

EXEMPT ORGANIZATIONS

INFORMATION MEMO

MARCH 30, 2022

Informed Giving During Times of Crisis

If you are like most people, you have heard the urgent calls to aid Ukraine and want to help. In a time of crisis like this, new nonprofit organizations and charitable initiatives are launched quickly, with compelling cases for your contributions. Urgency and speed can, however, make informed decision-making harder. So how can we conduct meaningful diligence quickly, when we are concerned about the human impact of delay? The tools of the tax lawyer are actually quite good for this purpose, and so we thought we would share how we use widely available information to help make informed giving decisions.

While the approach below generally focuses on looking at numbers, it is unavoidable that your intuition will be your guide when perfect diligence isn't possible. To us, this is consistent with informed giving, as, all things being equal, you are seeking to give based on more information rather than less and availing yourself of that information which can be found before making decisions. There is arguably an 80/20 principal in charitable giving diligence – that 80% of the value can be obtained from the first 20% of effort. So ultimately what we are suggesting is this: if you feel that time is critical, look for something that makes you pause, that confirms your expectations or that leads to more questions, that you wouldn't have had if you hadn't looked, until you feel ready to make a decision. Giving in this way amplifies the beneficial effects for all.

While the discussion below may look a bit daunting, much of this comes from our efforts to lead you directly to the places where we think the most useful information can be found.

Lastly, we note that there are many other dimensions to informed giving that we aren't touching on here and that are outside of our expertise. This article only describes the tools in the tax lawyer's toolbox, and there are many other resources that are also valuable to the process that are beyond the scope of this brief guide.

Proactivity. In terms of avoiding fraud or malfeasance in giving, proactivity may be the most important part of the strategy. This means independently seeking out charities and fundraising campaigns, rather than responding to unsolicited emails or social media requests. Proactive research also greatly increases the odds of your funds reaching the right hands. But this doesn't mean you need to start your research from scratch: many reputable news organizations and nonprofits/civic groups such as state bar associations compile lists of organizations that are already actively engaged in providing support for Ukraine (for example, the New York Bar Association maintains a list [here](#)). Building your efforts on those of trusted sources can dramatically focus your search and significantly increase the chances your gifts will have an impact.

As for those unsolicited email requests or social media campaigns? We certainly don't recommend that they automatically be ignored. But just a bit of cursory Googling can dramatically limit the chances that your donations will be diverted. After doing some preliminary research on a soliciting organization's, or other fundraiser's, website and charity evaluation websites such as [givewell.org](#) and [charitynavigator.org](#), consider running some searches with terms of the names of executives or key persons listed on the site and terms like "complaint" and "fraud" and the like, just to see what you find.

Check basic compliance. It is fairly easy to review any potential donee's fundamental legal compliance record and eliminate organizations with major red flags. Nonprofits exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code should be listed on the Internal Revenue Services' [search tool](#) (excepting churches) and also should be registered with a state charity regulator, such as the [New York State Attorney General](#) (though there are certain registration exceptions). If an organization soliciting funds in your state can't be found in both these places, we suggest caution.

If these compliance records are incomplete (such as inconsistent annual Attorney General filings) or unavailable, this in itself can be a major red flag which we would consider carefully. In some cases, however, a very new organization may have limited information available. Should this be a concern? It depends on many factors, most of which are practical: Who is the organization's leadership and are they experienced in operating nonprofits? What is the organization's infrastructure for providing aid? Is the organization's model one of direct service and/or financial support? Does the organization have "boots on the ground" or are they operating from abroad? The answers to these questions should inform your decision to donate to a newly formed organization, or to an existing organization that is launching a new initiative.

Look at the numbers from 25,000 feet. Publicly available annual filings provide a wealth of information, especially the annual IRS Form 990 tax returns. [Guidestar](#) compiles and publishes recent tax returns for nearly every 501(c)(3) organization that is large enough to be required to file one, so you should be able to search for the return of any organization to which you intend to make a contribution. (You can register with Guidestar for free to access these returns). You don't have to read every page of an organization's Form 990 to learn an incredible amount of useful information.

The first two pages alone provide a great deal of insight:

- Mission statement (located on the first page of the Form 990) and statement of the organization's program service accomplishments (located at the top of the second page): Are the organization's purposes aligned with the needs of those affected by the current crisis? Are they already active in the specific country or region of interest? The learning curve can be very steep, so knowing where an organization may be on it can be highly valuable.
- Total number of employees and volunteers: How large is the organization? What is its capacity to provide the services or aid it intends to provide? This will be located on the first page, Part I, lines 5 and 6.
- Revenue and expenses: These can be seen at a glance on lines 12 and 19 of Part I. Is the organization running a deficit or a surplus in the current or most recently completed year? Over the preceding years (usually there will be three years of returns available)? This may indicate reason to be concerned with an organization's financial management, especially if persisting across compare multiple returns. Consider the status of the organization's net assets or fund balances on line 22 of Part I, and whether they are being used to bridge deficits or if surpluses are being accumulated.
- Salaries, compensation, employee benefits: How much are executive leadership and staff getting paid? You can find this a little deeper into Form 990 at page 10, Part IX, line 5 (compensation of officers, directors and key employees) and line 7 (other salaries and wages). Of course,

compensation does not exist in a vacuum, so you want to keep in mind the size and sophistication of the organization's activities and generally want to see compensation in line with similar organizations, not the just the dollar amount being provided. Part IX more generally provides a wealth of other information about what the organization is spending money on, and is worth a review, along with Part VIII on the preceding page, which breaks down its sources of support.

Diving a bit deeper into a tax return can reveal more detailed information:

- Part IV, line 14 on page 3 of Form 990 (and related schedules) includes questions related to officers, employees and/or agents located outside of the United States; program service activities outside of the United States; and grants and other assistance to foreign organizations and/or individuals. All of these can demonstrate an established relationship or provision of aid to a foreign country and/or region. Schedule F is particularly useful in evaluating an organization's work with respect to Ukraine, for example, as it breaks down expenditures by region.
- Part VII on page 7 includes more information related to the organization's directors, officers and highest compensated employees (>\$100,000), including names, titles and a breakdown of compensation.
- Part X expands upon the Balance Sheet on the first page of the tax return to provide more color to the organization's finance, including its liquidity, debt and whether it holds donor-restricted assets.

As noted above, all of this information can be approached intuitively, without a specific goal other than to get "smarter" about the organization in general, and to see whether you feel more or less confident about giving it your donation. Also, the first time that you do this may take a bit of time, but with repetition this can become a fairly quick process.

Commitment and efficacy. Once you have evaluated an organization's compliance and financial fundamentals, you should consider their commitment to use your contributions for their intended purpose (to the extent we haven't developed full confidence already). In times of crisis, this is usually the ability to offer immediate aid that will provide the most benefit at the lowest cost. Whether an organization has experience addressing a specific humanitarian cause, an established history of successful fundraising and providing aid during crises, and infrastructure within the impacted region should all aid in selecting a charity or fundraising campaign. Also, consider whether the organization will commit to your donation serving a specific region or crisis on its giving portal if this is important to you. For example, can you designate your donation to go to aid for Ukraine specifically?

Here's an example of how this can play out: One practice member was interested in making a donation to support the provision of emergency medical supplies in Ukraine. A major news outlet provided a list of organizations active in Ukraine according to the type of aid provided, which was a great starting point. Two of the organizations were selected for review, and both received high marks across all metrics on charitynavigator.org. A review of the two organizations' respective tax returns revealed that one organization was significantly larger than the other in terms of revenues and other metrics, but also that the larger organization (based on reviewing Schedule F of the 990s) was historically much less active, from a programmatic perspective, in the region where Ukraine is located.

This presented a question of judgment, as to whether either organization would be more likely to respond effectively in these circumstances: the smaller (but still large) organization that appeared more likely to have the stronger infrastructure and network of trusted partners on the ground to manage the logistics, or the larger organization that appeared to possibly have greater “surge capacity” to scale up its existing network, albeit perhaps at a slower initial pace? The decision was ultimately made to diversify by contributing to both organizations. This was done with the hope that both organizations would be highly effective, while increasing the chances that at least half of the donation would be deployed as quickly as possible.

The process is a means to an end. For most of us, giving in times of crisis is different from giving in normal times, and we certainly wouldn’t advocate for “paralysis by analysis.” With a time or two of practice, the diligence described above can be accomplished in a few minutes, keeping in mind that the goal of the process is to glean information quickly to inform choices, not to achieve any kind of certainty.

Charitable giving, and the diligence leading up to it, is a deeply personal choice motivated by a variety of factors, but we hope our insight into evaluating 501(c)(3) organizations aids in your decision to donate now or in the future. If you have any questions or concerns related charitable giving or other matters involving 501(c)(3) tax-exempt organizations, please contact [Thomas W. Simcoe](#), [Delaney M. R. Knapp](#) or the attorney at the firm with whom you are regularly in contact.



Bond has prepared this communication to present only general information. This is not intended as legal advice, nor should you consider it as such. You should not act, or decline to act, based upon the contents. While we try to make sure that the information is complete and accurate, laws can change quickly. You should always formally engage a lawyer of your choosing before taking actions which have legal consequences. For information about our firm, practice areas and attorneys, visit our website, www.bsk.com. Attorney Advertising. © 2022 Bond, Schoeneck & King PLLC.



Bond, Schoeneck & King, PLLC



BondLawFirm



Bond, Schoeneck & King



bondlawfirm