



## **Using Friends of BCF as a Fiscal Sponsor Guidance for American Taxpayers**

The Friends of Bermuda Community Foundation (Friends of BCF) is a 501(c)(3) tax-exempted organisation under the Internal Revenue Code of the US (EIN: 38-3938349). It was initially established to facilitate gifts from American Taxpayers to donor-advised funds at the Bermuda Community Foundation. It extended its services as a fiscal sponsor for donors wishing to make IRS tax-deductible gifts to registered Bermuda charities, in the absence of such local infrastructure. The Friends of BCF is overseen by a volunteer board of Directors.

To mitigate tax and regulation risks and to ensure that the Friends of BCF remains in good standing in Delaware, we facilitate charitable giving for American Taxpayers with a degree of caution. Consequently, we seek to understand the practices and requirements of both fiscal sponsors and donor advised funds.

This document serves as guidance on how transactions through the Friends of BCF are managed from gift acceptance to gift acknowledgement.

### **Anti-Money Laundering, Anti-Terrorist Financing and KYC compliance**

As part of what is essentially a global movement to diligently monitor financial transactions to counteract money laundering schemes (AML) and the prospect of assisting terrorist financing (ATF), we seek to know our customers (KYC). The Friends of BCF adopts a risk-based framework for overseeing charitable transactions sponsored through its 501c3 facility. We seek assurances about the identity of donors, particularly substantial donors and take steps to verify their identity. Depending on the size and origin of a transactions, donors through FBCF can expect to be queried on the provenance of the funds behind their charitable gift and the conditions attached to them. This process is initiated with the donor completing a ["Gift Now Form"](#)

The gift forms request donor information such as name, address and source of funds (at a high level). The responses to these questions as well as the size of the donation may give rise to additional activities, which may include desktop research on the donor, examination of various company and individual registries and reference checks – all towards ensuring that FBCF can verify the identity of the donor and the provenance of the funds.

If donors have initiated a transaction and these "checks and balances" result in a concern about suspicious activity, Friends of BCF are bound to complete a Suspicious Activity Report (SAR).

### **Friends of BCF as a Fiscal Sponsor, like a Donor-advised Fund: Donors retain Advisory Privileges**

The Friends of BCF serves as the sponsoring organization for many types of donor transactions coming through Bermuda, i.e., for further credit directly to a Bermuda registered nonprofit or to a Donor advised fund at the Bermuda Community Foundation. In the USA, the term donor-advised fund (DAF) refers to an account held at a "sponsoring organization", often a community foundation. Although the Friends of BCF does not manage DAF's directly, it considers the IRS guidance on DAF's and for operational purposes, uses the terms "fiscal sponsor" and "DAF" synonymously.

The DAF, or in the case of FBCF the actual charitable donation, is owned and controlled by the sponsoring organization. The donor retains only advisory privileges over the distribution or investment of the funds in the account. When a donor contributes to a DAF, the sponsoring organization has legal control over it and the donor is eligible to take a charitable tax deduction for this completed gift. It is important to note that even though the donor has retained “advisory” privileges over the money in their DAF, the owner of the funds is the sponsoring organization and all funds are ultimately controlled by the sponsoring organization. The donor is limited to making recommendations only. The donor **cannot legally obligate** the fiscal sponsor.

While most sponsoring organizations will routinely approve a donor’s request, it is under no legal requirement to comply with a request. Donors using the FBCF 501c3 facility are asked to phrase any advice they have for how their gifts should be utilized as “I request that FBCF donate to...” or “I recommend a donation to...”.

### **Impermissible “prohibited benefit” and Earmarked Gifts**

Gifts that **do not qualify** for an IRS tax exemption through Friends of BCF are ones that permit the donor to use funds to serve their private interests. Such private interests could include: allowing the donor to attend retreats, conferences or seminars; to research investment opportunities; to save for retirement; to provide scholarships to the donor’s family members; to be paid “administrative”, “fundraising” and “consulting” expenses; and to pay the donor’s children for performing charitable work. These potential benefits allow donor donors to “contribute” property and cash to a foundation or charitable entity, control the investment of their resources, and then allegedly have the income or benefit be realized tax-free or tax-reduced. The above independence of the FBCF to facilitate donor gifts is guarded to reduce any unintended risk of it serving as a conduit for accomplishing tax avoidance goals.

The fiscal sponsor and the ultimate beneficiary must have complete discretion and control over the use of all donated funds – without any obligation to benefit a designated individual, for example, for the donor to receive a charitable tax deduction.

### **Fulfilling a legally enforceable pledge**

Since the donor has advisory privileges over distributions from the DAF, many donors believe they can simply request a distribution through the Friends of BCF or from their DAF to fulfill their legally enforceable pledge. But the money held at the FBCF, however, briefly, belongs to the sponsoring organization, not the donor, and the donor can’t legally obligate the DAF.

A charitable pledge is an obligation of the donor to give money at a future time. If the sponsoring organization (the owner of the funds) relieves the donor of the obligation to fulfill their pledge, the donor is receiving an impermissible “prohibited benefit.”

IRS rules prohibit a donor from fulfilling a legally enforceable pledge with a payment from a donor advised fund (DAF).

### **For Charitable Organizations who may be the ultimate beneficiaries of a gift**

#### **Risk and responsibility**

A charity receiving a contribution from the Friends of BCF (like a DAF) is not subject to any US excise taxes relating to these transactions; however, the risk of alienating donors and the fiscal sponsors (Friends of BCF) involved in these prohibited transactions could be significant.

Many charitable organizations have set up procedures to record a non-binding gift intention. This is not a legal or binding commitment, but rather a courtesy notification that the donor intends to request that a fiscal sponsor/DAF make future gifts to the organization. The donor would make a request of Friends of BCF (or their US/Bermuda DAF) each time they wish to contribute to the charity, based on their non-binding commitment, but there is no legal requirement that they do so, and no obligation for the Friends of BCF/DAF to agree to the request.

Organizations should exercise care when thanking a donor for making a request from a donor advised fund. The thank you letter should not thank the individual donor for the donation, but instead should thank the donor for “recommending that the John Doe donor advised fund contribute to our organization.”

It’s good policy for all charitable organizations to understand the rules surrounding fiscal sponsors or donor advised funds and can advise donors regarding the best ways for them to provide continued support.

### **All Campaign Funds Must Go Directly to Fiscal Sponsor**

Funds cannot be transferred to the project owner directly if you want them to be tax deductible. The Fiscal Sponsor is then responsible for issuing the funds to the project owner.

### **Remember Partial-Deductibility**

Tax issues abound in all charitable giving for American taxpayers and require detailed professional analysis, in some cases. If the donor receives something in return for the gift, the charitable deductions is reduced accordingly and may be eliminated altogether. The basic rule is that a tax deduction is allowable as a “charitable contribution” if the gift is “to or for the use of” an IRS recognised tax exempt charity [26 U.S.C. Sec. 170©]. From this basic concept comes broad standards that prevent the taxpayer or a taxpayer designated individual from personally benefiting from the gift.

This is extremely important for campaigns that are run by nonprofits. Whenever donors are offered rewards in exchange for their pledge, their donation is partially deductible above and beyond the fair market value of the rewards that they are receiving. For example, if for a donation of \$100 you give a donor a ticket to your show that normally costs \$10, the tax-deductible value of that donation is \$90 (the amount above the value of the reward that they received). The Friends of BCF will need to issue tax receipts stating non-deductible values, so it is the nonprofit’s responsibility to provide information about the fair market values of the donors’ rewards.

### **Sources**

- The following sources provide good additional information on these policies.
- Baker Tilly. <http://www.bakertilly.com/insights/pledges-and-donor-advised-funds-dont-mix/>
- Guidance on the Charities (Anti-Money Laundering, Anti-Terrorist Financing and Reporting) Regulations 2014, Bermuda, March 2018.
- IRS Donor-Advised Funds Guide Sheet Explanation – July 31, 2008
- Reid, Brad (Dec. 2016). Some Legal Aspects of Donor Restricted Charitable Gifts. Huffington Post

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