

## Foundations May Fund International Projects and Grantees

Increasingly, foundations are making grants to fund projects outside the United States and to international organizations. When making grants for international purposes, foundations need to follow federal tax law to make certain that foundation assets are used exclusively for charitable purposes. While foundations must also comply with anti-terrorism rules to ensure that no funds are diverted to terrorists or used for terrorist purposes, this summary addresses only federal *tax* regulations.

Foundations may fund international projects in several ways. Each method comes with its own advantages and limitations, and foundations will have to determine which way best meets its needs. Whichever method is used, the grant must be made for a charitable purpose: the grant cannot fund any activity internationally that it cannot fund domestically.

To fund international projects, private and public foundations can make grants to:

1. **U.S. public charities that do work in other countries.** The grant can be earmarked to be used in a particular geographic area and/or for a specific project. The grant is made using the same procedure the foundation uses when making grants for domestic projects.
2. **“Friends of” organizations.** A foundation can make a grant to a “friends of” organization, a U.S. public charity that is created to benefit a specific non-U.S. charity. The key is that the “friends of” organization must exercise full control over the grant and complete discretion over how the grant funds are spent; it cannot be merely a conduit for grant funds passing to a foreign grantee. The grant cannot be earmarked for a foreign beneficiary. A grant to a “friends of” organization is made using the same procedure the foundation uses when making grants to all other domestic public charities.
3. **Non-U.S. public charities that are recognized as exempt under section 501(c)(3).** A foundation may make a grant to a non-U.S. organization that has been recognized as exempt by the IRS under 501(c)(3), using the same procedure it uses when making grants for domestic projects. Few non-U.S. organizations actually apply for 501(c)(3) status.
4. **Non-U.S. public charities.** Foundations must take additional steps when making grants directly to non-U.S. (or foreign) charities. Here, the rules differ for public and private foundations.

*Public foundations* may make grants to foreign entities as long as the grant funds are used exclusively for charitable purposes. Public foundations must exercise sufficient “discretion and control” over the grant to demonstrate that the funds are used for charitable purposes only. The funds cannot be used for any purpose that a U.S. public charity could not accomplish.

*Private foundations* must structure their grants in certain ways to avoid having the grants treated as taxable expenditures. They can make grants to foreign charities if they exercise expenditure responsibility or make an equivalency determination.

- Expenditure responsibility is a set of requirements that must be followed to ensure that the grant is spent solely for the purpose for which it was made. A private foundation must make a pre-grant inquiry prior to awarding a grant, provide a written grant agreement, require status



reports from the grantee, and provide information to the IRS about the grant. Expenditure responsibility grants are the only grants that cannot be used for lobbying.

Equivalency determination allows a foundation to make a good faith determination, based on a grantee's affidavit or opinion of counsel, that the grantee is a public charity. The affidavit or opinion of counsel must set forth sufficient facts about the grantee's operations and support to enable the IRS to determine that the organization would likely qualify as a public charity.

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