

## Private Foundation Bulletin

### Proposed IRS Regulations Expand "Equivalency Determination" Criteria for Private Foundations

By Thomas F. Blaney, Partner

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Private foundations that make grants to foreign charities generally have to exercise expenditure responsibility over the grants, or go through a process known as "*Equivalency Determination*." Under existing regulations, a private foundation performing "*equivalency determination*" makes a good faith determination, based on a grantee-completed affidavit or on an opinion of counsel, that the foreign charity meets the basic requirements of a public charity.

Under the proposed regulations, a private foundation's good faith determination ordinarily may be based on written advice given by a "qualified tax practitioner." A qualified tax practitioner means an attorney, a certified public accountant ("CPA"), or an enrolled agent. The proposed regulations limit the definition of a qualified tax practitioner to attorneys, CPAs, and enrolled agents because these practitioners generally provide advice to clients with respect to taking positions on tax returns, and these practitioners are generally authorized to represent their clients before the IRS without limitations applicable to other types of practitioners (such as enrolled actuaries). The Treasury Department and the IRS believe that expanding the class of practitioners on whose written

advice a private foundation may base a good faith determination will decrease the cost of seeking professional advice regarding these determinations, enabling foundations to engage in international philanthropy in a more cost-effective manner. Although the proposed regulations generally expand the class of practitioners on whose written advice a private foundation may ordinarily base a good faith determination, unlike the current rule, the expanded class would not include foreign counsel unless the foreign counsel is a qualified tax practitioner (as defined in the proposed regulations).

The IRS requests comments regarding the following:

- The timeframe during which a private foundation can rely upon a qualified tax practitioner's written advice
- Should additional guidelines regarding appropriate timeframes for gathering information with respect to affidavits should be provided
- Whether the ability of a private foundation to base a good faith determination on an affidavit of a foreign grantee is to be eliminated or restricted.