

International Grantmaking – Understanding the Rules and Regulations

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Learning Objectives

Understand support within foreign countries



Support to foreign charities

Direct program activities

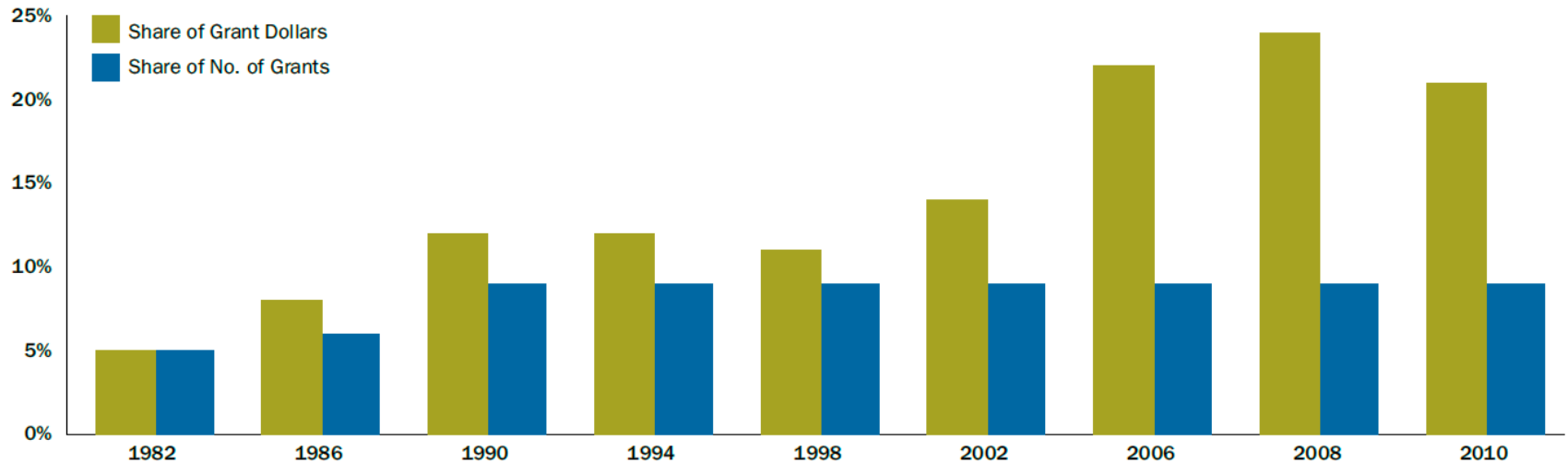
Identify common errors in required IRS reporting of foreign activity

Global Philanthropy

- In 2013, U.S. grantmakers gave \$244 billion dollars to non-U.S. recipients
<http://fconline.foundationcenter.org/maps/IntlDollars.php?map=&unit=&y1=2013>
- In 2012, the Foundation Center released their international grantmaking update report – included 1,330 of the largest U.S. foundations (independent, corporate and community)
- 60% (799 out of 1,330) awarded at least one international grant
- Nearly 41% of international support funded health

Global Philanthropy

FIGURE 1. International grant dollars as a share of overall giving declined between 2008 and 2010, while the share of number of grants has held steady



SOURCE: The Foundation Center, *International Grantmaking Update, 2012*. Based on grants awarded by a sample of the largest U.S. foundations.

Direct Giving

- U.S. charity physically present in a foreign country
 - Office space, personnel
 - Schools, clinics, orphanages, economic development, etc.
- Examples
 - American Refugee Committee
 - Lutheran World Federation
 - World Vision

Charitable Giving

- U.S. charity supporting foreign charities (NGO)
 - Defined as non-governmental organization
- U.S. charity supporting foreign charities (NGO)
 - Africa Peace Forum (Kenya)
 - Iraqi Health and Social Care Association (Iraq)

How This Impacts You

- May apply to everyone in this room
- Examples
 - Private foundation granting directly to NGO
 - Private and community foundation gives to ABC social service agency
 - ◇ Agency is nonprofit promoting health education in underdeveloped communities
 - ◇ Has program in foreign country
 - ◇ Restricted gift – health education; vaccines
 - ◇ Unrestricted gift

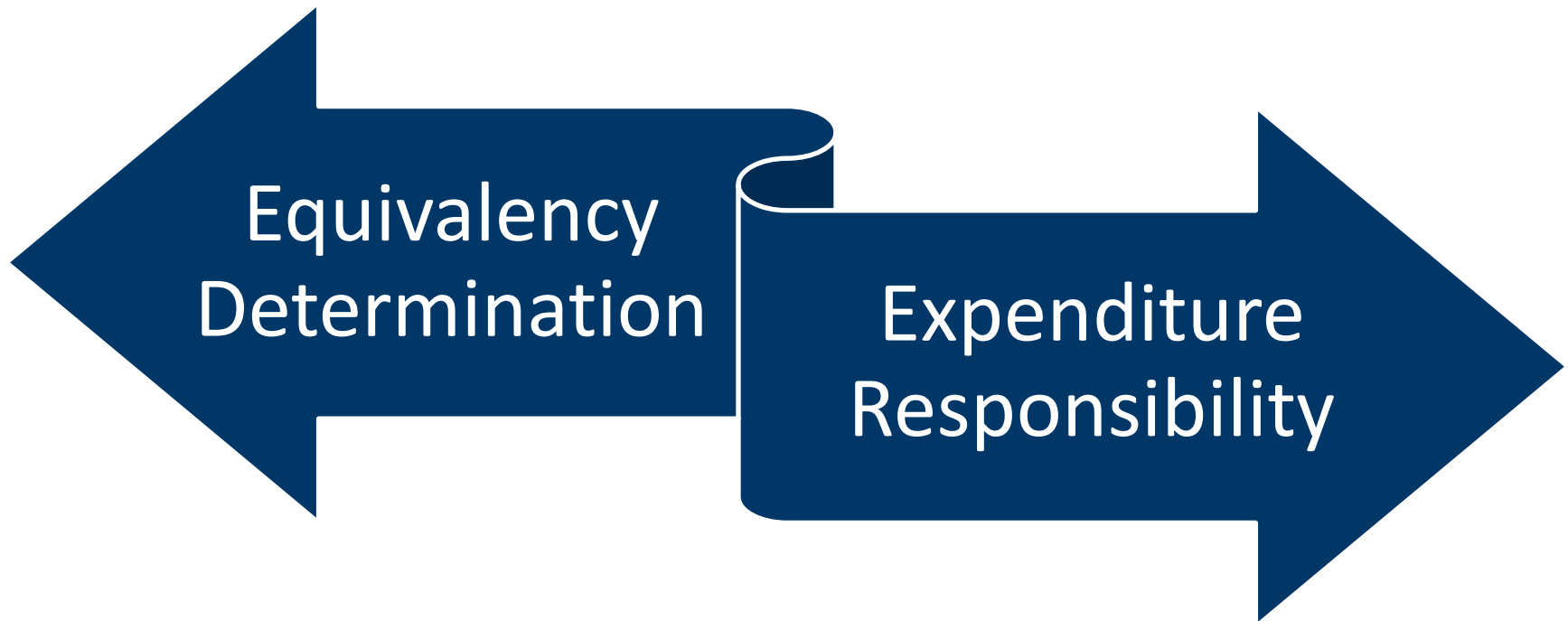
Challenges to Both

- Monitoring of the funds being used
- OFAC (The Office of Foreign Assets Control) administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy, or economy of the United States.
 - <http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>

Challenges to Both

- Ensuring they are not on the list
- Examples
 - Cuba
 - Iran
 - Sudan
 - North Korea

Private Foundation – Qualifying Distribution



Equivalency Determination

Evaluate whether the foreign grantee is the equivalent of a U.S. public charity

- Required if foreign grantee does not have a ruling or determination letter (501(c)3)
- Collect information on operations and finances
- Obtain affidavit of attorney, CPA, or enrolled agent
- Cannot share EDs

Equivalency Determination

Requests

- Founding documents of the organization
- Detailed description of the purpose of the organization and its past and proposed activities
- Dissolution provisions – applicable law or in founding documents
- Legal or founding document restrictions on private benefit, non-charitable activities, lobbying, and political activity
- Financial records

Expenditure Responsibility

The Foundation exerts all reasonable efforts and establishes adequate procedures

- To see that the grant is spent only for the purpose for which it is made
- To obtain full and complete reports from the grantee organization on how the funds are spent
- To make full and detailed reports on the expenditures to the IRS

Certain grants to foreign organizations. Grants made to foreign organizations, other than an organization described in section 509(a)(1), (2), or (3), are subject to the same restrictions on the use of the grant as those imposed on domestic private foundations.

Expenditure Responsibility

Process

- Pre-grant inquiry – are they capable of fulfilling charitable purposes of the grant?
- Execute grant agreement – includes spending and reporting responsibilities and commits the grantee to spend only for specified purposes
- Require one or more reports detailing spending
- Report and summarize grant on 990-PF
- Require grant funds to be in a separate account dedicated to one or more charitable purposes

ED Versus ER – No Choice

Situation	Required Action
Grantee is a non-charitable enterprise that will use the grant for charitable purposes.	Expenditure responsibility
Grantee cannot supply the information required for an equivalency affidavit.	Expenditure responsibility
Grantor evaluates the affidavit and concludes that despite everyone's best efforts, the grantee is not the equivalent of a public charity.	Expenditure responsibility

http://www.adlercolvin.com/pdf/private_foundations/Equivalency.pdf

ED Versus ER – Grantor Can Choose

Equivalency Determination (ED)	Expenditure Responsibility (ER)
Grantor expects a long-term relationship.	Grantor plans a one-time grant.
Grantee can supply governing documents and no financial data is needed (i.e. grantee is a school, hospital, or church).	Grantee may have considerable difficulty in supplying historical financial data or obtaining a certified copy of its governing documents.
Grantor wants flexible reporting procedures.	Grantor wants strict reporting provisions.
Grantor wants to make a general support grant.	
Grantee plans to re-grant funds received to accomplish its exempt purposes.	

Other Considerations

- Internal controls over foreign operations
- Foreign reporting capabilities
- Continuity of operations
- Currency fluctuation risk
- Foreign government intervention



IRS Reporting

Top 10 Errors in Reporting Foreign Operations on Form 990

Top 10 Errors in Reporting Foreign Operations on Form 990

1

- Grants made to domestic entities and individuals to be used for foreign activities are not included on Schedule F, Part II or Part III.

Top 10 Errors in Reporting Foreign Operations on Form 990

2

- Investments in foreign partnerships or corporations with a FMV of \$100,000 or more are not included on Schedule F, Part I.

Top 10 Errors in Reporting Foreign Operations on Form 990

3

- Understanding the definition of “outside the United States” for purpose of the Form 990 reporting (i.e. Puerto Rico and U.S. Virgin Islands, for example, are considered United States and therefore are not foreign).

Top 10 Errors in Reporting Foreign Operations on Form 990

4

- Failure by grantmakers and others to disclose their process of monitoring the use of international grants on Schedule F.

Top 10 Errors in Reporting Foreign Operations on Form 990

5

- Foreign grants are not distinguished from domestic grants on Form 990, Part IX – Schedule of Functional Expenses.

Top 10 Errors in Reporting Foreign Operations on Form 990

6

- Foreign officer compensation is not reported due to the inapplicability of the Form W-2 reporting requirements.

Top 10 Errors in Reporting Foreign Operations on Form 990

7

- Foreign investments and bank accounts giving rise to foreign bank account reporting (FBAR) are not properly analyzed for purposes of Form TD F 90-22.1.

Top 10 Errors in Reporting Foreign Operations on Form 990

8

- Disclosures made by domestic partnerships by way of the K-1 footnotes are not reviewed to determine the applicability of foreign filings such as Forms 926, 8621, 8865, and 5713 for the investor organization.

Top 10 Errors in Reporting Foreign Operations on Form 990

9

- Direct investments into foreign entities are not reported on Forms 5471, 8858, 8865, and 926.

Top 10 Errors in Reporting Foreign Operations on Form 990

10

- Disregarded entities for the purpose of foreign subsidiaries are assumed to follow the U.S. “check the box” rules



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