

Charitable Activities in a Foreign Country

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Foundation Group, May 5, 2009



The issue of a charity having operations in a foreign country is rather complex, one that involves oversight not only by the Internal Revenue Service, but also Homeland Security. It is fraught with pitfalls that can only be avoided if you understand the rules. The Foundation Group has worked with thousands of 501(c)(3) clients with foreign activities...and each situation is different. We can only scratch the surface in this article, but our goal is help you understand some of the challenges associated with foreign country activities.

This subject can best be divided into two primary scenarios: 1) direct activities and 2) charitable giving. Let's look at each in order:

1. Direct activities. Direct activities is defined as a domestic (US) tax-exempt organization operating some or all of its programs physically in a foreign country. There are many examples of this: schools, clinics, economic development programs, orphanages, etc.. This can involve US citizens living in and operating the program in the foreign country, a program fully staffed by foreign nationals or a combination of the two. The biggest challenge in maintaining an IRS-compliant foreign country program is the same as for any 501(c) organization, that is, the program must satisfy a charitable purpose. What is different is the ever-changing landscape of international relations.

One of the key issues here is OFAC – the Office of Foreign Asset Control. As explained at www.ustreas.gov,

“The Office of Foreign Assets Control (“OFAC”) of the US Department of the Treasury administers and enforces economic and trade sanctions based on US 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. OFAC acts under Presidential national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze assets under US jurisdiction. Many of the sanctions are based on United Nations and other international mandates, are multilateral in scope, and involve close cooperation with allied governments.”

In a nutshell, OFAC determines where you can and cannot go and who you can and cannot deal with. While technically it is a Treasury Department program, Homeland Security is directly involved. It is imperative that any US charity that intends to put programs in place in a foreign country know what OFAC is saying. It is difficult enough to learn how to acclimate to a unique culture. You certainly do not need the headache of running afoul of Homeland Security.

2. Charitable giving. This activity usually involves a US charity financially supporting the efforts of a foreign charitable organization. This topic may seem more straight-forward on the surface, but it is actually treated with greater scrutiny by the IRS than are direct activities. For example, a US charity gives money to a poverty relief program based in New Delhi, India. In principle, this is OK, so long as the foreign country or agency is not on any OFAC list (see above). The problem is the lack of direct, fiduciary responsibility for the expenditure of funds by the US organization. In our example, the US charity must ensure that the program being supported qualifies as one that would be recognized as 501(c)(3) if it were in the US. In addition, the US charity must require a detailed accounting of the expenditure of funds in order to monitor compliance with 501(c)(3) related expenditures. Should the domestic organization find out that money is not being spent in a way that would be acceptable by the IRS, the donations to that foreign organization must cease immediately.

Also, the IRS will not allow a domestic charity to be simply a “money conduit” to a foreign organization. US law does not allow such direct-affiliate organizations. In other words, a US charity cannot exist for the sole purpose of financially supporting a specific foreign charity. A US charity must be organized for specific charitable purposes that it alone is responsible for, one of which may be the support of foreign charitable work. It is best when that support is not tied to any specific foreign charity on an exclusive basis. For a new organization it is OK to name the foreign charities to be supported initially, but it would be a big mistake to make the support of those named charities the sole purpose. The IRS would probably deny the application for

501(c)(3) status. Revenue rulings 63-252 and 66-79 deal with some of these issues directly.

As stated above, this post barely scratches the surface. We will revisit this topic with a more detailed look at OFAC restrictions later this summer.