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Private Foundations Bulletin

New Guidelines for Good Faith Determinations of Foreign Grantees

The IRS recently issued Revenue Procedure 2017-53 providing guidelines that international grantmakers and qualified tax practitioners may use for preparing preferred written advice on which a domestic private foundation ordinarily may rely in making a good faith determination (also known as “equivalency determination”) that a foreign grantee is a qualified public charity.

Until further guidance is issued, sponsoring organizations of donor advised funds may also follow this guidance.

For background on equivalency determination, please refer to our 2015 bulletin entitled [New IRS Regulations May Make International Philanthropy More Appealing](#).

General Requirements

Preferred written advice should enable the IRS to determine that the foreign grantee, as of the date of the written advice, would likely qualify as the equivalent of a U.S. qualified public charity.

In summary, the new guidelines stipulate that the following components be included in the preferred written advice, which must be written in or translated to English:

- Grantee affidavits used to form conclusions can be attached and attested to by a proper officer/trustee of the grantee. Previously supplied affidavits can be attached, along with an updated affidavit, describing only material changes and may be relied upon.
- Grantee’s governing documents translated into English and the country of the grantee formation must be noted if not evident in governing documents
- Identifies charitable purpose(s) of grantee
- Confirms that if the grantee terminates, liquidates or dissolves, then under the governing instrument of applicable law, all assets will be disbursed to another not-for-profit charitable organization for charitable purposes or government entity for public purposes
- Confirms that the grantee has no shareholders or members who have an ownership interest in the income or assets of the grantee
- Confirms that the grantee’s income or assets are not distributed to a non-charitable organization, or individual, or apply any income or assets for the benefits of a non-charitable organization, or individual (and that the grantee’s governing instruments do not expressly permit such activities) except for payment of reasonable compensation for services rendered and reasonable expenditures necessary to conduct the grantee’s charitable activities

- Confirms the grantee does not attempt to influence legislation as a substantial part of its activities and does not get involved in any political campaign for or against any candidate for public office, and governing instruments expressly do not permit such activities
- Discusses affiliated organizations
- Describes activities of the grantee including sources of receipts, types of expenditures and how charitable activities are carried out
- Applies the applicable federal tax law and other relevant law to the facts, as documented with points above, in discussing whether the grantee is operated exclusively for charitable purposes

Includes verification that the grantee is not identified as a terrorist organization or blocked person by the United States government

Foreign Hospital, School, Medical Research Organization and Other Grantees

In addition to the above components which must be incorporated in the preferred written advice, the following relate to these specified grantees:

- If the foreign grantee operates a hospital in a foreign jurisdiction, 501(r) regulations do not apply.
- If the grantee is a foreign school, advice states that the grantee has adopted a policy in governing documents that the grantee does not discriminate on the basis of race, color, or national or ethnic origin, both by policy and in practice, against applicants and students. [Although compliance with Revenue Procedure 75-50 is not required, it can be used as guidance.]
- Grants to foreign medical research organizations require other attachments as do non-functionally integrated Type III supporting organizations and private operating foundations.

Foreign Grantees Subject to Financial Test

In addition to the general requirements summarized above

- If the grantee whose status as a qualifying public charity depends in whole or in part on a financial test, preferred written advice includes an attached financial schedule showing satisfaction of financial test(s) i.e. public support test.
 - If the grantee is in existence **less than five years**, include a determination that as of the time of determination the grantee can reasonably be expected to meet financial test(s).
 - If the grantee is in existence for **more than five years**, IRS Form 990 support schedule or similar schedule must be attached, as well as other related information depending on type of financial test.

Documentation

The private foundation must retain the original written advice (or a copy) and make it available to the IRS upon request.

Effective Date

This revenue procedure is effective September 14, 2017 and modifies and supersedes Revenue Procedure 92-94.

Contact Us

We welcome the opportunity to speak with you about any questions you may have regarding this newsletter or any other subject related to accounting, audit, tax or advisory matters relative to private foundations. Please contact us:

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