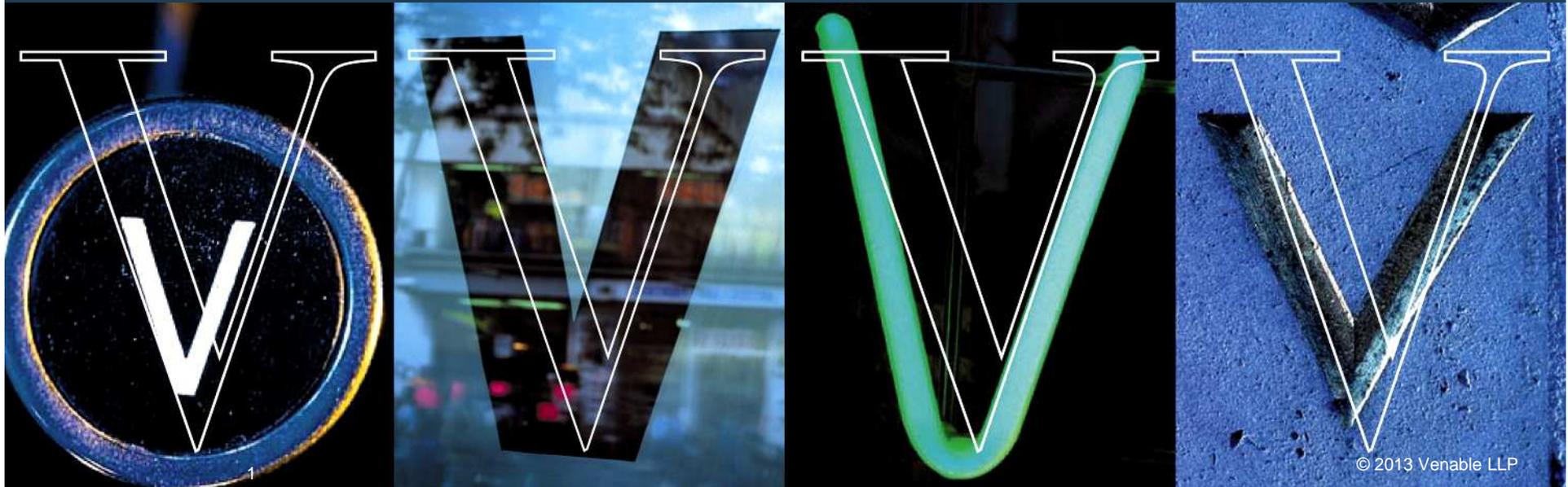


Tax Considerations of International
Grantmaking in Today's World

Robert L. Waldman, Esq.

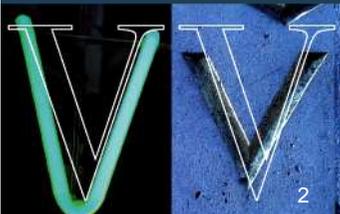
Venable LLP

March 2013



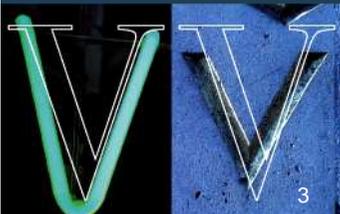
Recent Developments in International Philanthropy – Best Practices

- 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



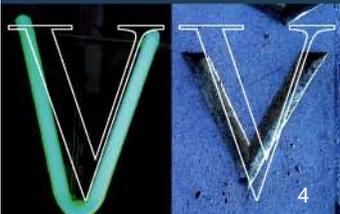
Grants to Foreign Charities

- 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



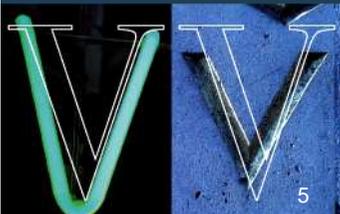
Expenditure Responsibility

- 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



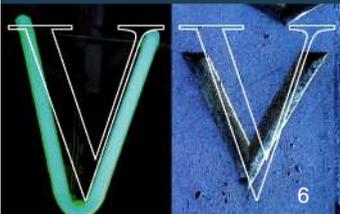
Equivalency Determination

- 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



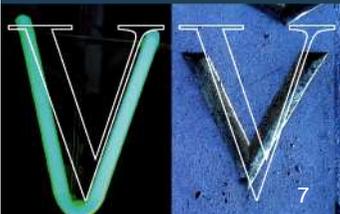
Affidavit of Grantee

- 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



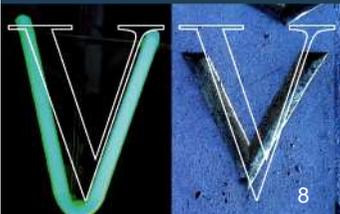
Opinion of Counsel

- 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



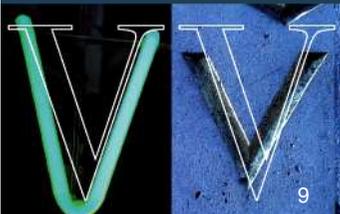
When to Use Expenditure Responsibility

- 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



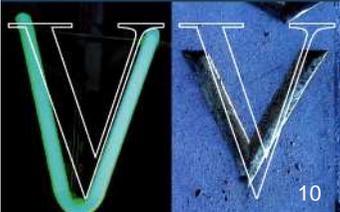
When to Make an Equivalency Determination

- 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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