



Cambyes Financial Advisors, LLC  
Steven Roy Management

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In this edition, Our *Donor Care* and *Exempt Organization Care* topics address two sides of the same question: ***"How can I support charitable causes in Ukraine?"***

We have temporarily added a number of people (Mostly those who work with us or serve with Steven on charitable organization boards) to our mailing list because we consider the information important enough to justify the breach of etiquette. If you are one of those people, we promise we won't barrage you with future e-mails. You will be removed from our list as soon as we have sent this message (unless you request, by email, to remain on our subscriber list).

If anything here piques your interest reach out to us at:

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For more detail about our commercial and charitable sector services, visit our websites and document archives: [www.stevenroymanagement.com](http://www.stevenroymanagement.com) and [www.cambyesadvisors.com](http://www.cambyesadvisors.com)

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## *Donor Care* *Charitable Giving - The Special Case of Ukraine*

About a month before Russia commenced its "special military operation" on February 24th (which looks like reprehensible, unprovoked aggression, and degeneration into war-crimes from where we sit), *Donor Care* clients began to inquire, ***"What is the best way to make charitable contributions to support the Ukrainian people and/or their pets and animals."*** [\*1] This is our reply:

### ***Identify your values and your passion: What do you want to support? Why? How?***

This, in our opinion, is both the most important and most neglected step toward sustainable philanthropy.

### ***Identify Organizations that support your values and passion.***

There is an organization, domestic, foreign, Ukrainian, or Polish that addresses almost any issue you want to support. Identify the candidates by searching the internet, asking your friends or a professional, and searching sites like GuideStar-Candid.

### ***Vet the Organizations:***

Sadly, events like this bring scammers out from whatever slime they normally dwell in.

For U.S. charities - minimum due diligence includes a search using the [IRS's Exempt Organization Search Tool](#). If the organization is not a church and is not listed in the IRS database [\*2] - think twice before you donate.

For large contributions, you or your representatives MUST vet the organizations more thoroughly. We (and many other professionals) employ protocols similar to the one in our publication: [Vetting Donee Exempt Organizations and Projects](#). In the Ukrainian scenario, we suggest you supplement it with several additional thoughts:

- Give to Organizations, not to Individuals or "GoFundMe" campaigns (the "scam factor" is too high, validation of their bona fides too problematic, accountability is non-existent)
- Size and Age Counts: Small organizations may not be able to shift resources and/or scale fast enough to respond efficiently. Favor established over new organizations if rapid benefit delivery is needed or desirable.
- Favor U.S. Domestic Charities that either operate in Ukraine (and or Poland) already or have direct working relationships with Non-Governmental Organizations in that theater. [\*3] The

learning curve is very steep in a war zone. Incidentally, under similar circumstances, we usually recommend against making restricted or earmarked contributions to these organizations - general operating funds are a much more flexible instrument.

### ***Give Money - Not Stuff!***

Development and Disaster Response workers talk about "the second tragedy" that follows many disasters: donations in kind (aka, "stuff") that must be collected, sorted, accumulated-stored, transported and distributed at great expense - but is often unusable. Many times, those donations are simply dumped, left briefly for scavenge, and eventually, bulldozed into a hole, landfill, or rubbish burn. [\*4] Food and Medicine are an exception to this rule - when given to organizations that have existing delivery channels.

### ***Document What You Did:***

This is critical if you want to take a charitable deduction for your donation. Minimum documentation for deductible contributions includes:

- For all contributions: third party evidence that the contribution was made. (cancelled check, wire confirmation, account statement, transfer confirmation, donee acceptance receipt)
- Cash and in-kind contributions over \$250: " *Contemporaneous Written Acknowledgement* " from the Exempt Organization. IRS rules dictate the contents of this notice.
- In-Kind contributions over \$5,000 (with some exceptions): A " *Qualified Appraisal*" signed by a " *Qualified Appraiser*" (and sometimes by the Exempt Organization) [\*5]
- Some contributions (e.g. automobiles, out-of-pocket expenses, conservation easements) require additional, specific, documentation.

Important point: The documentation standards are cumulative: i.e. for donations over \$5000 you must have third party evidence, AND Acknowledgement, AND Qualified Appraisal. None of them is sufficient by itself. The Service and the Courts often take a "perfect compliance" stance on large contributions. Make sure you and your advisors know what is required. Obtain it and Retain it.

[\*1] A substantial number of our ***Donor Care*** clients are involved in or donate to animal and animal rights charities.

[\*2] *Churches and Organizations of Churches* (and very small organizations) are not required to file IRS Form 1023 or 1024 to claim tax exemption. Therefore, they may not appear in your organization search. If it is not a church that you recognize - do some follow-up internet research to vet them.

[\*3] Foreign Non-Governmental Organizations are often difficult or impossible to vet properly without "boots-on-the-ground." In addition: Direct individual contributions to foreign charities (even legitimate ones) usually do not qualify for itemized US charitable deductions under U.S. tax laws. (There ARE work-arounds, ask us about them). If you insist on deductibility - U.S. Not For Profits are a better fit.

[\*4] Steven has witnessed this sequence several times, including while responding to domestic disasters (notably, an EF5 tornado in Missouri). Money donations have many advantages, including their fungibility, flexibility, and their ability to support the local economy when disbursed in and around the disaster/area-event.

[\*5] *Qualified Appraisal* and *Qualified Appraiser* are defined terms of trade. c.f. Treas. Regs. Sec. 1.170A-17. Specifically, a "Broker Opinion of Value" is not a *Qualified Appraisal* unless it conforms to the regulations AND the Broker is licensed to appraise that type of property.

If you wish to be notified when we publish additional data, findings, or opinion, or to get our analysis of a specific charity - please contact us by phone or email:

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## ***Exempt Organization Care Gifts and Grants to Foreign Individuals and Charities***

Our discussions with *Exempt Organizations* who want to commence operations in foreign countries, almost without exception, focus on several fundamental questions:

***Can a U.S. Exempt Organization operate in a foreign country?***

Short Answer: Yes. This prerogative was established almost immediately after the first not-for-profit tax statute was enacted in the *Tax Act of 1917*. [\*1] It has since been interpreted to extend to Exempt Organizations that operate in foreign territories:

- Directly,
- Through a subsidiary,
- Directly but remotely, or through
- Third party Contracts or Grants with Organizations or Individuals

***Can our Exempt Organization make grants to individuals or organizations in a foreign country?***

Generally speaking,

- Public and Private Organizations may make grants to foreign organizations.
- Public Foundations may make grants to individuals.
- Private Foundations cannot.

Both this and our previous response presupposes that:

- You have vetted the foreign individual or organization,
- Your activity in the foreign territory is consistent with your Organization's Exempt Purpose,
- Your activity in the foreign territory is legal in that territory,
- You satisfy some additional additional U.S. administrative and reporting requirements [\*2], and (possibly) those of the foreign jurisdiction as well, and
- You can cope with currency, language, legal, and "corporate characteristic" differences between the U.S. and Foreign jurisdictions.

You may need to do some research (and soul searching) to frame responses to those conditions.

Private Foundations must jump through some additional hoops -- including

- determining that the foreign organization is "substantially equivalent" to a U.S. organization that would be exempt under IRC 509(a)(1-3), and/or
- exercising "expenditure responsibility" over the grant funds. [\*3]

These two requirements technically apply only to Private Foundations -- however, we strongly recommend that Public organizations apply them as well.

***Do our foreign operations affect our donors?***

Generally, an Exempt Organization's foreign operations do not affect Donors or their donations' deductibility. Notwithstanding, we urge you to fully disclose your foreign operations to all potential donors so they can decide for themselves.

"Conduit" and "Earmarking" restrictions on donor deductions are often aggravated in the foreign context. Donors cannot manufacture deductions for contributions to an unqualified individual or organization (domestic or foreign) by routing the donation through a *Qualified Organization* and "earmarking" the funds for the unqualified organization. [\*4]

Concomitantly, Qualified Organizations cannot facilitate earmarking or conduit transactions. This implies that your organization must review restrictive language that attends any donation. If the restriction creates a path to an otherwise unqualified beneficiary, consider renegotiating the donor restriction or declining the contribution. Better yet, preempt this issue entirely. Include language in your solicitation (or donor agreement) that allows you broad discretion to decide how the donation will be used. This approach facilitates both Organizational flexibility and Donor deductibility.

[\*1] Practitioner Note: This was validated by c.f., A.R.R. 301, 3 C.B. 188 (1920) Ask us for more detail on this subject.

[\*2] Prominent among them: Patriot Act vetting and additional Form 990 reporting requirements.

[\*3] IRC 4945 and Treas. Regs. 53.4945-4 through 6: An "equivalency letter" from the IRS can be

used to satisfy the first requirement. These requirements are mandatory for *Private Foundations* that claim the grants as *Qualifying Distributions* that fulfill *Minimum Distribution Requirements*.

[\*4] The conduit principle was well established by a series of Tax and District Court Cases involving earmarked contributions for missionary support. The best statement of the principle comes from Rev. Rul. 63-252, 1963-2 C.B. 101. "A given result at the end of a straight path is not made a different result because reached by following a devious path. Moreover, it seems clear that the requirements of section 170(c)(2)(A) of the Code would be nullified if contributions inevitably committed to a foreign organization were held to be deductible solely because, in the course of transmittal to a foreign organization, they came to rest momentarily in a qualifying domestic organization. In such case the domestic organization is only nominally the donee; the real donee is the ultimate foreign recipient." (Citing . ' Minnesota Tea Co. v. Helvering, 302 U.S. 609, at 613, Ct. D. 1305, C.B. 1938-1, 288; and George W. Griffiths v. Helvering, 308 U.S. 355, at 358, Ct. D. 1431, C.B. 1940-1, 136.)

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