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Tax Considerations of Grantmaking in Today's World

CliftonLarsonAllen National Foundation Conference

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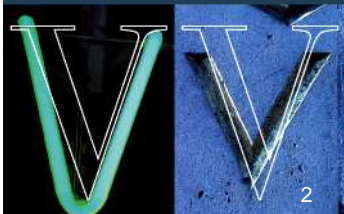
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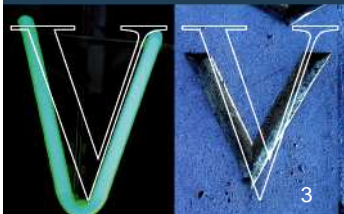
Recent Developments in International Philanthropy

- PRIVATE FOUNDATION DISTRIBUTION RULES
 - Private Foundations are required annually to make “Qualified Distributions” equal to 5% of their assets
 - Grants to “non-charities” are deemed to be taxable expenditures subject to penalty taxes unless expenditure responsibility is exercised



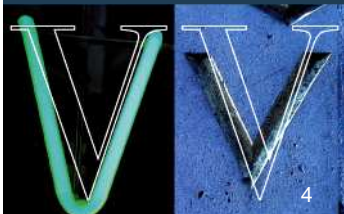
Grants to Foreign Charities

- Grants to foreign charities will be deemed qualified distributions and will not be treated as taxable expenditures if:
 - The foreign charity has been recognized by the IRS as a 501(c)(3) public charity
 - Donor foundation makes a good faith determination that the foreign grantee is the equivalent of a US public charity by either:
 - Exercising expenditure responsibility, or
 - Making an equivalency determination



Expenditure Responsibility

- Pre-grant inquiry – limited inquiry concerning potential grantee
- Requires written agreement with grantee that
 - Requires repayment of amounts not used for grant purposes
 - Annual reporting
 - Make books and records available
 - Prohibit activities not consistent with 501(c)(3) status
- Donor must report expenditure responsibility grants on its annual Form 990-PF



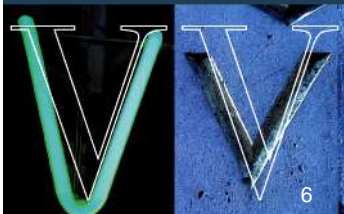
Equivalency Determination

- Grantor private foundation makes a good faith determination that the foreign grantee is the equivalent of a US public charity based on either:
 - An affidavit of the grantee
 - An opinion of counsel (of the distributing foundation or the donee organization) – “old law”
 - Written advice from an attorney, CPA or enrolled agent that the organization is the equivalent of a US public charity – proposed regulations issued 9/24/12



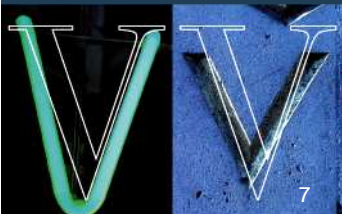
Affidavit of Grantee

- Must be in English
- Requirements set out in Rev. Proc. 92-94
- Requires fair amount of information
- Grantee may find it difficult to provide



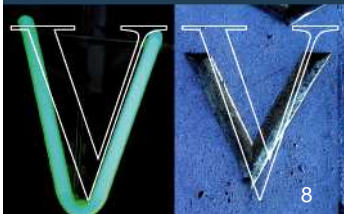
Opinion of Counsel

- Under “old law” was very expensive
- Proposed regulations permit advice from “any” attorney, CPA or enrolled agent (not just counsel to the distributing foundation or donee organization) – should lower costs of equivalency determination
- Opens door to possibility of creating a “repository” of equivalency determinations available to any foundation



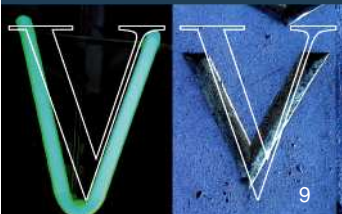
What's Next

- Comment period on proposed regulations just ended
- Treasury looking at continued viability of affidavits from grantee and putting an “expiration date” on equivalency determinations
- Continued move to standardizing and simplifying process
- Will also help public charities (e.g. community foundations) making foreign grants

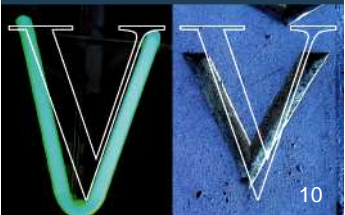


Program-Related Investments

- Code Section 4944 imposes a tax on a private foundation that invests in a manner that jeopardizes its exempt purposes. There is an exception to this rule for “program-related investments.”
- A PRI is an investment, the primary purpose of which is to accomplish charitable purposes and no significant purpose of which is the production of income or the appreciation of property.

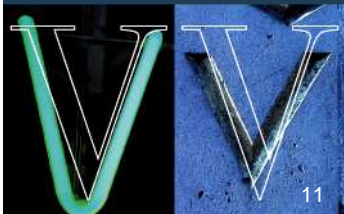


- Test is whether commercial investors would be likely to make the investment on the same terms as the private foundation. Not necessarily a problem if the investment ultimately produces significant income or capital appreciation

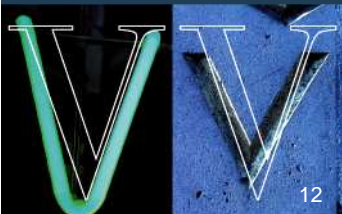


Examples

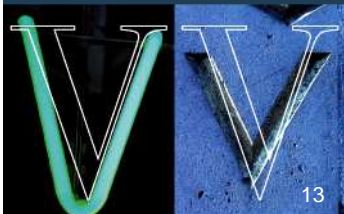
- Prior examples in Treasury Regulations mainly treated below market loans or equity investments in businesses located in depressed areas or owned by economically disadvantaged minority groups as qualifying as PRI's.
- In April 2012, the IRS added additional examples to the regulations confirming that -



- PRI's can support charitable activities conducted in foreign countries
- Charitable purposes served by a PRI are not limited to situations involving economically disadvantaged individuals and deteriorated urban areas
- Credit enhancement arrangements may qualify as PRI's
- A PRI may accomplish a variety of charitable purposes, such as advancing science, combatting environmental deterioration and promoting the arts



- Investments that alleviate the impact of a natural disaster or that fund educational programs for poor individuals may qualify as a PRI
- Guarantee arrangements may qualify as a PRI

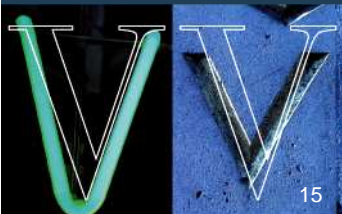


Specific Examples

- Investments in a drug company to develop a vaccine that will help poor individuals in developing countries
- Investing in a recycling business in a developing country
- Lending money to businesses or individuals starting businesses in areas hit by natural disasters



- Lending money to a social welfare organization to purchase art exhibition space
- Loans must still be below fair market value



QUESTIONS?

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