International Grantmaking and Giving through an Intermediary

Introduction

International grantmaking can be a complex process for corporate funders, private and family foundations and donor advised funds, requiring funders to comply with US tax laws, IRS guidelines, and other regulations. Fortunately utilizing a philanthropic intermediary, like GlobalGiving, can help alleviate the risk and burden of performing due diligence on potential grantees, confirming charitable purpose of proposed projects, developing grant agreements, facilitating international grant payments, monitoring grant funds, and following up on required reporting.

An intermediary is an organization that provides specialized expertise to foundations and other donors, in particular through the regranting of charitable funds to organizations and projects outside the United States. An intermediary's expertise may include legal knowledge of US and other governments' guidelines, a deep understanding of a specific issue or region of the world, or capacity building and other support to grantee organizations.

Corporate funders, private and family foundations, and donor advised funds, partner with GlobalGiving, a 501(c)(3) public charity intermediary, to recommend grants to foreign organizations. Upon receiving a grant recommendation, GlobalGiving becomes the grantmaking entity that retains full control and discretion over the recommended grant to ensure compliance with IRS rules and regulations. GlobalGiving will manage the entirety of the grant process, including conducting due diligence on the recommended foreign organization, the execution of a grant agreement, the disbursement of funds, and review of grant reporting.

Partnering with an Intermediary

As described in the Internal Revenue Code (IRC), private foundations are subject to Section 4945 excise tax rules, which treats grants to foreign organizations with no 501(c)(3) status to be taxable expenditures, unless the foundation:

- Obtains an equivalency determination from a qualified tax practitioner that the foreign grantee is equivalent to a 501(c)(3) charity; or
- Exercises expenditure responsibility over the foreign grantee.

However, through the use of an intermediary, a private foundation can give directly to an intermediary, like GlobalGiving, without obtaining the equivalency determination or exercising expenditure responsibility noted above:

- The intermediary performs the determination on the foreign grantee instead.
- GlobalGiving is a registered 501(c)(3) public charity under U.S. law and considered an intermediary charity.
- As a 501(c)(3) public charity, US corporate funders receive tax-deductibility benefits on their donation and grant recommendations made through GlobalGiving.

Earmarking

When making a grant recommendation to be managed by GlobalGiving, the original funder must be careful to avoid concerns related to earmarking.

Earmarking refers to situations in which a private foundation, as the original donor, is perceived as designating funds for a specific grantee. Specifically, there should not exist an oral or written agreement between the original donor and the ultimate recipient organization (the grantee) such that the corporate funder may cause the selection of the secondary grantee.

Earmarking opens the possibility that the original funder would be considered by the IRS to be the direct grantor to the foreign organization and, **thus, liable for penalty excise taxes under Section 4945 of the IRC.**

A grant made by an intermediary will not be considered a grant made by the original funder and thus not subject to Section 4945 restrictions.

Tips

In order to ensure compliance with US tax regulations throughout the grant recommendation process in partnership GlobalGiving, the original funder **should not**:

- lead grantees to believe that a grant approval is guaranteed by an intermediary;
- promise funding or material support to the grantee before the intermediary's approval;
- encourage grantees to advertise/schedule an event or project before the intermediary's approval;
- direct a grantee to change its project before receiving the intermediary's approval; and,
- approve project changes before receiving the intermediary's approval.

The original funder **should**:

- give the intermediary enough time to review grant proposals well in advance of a project's start date;
- direct grantees to inform the intermediary of project changes: delays, cancellations, change in deliverables, change in spending plans, etc; and,
- always communicate with the intermediary first through its designated point of contact.

GlobalGiving is not a law firm, and the rules and regulations presented in this document are not exhaustive and are for informative purposes only. Any further questions related to international or tax law should be discussed with your legal representation.