- Functionally related business considerations
- Analysis of grant effectiveness and risk management
- Jeopardy investments, self-dealing, and excess business holdings

Prior to assuming leadership of the Global Grants Program in 2000, Mr. Stiles was the Director of the West Region Exempt Organizations Tax (EXOTAX) practice, over-seeing the delivery of services to all not-for-profit clients in 13 states throughout the western United States. He was instrumental in founding KPMG's national EXOTAX practice in 1995, and served in the exempt division of the firm's Washington National Tax Practice.

Education
Bachelor of Science, with distinction (cum laude) June, 1986
University of California, Los Angeles

Professional and Civic Activities
American Institute of Certified Public Accountants
Certified Public Accountant, Licensed in California and Washington
Ocean Inquiry Project, Treasurer and Director
Travel Just, Director
KPMG Disaster Relief Fund, Advisor

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I. INTRODUCTION

Domestic charities, both public charities and private foundations, have long played a role in international philanthropy. Whether bridging resources to help alleviate dire health situations or acting to spur democracy, many funders have undertaken international giving. While a charity may seek to work outside the United States in a number of ways ranging from direct charitable activities or funding domestic charities doing international work, this paper will focus on making grants to foreign organizations. The paper will begin by setting out the legal framework, move to identifying the basic rules for making such grants, discuss good grantmaking policies, and conclude with special challenges of international grantmaking including working with the anti-terrorist guidelines.

II. TYPES OF ORGANIZATIONS

To understand the rules for international grantmaking, it is first necessary to make distinctions between different types of organizations recognized as exempt under I.R.C. § 501(c)(3).

A. Foundations in General

The word "foundation" can be deceptive, as it may refer to any number of non-profit organization types. I.R.C. § 509(a) defines a private foundation as any domestic or foreign organization described in I.R.C. § 501(c)(3) other than the following types of public charities:

1. Organizations that are, by definition or by activity, public charities I.R.C. § 509(a)(1); I.R.C. § 170(b)(1)(A)(i)-(v) ("traditional" public charities);

2. Organizations receiving a substantial amount of support from the general public or from governmental entities, I.R.C. §509(a)(1); I.R.C. §170(b)(1)(A)(vi) ("publicly supported charities")

3. Organizations receiving a substantial amount of support from the general public or from governmental entities, I.R.C. § 509(a)(2) ("gross receipts" or "service provider" publicly supported charities);

4. Organizations excluded from private foundation treatment due to their close association with public charities treated as other than private foundations, I.R.C. § 509(a)(3) (Supporting Organizations); and

5. Organizations organized and operated exclusively to test for public safety, I.R.C. § 509(a)(4).

In other words, an I.R.C. §501(c)(3) organization is presumed to be a private foundation unless it demonstrates that it fits one of the exceptions listed above.

B. Private Nonoperating Foundation

The most common type of private foundation is the nonoperating foundation. It does not directly perform any charitable programs or services. It generally receives its funding from one

primary source, such as an individual, a family or a corporation. It does not generally actively raise funds or seek grants. It is required to distribute approximately 5% of its assets annually to public charities. Donors' charitable income tax deductions are more limited than when made to a public charity. As with many other areas of tax-exempt planning, private nonoperating foundations face the most restrictive rules in the arena of international grantmaking.

C. Private Operating Foundation

The operating foundation has a stated charitable purpose and carries out its own programs. It generally seeks grants rather than awarding grants to other charitable organizations. The operating foundation must expend substantially all of its net investment income directly for the purposes of its own charitable activities. Although donors receive the more liberal public charity income tax deduction limitations, this type of foundation remains subject to the private foundation restrictions because its source of funding is generally from one individual, family or corporation. Nevertheless, the private operating foundation operates within the more flexible public charity rules in the context of international grantmaking.

D. Traditional Public Charities

Traditional public charities are organizations that are classified as public charities by virtue of the nature of their existence (i.e. their programs and structure). Traditional public charities include churches, schools, and hospitals. I.R.C. §§ 170(b)(1)(A)(i)-(v).

E. Publicly Supported Public Charities

1. I.R.C. §509(a)(1) Publicly Supported Organization: The publicly supported charity is described in I.R.C. §509(a)(1) and I.R.C. §170(b)(1)(A)(vi), sometimes referred to as a "donative" publicly supported charity, because it does not typically provide services (as compared to §509(a)(2) organizations). It is not a private foundation; rather it is taxed as a public charity. It must meet a public support test and generally must demonstrate that it is organized to attract contributions from a broad range of donors.

2. I.R.C. §509(a)(2) Publicly Supported Organization: A second publicly supported charity is described in I.R.C. §509(a)(2) and sometimes referred to as a "gross receipts" or "service provider" public charity. It is not a private foundation; rather it is taxed as a public charity. It is generally established to attract contributions from a broad range of donors and to raise support through admissions, sales of merchandise, and the performance of services and furnishing of facilities related to its exempt purpose. As with the donative publicly supported charity, it must meet a public support test.

F. Community Foundations

Another type of "foundation" is the community foundation, which is described in I.R.C. §170(b)(1)(A)(vi). It is not a private foundation; rather it is taxed as a public charity. It does not

perform any charitable programs or services. It is generally established to attract large contributions of capital or endowment for the benefit of a particular community or area. Its attractiveness is enhanced by the donor's ability to benefit multiple charities through the donor's gift to a single community foundation.

G. Supporting Organizations

Another type of organization is the supporting organization, which is described in I.R.C. §509(a)(3). It is not a private foundation, but is a sub-category of public charity and is really only indirectly public, meaning that the public that monitors this organization's operations does so through an intervening public charity. That intervening public charity is the entity to which the supporting organization must answer regarding organization and operation. Because of its "public charity" nature, its attractiveness to potential donors is enhanced because donations are allowed the more favorable tax deduction limitation of those made to public charity. However, a donor seeking control is not as likely to favor this organization as the choice for his or her donation because the organization cannot be controlled by the donor, the donor's family or other disqualified persons.

III. GRANTS MADE BY PUBLIC CHARITIES

As noted above, public charities have more latitude and flexibility when making grants to foreign organizations. This is so because public charities are not subject to the tax on taxable expenditures imposed by I.R.C. § 4945. Nevertheless, public charities do have an obligation to ensure that their assets are used exclusively for charitable purposes (thereby avoiding private inurement or diversion of assets for other non-charitable purposes). Ensuring funds are used exclusively for charitable purposes is thus the central issue for public charities in making grants to foreign organizations.[1] The public charity must be able to establish that it has maintained control over its funds and discretion as to the use of such funds. *See Rev. Ruling 62-113;* Exempt Organizations Continuing Professional Education Technical Instruction Program for Fiscal Year 1992 at 233. An aspect of control and discretion is under what circumstances a public charity may accept "earmarked" donations. This paper will not discuss such donations or the use of "friends of" organizations.

There are no precise rules for the necessary level of oversight a charity must maintain over funds granted to foreign organizations. As commentators have noted, because Treasury regulations stipulate quite clearly what is required of private foundations in order to design and exercise the requisite discretion and control . . . the closer a public charity comes to following the private foundation rules, the safer it will be." *See* Beyond Our Borders, A Guide to Making Grants Outside the United States, Council on Foundations, 20. At a minimum, public charities making grants to foreign organizations should conduct pre-grant due diligence and obtain reporting from the grantee on an at least annual basis until the grant funds are

[1] Although it is possible for a foreign organization to obtain IRS recognition under § 501(c)(3), such organizations, being relatively rare, are not dealt with in this outline.

fully expended. In order to commit the grantee to use the funds for charitable purposes and commit the grantee to the aforementioned reporting requirements (as well as to memorialize the exercise of discretion and control on the part of the public charity), a written grant agreement should be signed by the grantee at the outset of the relationship as will be more fully discussed below.

A. Pre-Grant Due Diligence

Pre-grant due diligence will vary widely depending on the nature of the grantee. However, some basic documentation should always be obtained. Specifically, the grantor public charity should obtain copies of the grantee's organizational documents, a narrative description of past, present and planned activities, and information regarding the governing board of the grantee. Documents should be translated into English and copies of relevant foreign law (e.g. laws regarding operation of a charity in the subject foreign country) should be obtained and considered. The purpose in obtaining each piece of documentation is ensuring the public charity is comfortable that a grant made to the recipient foreign organization will be used exclusively for charitable purposes. As such, depending upon the nature of the foreign organization, more documentation may be required.

B. Periodic Reports

Written reports from grantees may also vary widely; however, most grantmakers have grant agreements that set out basic reporting requirements including use of the funds and how such use is in furtherance of the grant terms, progress of any activities to be funded by the grant, and action steps for any remaining funds.

C. The Written Grant Agreement

As noted above, committing the recipient to providing periodic written reports is best accomplished through a written grant agreement signed by an authorized agent of the grant recipient before funding. A secondary purpose to the written fund agreement is establishing parameters in attempts to avoid the funds being diverted to noncharitable purposes. For example, the written grant agreement should specify the purpose for which the grant is made and commit the grantee to using the funds exclusively for such purposes (and avoiding diversion to noncharitable purposes or purposes that are antithetical to qualification as a § 501(c)(3) organization such as intervention in campaigns, private inurement, etc.). In addition, the written grant agreement should commit the grantee to return funds not used for the charitable purpose for which they were granted.

Pre-grant due diligence, periodic reporting, and written grant agreements are basic requirements that will be employed by good grantmakers to exercise discretion and control over the granted funds so as not to risk the charity's tax-exempt status and subject its governing body to claims of fiduciary breach. However, best practices for good grantmaking will dictate the comprehensiveness of these basic requirements.

D. Acting in an Intermediary Capacity ("Friends Of" Organizations)

Some public charities may carry out international grantmaking in an intermediary capacity. In such situations, it is critical to understand the requirements to ensure deductibility for the original donor as well as the charity's compliance with its own obligations to ensure that its charitable assets are used for exclusively charitable purposes.

The IRS issued a key Revenue Ruling in 1963 dealing with the deductibility of contributions by individuals to a charity in the United States which subsequently grants some or all of such funds to a foreign grant recipient. Rev. Rul. 63-252 (Revenue Ruling 63-252 is reproduced at Appendix "4"). Revenue Ruling 63-252 provides five hypothetical situations involving funding transmitted to a foreign organization by or through an intermediary public charity:

(1) In pursuance of a plan to solicit funds in this country, a foreign organization caused a domestic organization to be formed. At the time of formation, it was proposed that the domestic organization would conduct a fund-raising campaign, pay the administrative expenses from the collected fund and remit any balance to the foreign organization.

(2) Certain persons in this country, desirous of furthering a foreign organization's work, formed a charitable organization within the United States. The charter of the domestic organization provides that it will receive contributions and send them, at convenient intervals, to the foreign organization.

(3) A foreign organization entered into an agreement with a domestic organization which provides that the domestic organization will conduct a fund-raising campaign on behalf of the foreign organization. The domestic organization has previously received a ruling that contributions to it are deductible under section 170 of the Code. In conducting the campaign, the domestic organization represents to prospective contributors that the raised funds will go to the foreign organization.

(4) A domestic organization conducts a variety of charitable activities in a foreign country. Where its purposes can be furthered by granting funds to charitable groups organized in the foreign country, the domestic organization makes such grants for purposes which it has reviewed and approved. The grants are paid from its general funds and although the organization solicits funds from the public, no special fund is raised by a solicitation on behalf of particular foreign organizations.

(5) A domestic organization, which does charitable work in a foreign country, formed a subsidiary in that country to facilitate its operations there. The foreign organization was formed for purposes of administrative convenience and the domestic organization controls every facet of its operations. In the past the domestic organization solicited contributions for the specific purpose of carrying out its charitable activities in the foreign country and it will continue to do so in the future. However, following the formation of the foreign subsidiary, the domestic organization will transmit funds it receives for its foreign charitable activities directly to that organization.

With respect to the first two hypothetical situations and the earmarked contributions in the third, the IRS held that the contributions would not be deductible. The contributions contemplated in the fourth and fifth hypothetical situations, however, would be deductible. The key distinction is the level of discretion and control the organization has over the funds. For charities finding themselves serving in an intermediary capacity, this Revenue Ruling provides important guidance on what it means to exercise discretion and control as opposed to simple being a conduit organization. An organization that operates as a conduit organization will not be able to demonstrate the type of discretion and control necessary to ensure charitable assets are used exclusively for charitable purposes.

As opposed to a conduit entity that merely passes funds through to a foreign organization, a "friends of" organization, when properly structured, can satisfy the requirements for deductibility to the original donor and compliance with the public charity's obligations to ensure that its charitable assets are used exclusively for charitable purposes.

Revenue Ruling 66-79 amplifies the IRS position set out in Revenue Ruling 63-252 providing guidance specifically with respect to a "friends of" organization. There it was held that because the domestic organization could "only solicit for specific grants when it has reviewed and approved them as being in furtherance of its purposes" and could "make such solicitations only on the condition that it shall have control and discretion as to the use of the contributions received by it," the organization was structured and operated in such a way that contributions to it would be deductible under § 170 of the Code. Accordingly, a properly structured "friends of" organization will provide for a board that operates independent of control by the foreign organization. The organization will communicate to donors and potential donors that all funds donated are subject to the independent control of the domestic organization, and the organization will thereafter exercise such independent control over the funds in determining whether and to what extent to make grants to the foreign organization.

Following passage of the Pension Protection Act of 2006, grants made by public charities such as community foundations from donor-advised funds must follow the private foundation rules of equivalency determination or expenditure responsibility set out below.

IV. GRANTS MADE BY PRIVATE FOUNDATIONS

A. Private Foundation Prohibited Transactions

Private foundations face certain restrictions not applicable to public charities including restrictions on self-dealing, excess business holdings, jeopardizing investments, taxable expenditures, and failure to meet a minimum distribution requirement. The latter two restrictions are most relevant to a discussion of international grantmaking.

Specifically, a private foundation is prohibited under IRC § 4945 from making taxable expenditures which are expenditures not in furtherance of the foundation's exempt purposes. Further, a private foundation must generally distribute at least 5% of its assets on an annual basis in qualifying distributions. This minimum distribution is required to prevent foundations from holding gifts, investing the assets and never spending the assets on charitable purposes. Generally, a private foundation's qualifying distributions will consist of grants to qualified charitable organizations (I.R.C. § 501(c)(3) organizations). However, qualifying distributions also include grants to charities and non-charities for "charitable purposes," costs of all direct charitable activities, amounts paid to acquire assets used directly in carrying out charitable purposes, set asides, program-related investments and all reasonable administrative expenses necessary for the conduct of the charitable activities of the foundation. As such, grants made to foreign grantees may count toward a private foundation's minimum distribution requirement.

The rules faced by private foundations in the arena of international grantmaking are meant to ensure that the assets of the private foundation are used exclusively for charitable purposes (thereby avoiding the taxable expenditure restriction) and that grants made by the private foundation count as qualifying distributions for the foundation. To that end, private foundations have several options from which to choose when undertaking international grantmaking: (1) make the grant to a domestic public charity (being mindful of the earmarking rules addressed above); (2) make a grant to a foreign organization qualifying as a public charity; (3) make a grant to a foreign organization based on an equivalency determination; or (4) make a grant to a foreign organization and thereafter exercise expenditure responsibility.

B. Grants to Domestic Organizations for International Work

If the contribution is made to a domestic organization which is to be used for a charitable activity in a foreign country, the domestic organization will be considered the recipient of the contribution and the contribution will be a qualifying distribution if the use of the contribution is subject to the domestic organization's discretion and control.

Rev. Rul. 66-79, 1966-1 C.B. 48. However, the donating foundation must not earmark the contribution to the domestic organization directly for the use of the foreign organization. If they do, they will be deemed to have made a grant directly to the foreign organization and the foreign organization must meet the qualifications of a public charity in order for the distribution to be a qualifying distribution. As long as the donating foundation does not earmark the use of its grant for any named secondary donee, it will not be deemed to have made a contribution to the secondary donee. Treas. Reg. 53.49429(a)-3(c)(4).

C. Grants to Foreign Charities Recognized as Exempt

A private foundation can make a contribution to a foreign organization and it not be deemed a taxable expenditure if the foreign organization has received a tax exempt determination letter from the Internal Revenue Service that it is a public charity or it qualifies as the equivalent of an IRC § 501(c)(3) organization and a public charity under IRC § 509(a)(1), (2) or (3); Treas. Reg. § 53.4945-6(c)(1), IRC § 4945(d)(4)(A).

D. Grants Made Based on an Equivalency Determination

Further, if in the reasonable judgment of a foundation manager, it is determined that the foreign organization will be treated as the equivalent of an I.R.C. § 501(c)(3) organization and a public charity under I.R.C. § 509(a)(1), (2) or (3), Treas. Reg. § 53.4945-6(c)(2)(ii), and a good faith determination is made based upon an affidavit of the foreign organization or an opinion of counsel by either the foreign organization's or the foundation's counsel, setting forth sufficient facts concerning the operation and support of the organization to enable the Internal Revenue Service on audit to determine that the grantee organization would likely qualify as a public charity under I.R.C. § 509(a)(1), (2) or (3). Treas. Reg. § 53.4945-5(a)(5).

Based on a 2001 letter from the IRS to the Council on Foundations, it is clear that the grantmaking private foundation may choose between equivalency determination and expenditure responsibility.[2] Should the private foundation choose to follow the path of equivalency determination, the foundation will require documentation from the potential recipient sufficient to make the determination that the foreign entity is the equivalent of a public charity under U.S. law. Because the foundation must make a "good faith determination," it should require documentation that would in large part be required by the IRS if the foreign organization were making application by way for Form 1023. Revenue Procedure 92-94 provides guidance related to information to be addressed in a written affidavit from the foreign grantee. Should a foundation choose to make an equivalency determination, Revenue Procedure 92-94 should be consulted as a guide for what information should be obtained.

The affidavit must contain current facts (i.e. be "currently qualified") concerning

[2] For an excellent discussion regarding factors that may influence or guide the decision to use either an equivalency determination or expenditure responsibility, see B. Buchalter Adler and S. Petit, "Equivalency or Expenditure Responsibility? A Guide in Plain English," *International Dateline*, Spring 2005.

the organization's qualification as "equivalent" to a public charity (e.g. accounting for support tests or facts for traditional public charities).[3] Although financial information may be given in foreign currency, the affidavit itself must be in English and must be attested by an officer of the foreign organization. The affidavit must include a statement of being operated exclusively for charitable purposes, a narrative of past, current and proposed activities, copies of governing/organizational documents, an explanation based on the organizational documents, or the laws and customs of the foreign country to ensure assets are not permitted to inure to or benefit a private person either during operation or upon dissolution, and a statement that either the laws and customs of the foreign country, or the organization's governing documents do not permit excessive lobbying, intervention in political campaigns or other noncharitable activities.[4] **Revenue Procedure 92-94 is included at Appendix "1."**

As an alternative to the grantee affidavit procedure, private foundations may continue to obtain opinions of counsel with respect to the equivalency determination. While an opinion letter will require largely the same documentation as support, the foundation managers, by relying on such an opinion letter will have acted with reasonable cause. *See* § 4945(a)(2); Treas. Reg. § 53.4945-1(a)(2)(vi).

[3] Obviously, to stay "currently qualified," the affidavit will need to be updated with attested statements to show continued satisfaction of the support tests.

[4] Additional information must be included for educational institutions. *See* Rev. Proc. 92-94.

E. Grants Made with the Exercise of Expenditure Responsibility

Finally, a private foundation can make a grant to a foreign organization if the foundation exercises expenditure responsibility as to the grant.[5] Most private foundations will already be familiar with the requirements of expenditure responsibility. The requirements, as they relate to grants to foreign organizations, are largely the same. Specifically, as with domestic expenditure responsibility, exercising expenditure responsibility with respect to foreign grants includes the conducting of a pre-grant inquiry concerning the grantee's management and programs, obtaining a written agreement from the grantee prior to making the grant, obtaining regular written status reports from the grantee regarding its progress in using the grant, and filing reports regarding the grant's status with the private foundation's annual information return and checking the appropriate box. However, in addition to these standard requirements, a grant to a foreign organization with respect to which the private foundation will exercise expenditure responsibility requires that all grant funds be maintained in a separate account dedicated to one or more charitable purposes. Treas. Reg. § 53.4945-6(c)(2).

V. COMPLIANCE WITH ANTI-TERRORISM MEASURES

No current discussion of international grantmaking would be complete without addressing the need to ensure charitable

[5] Please note that grants to foreign organizations that are the equivalent of a private non-operating foundation require expenditure responsibility and may not be counted as a qualifying distribution unless the technical "out of corpus" requirements are met by the foreign organization. Treas. Reg. § 53.4942(a)-3(a)(6).

funds are not diverted to terrorist purposes. A great deal has been written on this subject. While this section will highlight key issues, additional excellent resources include J. Gallagher, "Grantmaking in an Age of Terrorism: Some Thoughts About Compliance Strategies," *International Dateline*, Spring 2004; Day, Berry & Howard Foundation, Inc., "*Handbook on Counter-Terrorism Measures: What U.S. Nonprofits and Grantmakers Need to Know*," 2004.

A. Executive Order 13224

Following the terrorist attacks of September 11, 2001, President Bush signed Executive Order 13224. This important and broad Executive Order blocks the property of and prohibits transactions with individuals and organizations (1) specifically listed in the Annex to the Executive Order, (2) who ate determined by the Secretary of State to have committed or pose a risk of committing acts of terrorism, or (3) who are determined by the Secretary of the Treasury to be owned or controlled by, or associated with terrorists. Prohibited transactions cover a broad range of activities ranging from financial assistance to humanitarian assistance. The Executive Order can be violated even where the grantmaking organization lacks knowledge that it is engaging in a prohibited transaction. Thus it is important for a grantor operating internationally to follow adequate vetting procedures to ensure grant recipients do not fall into one of the covered categories. Vetting procedures should include checking the Specially Designated Nationals List (the SDN List) maintained by the Office of Foreign Assets Control, and the Terrorist Exclusion List (the TEL) maintained by the Department of Justice. Grantmakers may also consult lists maintained by the United Nations and the European Union. Services exist that will provide the necessary vetting.

B. The Patriot Act

In October 2001 Congress passed the Patriot Act which President Bush signed into law on October 26, 2001. The aim of the Patriot Act is combating terrorism through relaxing certain restrictions related to law enforcement's investigations of suspected terrorists, instituting procedures for the sharing of information and cooperation between law enforcement agencies, requiring actions of financial institutions to avoid money laundering and prohibiting the provision of material support to terrorists. Significantly to grantmakers, the Patriot Act prohibits an organization from willfully providing or collecting funds with the intention or knowledge that such funds will be used to carry out acts of terrorism. The Patriot Act provides for criminal and civil remedies. As with compliance with Executive Order 13224, it is important for a tax-exempt organization operating internationally to check the lists referenced above to ensure it is not running afoul of the provisions of the Patriot Act.

C. The Treasury Guidelines

In November 2002 the Treasury Department issued the "U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: *Voluntary* Best Practices for U.S.-Based Charities." An amended version was issued on December 5, 2005 with an invitation for public comment.

Following receipt of comments in response to the December 2005 version, on September 29, 2006, a new version (and the current version) was issued. **A copy of the September 29, 2006 Guidelines is included at Appendix "2."**

As with the original Guidelines, the current version details what Treasury considers "best practices" and is voluntary only. As the opening footnote to the current version of the Guidelines states:

> Non-adherence to these Guidelines, in and of itself, does not constitute a violation of existing U.S. law. Conversely, adherence to these Guidelines does not excuse any person (individual or entity) from compliance with any local, state, or federal law or regulation, nor does it release any person from or constitute a legal defense against any civil or criminal liability for violating any such law or regulation.

The current Guidelines have continued to evolve in format and comprehensiveness. The Guidelines now contain six sections broken down as follows:

1. Introduction – Providing the view of Treasury as to purpose and use of the Guidelines.
2. Fundamental Principles of Good Charitable Practice – Providing overarching principles of charitable organizations.
3. Governance Accountability and Transparency – Addressing the charity's governing documents, governing board, and key employees.
4. Financial Accountability and Transparency – Addressing the charity's financial accountability requirements and public disclosure.
5. Programmatic Verification – Outlining steps a charity should take in pre-grant due diligence and post-grant review.
6. Anti-Terrorist Financing Best Practices – Outlining steps a charity should take with respect to due diligence and vetting before distributing charitable funds.

Many commentators have criticized earlier versions of the Guidelines as lacking practicality and effectiveness.[6] The revised Guidelines, are intended to address and incorporate comments from the charitable sector. In fact, the Guidelines state that "[t]he risk-based nature of these Guidelines reflects Treasury's recognition that a "one-size-fits-all" approach is untenable and inappropriate due to the diversity of the charitable sector and its operations. Accordingly, certain aspects of the Guidelines will not be applicable to every charity, charitable activity, or circumstance." Nevertheless, a prudent charity will be aware of the Guidelines and its provisions.

[6] In March 2005 a working group of charitable sector organizations and advisors issues their Principles of International Charity as an alternative way to safeguard charitable assets. The Principles are available at www.independentsector.org/programs/gr/CharityPrinciples.pdf.

D. The Non-Diversion Principle

As noted in the sections above dealing with grants by public charities and private foundations, all § 501(c)(3) organizations are bound to use their assets exclusively in furtherance of their exempt purposes or risk losing their tax-exempt status. Clearly, using assets to support or finance terrorism runs afoul of this tax law requirement. In addition to losing tax-exempt status, § 501(p) was added to the Code in 2003 providing for a retroactive suspension of the tax-exempt status of an organization designated or identified by federal authorities as a terrorist organization or supporter of terrorism. Since enactment of § 501(p) the IRS has suspended exemption of four organizations.

VI. CONCLUSION

Charities in the United States continue to see that they can make a difference in global crises through their operations and their grantmaking. The resources available in the west are being shared worldwide to feed, clothe, shelter, heal, protect and educate. It is critical that funders devoted to such purposes understand the rules related to cross-border grants and operations so that the good work they intend is accomplished.

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Appendix “1”

Revenue Procedure 92-94

Appendix "2"

U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: *Voluntary* Best Practices for U.S.-Based Charities Issues September 29, 2006