

Is Your Nonprofit Involved in Foreign Activities?

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In recent years, nonprofit organizations are getting more involved in foreign activities in various ways. Some are interested in making grants to foreign organizations. Some domestic tax exempt organizations form as “friends of” organizations to support a foreign country or activity. Nonprofit organizations also may own interests in foreign partnerships, conduct activities in a foreign country, or perform religious ministry outside of the U.S.

When a nonprofit organization is involved in these types of foreign activities, they often inquire about whether there are any special rules they should be aware of. The main point to remember is that a domestic tax exempt charitable organization can basically do anything in a foreign country that it can do in the U.S., as long as it’s in line with the tax exempt purpose and mission of the organization. The tax exempt mission is that which was described to the IRS in the organization’s original application of tax exempt status.

Other basic rules are:

No interested or related individual should personally benefit from a nonprofit organization (you may have heard this referred to as private inurement).

The tax exempt entity cannot conduct political activities.

Lobbying activities cannot be a substantial part of a charitable organization’s total activities.

Nonprofit organizations must comply with IRS reporting requirements which may include more than just the Form 990.

These rules are no different whether the nonprofit organization conducts foreign activities or not.

Grant-making Entities and “Friends of” Organizations

A domestic tax exempt entity cannot be created as just a “pass-through” type of entity to funnel money to a foreign organization because the organization must have a purpose that meets one of the tax exempt categories allowed by the IRS. If a domestic nonprofit organization grants money to a foreign

organization, the organization must exercise reasonable care that their assets are used for charitable purposes through proper control and discretion. The organization must be able to demonstrate that it has control over the use of the funds. How is this done? The entity should have some kind of application process to ensure that the recipient has plans to use the money appropriately. The entity should also ensure that all expenditures of the organization are for the purposes of their tax exempt mission by receiving a detailed accounting of the recipient's expenditures. A reporting process should be required of the recipient organization and the organization should not accept donations that are earmarked for a specific recipient.

From a tax deduction standpoint, the allow ability of a tax deduction is based on where the charitable organization is created, not where the money is used. In other words, a donation made directly to a foreign organization is not tax deductible.

Foreign Investments

Any U.S. person (including entities and trusts) who holds a financial interest in any foreign financial account with a balance greater than \$10,000 is required to file the FBAR form (Report of Foreign Bank and Financial Accounts) with the IRS annually. However, investments in hedge funds are not considered financial accounts that require FBAR reporting. There are very steep penalties for not filing this form as required.

Schedule F

If your nonprofit organization is involved in any of the foreign activities described above, you may be required to file Schedule F along with your Form 990 each year. Schedule F is Statement of Activities Outside the U.S. You are required to file this schedule if you answer "yes" to certain questions on the Form 990.

If you are making grants to foreign organizations or individuals, you are required to describe your procedures for monitoring the use of the funds and if any amounts paid are greater than \$5,000 to one entity, you are required to disclose the name of that entity, the purpose of the grant, and the amount. For any activities in foreign countries, you are required to describe the type of activities and disclose the total amount of expenditures in those countries. Revenue and expenses from foreign investments may also have to be considered for Schedule F, depending on the types of investments and other factors. For example, an organization with an interest in a foreign partnership would need to take into account its share of the partnership's income. There is a minimum threshold for reporting for this type of income of \$10,000.

It should be noted that if you are allowed to file Form 990-EZ (rather than the full Form 990) due to your income level, you are not required to complete Schedule F.

Other Considerations and IRS Filing Requirements

Other than Schedule F, there are also other considerations and possible filing requirements when you have transactions with entities in foreign countries. If your nonprofit organization is conducting program activities in a foreign country, you need to consider what The Office of Foreign Assets Control (OFAC) is saying about the country. The OFAC is a federal agency that determines what countries the U.S. is or is not allowed to deal with. Homeland Security is involved in making these determinations. You can check the OFAC list at www.ustreas.gov.

When a nonprofit has a foreign partnership interest, there may be IRS filing requirements with the following forms: 925, 5471, 8621, 8865.

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