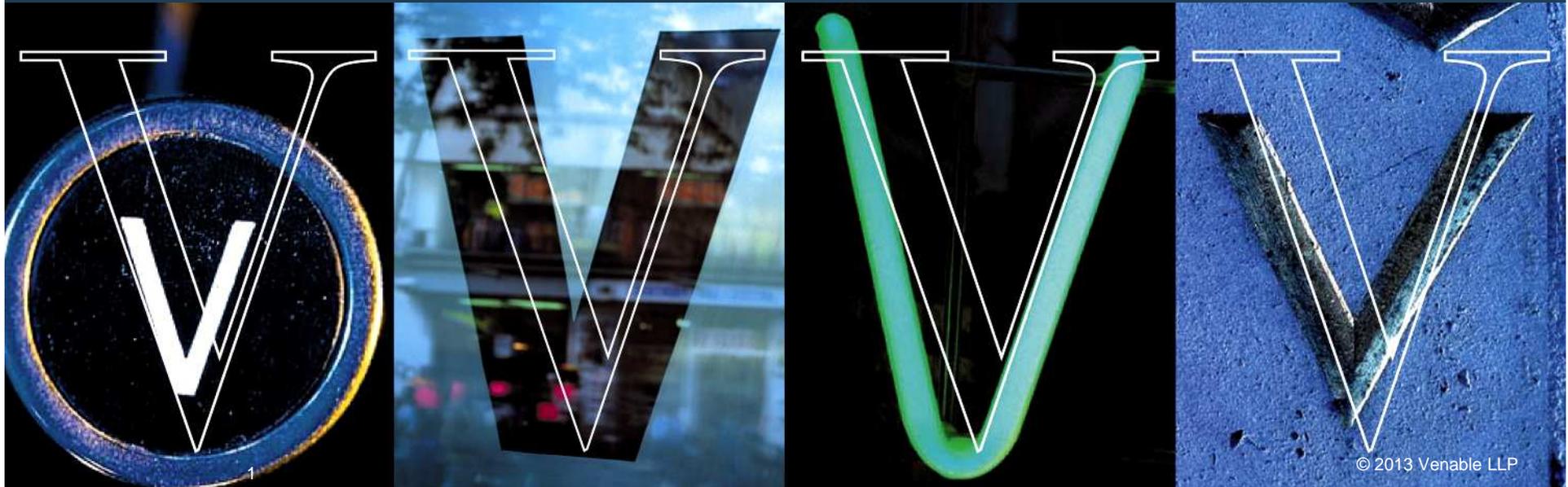


Tax Considerations of International  
Grantmaking in Today's World

Robert L. Waldman, Esq.

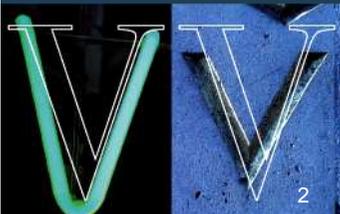
Venable LLP

March 2013



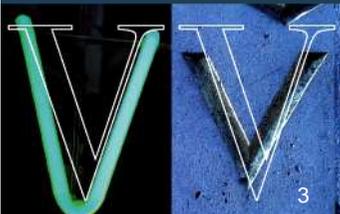
# Recent Developments in International Philanthropy – Best Practices

- 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



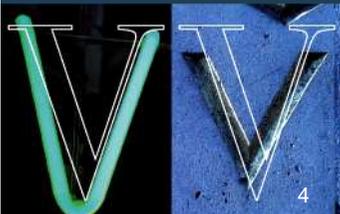
## Grants to Foreign Charities

- 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



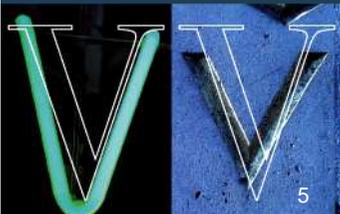
## Expenditure Responsibility

- 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 IRS Form 990-PF



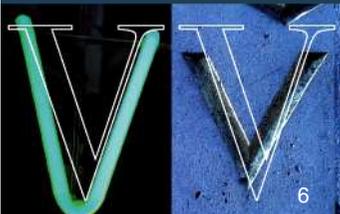
## Equivalency Determination

- 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



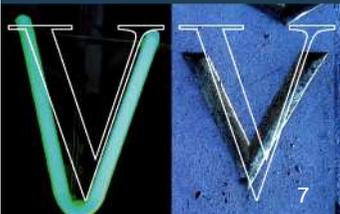
## Affidavit of Grantee

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



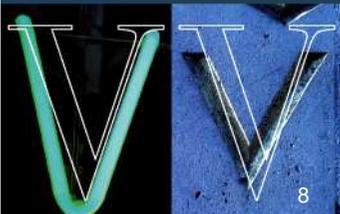
## Opinion of Counsel

- 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



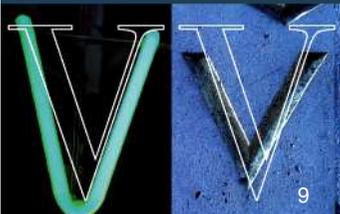
## When to Use Expenditure Responsibility

- Grantee's governing documents are in a foreign language and not easily translated
- Grantee has poor recordkeeping
- Hard to determine if grantee is a public charity
- One-time grant to grantee
- Need to make grant quickly – *e.g.*, disaster relief



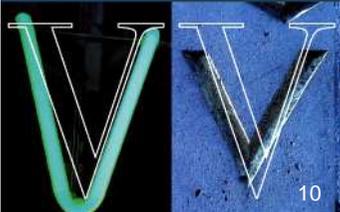
## When to Make an Equivalency Determination

- Grantee is a church, school or hospital
- Grantor anticipates making multiple grants to grantee over a period of years
- Grant is for capital equipment or for endowment
- General support grants, rather than support of a specific program
- Grantee will find it difficult to do annual reporting



## 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



# Questions?

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