

U.S. INTERNATIONAL GRANTMAKING

Country Information

Brazil

Current as of May 2006

Table of Contents

- I. [Summary](#)
 - A. [Types of Organizations](#)
 - B. [Tax Laws](#)
 - C. [Applicable Laws](#)
- II. [Relevant Legal Forms](#)
- III. [Specific Questions Regarding Local Law](#)
 - A. [Inurement](#)
 - B. [Proprietary Interest](#)
 - C. [Dissolution](#)
 - D. [Activities in General](#)
 - E. [Economic Activities](#)
 - F. [Political Activities](#)
 - G. [Racial Discrimination](#)
 - H. [Control of Organization](#)
- IV. [Tax Laws](#)
 - A. [Tax Benefits for Not-for-Profit Private Legal Entities](#)
 - B. [State and Municipal Tax Exemptions](#)
 - C. [Contributions to Brazilian not-for-profit private legal entities by individuals and corporations based in Brazil](#)
 - D. [Double Tax Treaty](#)
- V. [Knowledgeable Contacts](#)

I. Summary

A. Types of Organizations

Brazil is a civil law country, and its Civil Code (Law 10.406 of January 10th, 2002) provides for two traditional civil law forms of not-for-profit private legal entities: associations and foundations.

An association is an organization created by a group of people seeking to achieve a particular goal.

A foundation is an organization created and formed by an endowment. A foundation can be private (created by a private will or a donation) or public (created by law). The public foundation form was added by Law 7596/87 in 1989.

In addition, not-for-profit organizations in Brazil, whether an association or foundation, may qualify for one of five special designations:

1. Civil Society Organizations for the Public Interest (known as OSCIPs);
2. Social Organizations (known as OSs);
3. Public Utility Status;
4. Social Assistance Registry; and
5. Social Assistance Beneficent Entity Certification. [\[1\]](#)

Public foundations and private foundations created by the Public Administration are unable to receive OSCIP designation (Law no. 9790/99, article 2, VI and VII).

Special designations are not mandatory for private entities to qualify as not-for-profit. But in light of practical administrative issues, and the legal benefits they confer, these designations are useful to both grantmakers and organizations. Because the designations may bring organizations closer to being equivalent to an IRC §501(c)(3) organization, a grantmaker should inquire whether a not-for-profit entity has one of the designations.

B. Tax Laws

The Federal Constitution exempts educational and social assistance NGOs from taxes at all levels. To be eligible, an educational or social assistance NGO must observe requirements set forth in federal law. These requirements may bring the organization closer to being equivalent to an IRC §501(c)(3) organization.

Organizations that do not qualify for constitutional tax exemptions may be eligible to receive some tax benefits at the federal, state, and municipal level.

The income and the corporate tax laws provide donors with some tax benefits, which may be relevant to American corporations considering whether or not to make a direct grant to an organization in Brazil. There is no double taxation treaty between Brazil and the United States.

II. Applicable Laws

- [Brazilian Federal Constitution, Articles 5 \(XVII to XXI\) and 150 \(VI\) \(c\) and § 4 th](#)
- Tax Code - Law 5.172 of October 25 th, 1966 – Articles 9, 14 and 111 ([Portuguese](#))
- New Civil Code - Law 10,406 of January 10th, 2002 - Title II, Chapter II e III ([Portuguese](#))

- Law 8.742 of December 7 th, 1993 – Legal Framework on Social Assistance Issues
- [Legislation on Civil Society Organizations for the Public Interest - Law 9.790 of March 23 rd, 1999](#) in English and Decree 3.100 of June 30 th, 1999
- Legislation on Public Foundation - Law 7596/87, Decree 200/67, and Law 8958/94 from December 20 th, 1994
- Law on Social Organizations - Law 9.637/98
- Law on Social Assistance Organizations - Law 8.742 of December 8 th, 1993
- Legislation on Public Utility - Law 91 of August 28 th, 1935; and Decree 50.517 of May 2 nd, 1961
- Legislation on Social Assistance Beneficent Entity Certification - Law 8212 of July 24 th, 1991; Decree 2.536 of April 6 th, 1998; Decree 3504 of June 13 rd, 2000; Decree 4327 of August 8 th, 2002, and Decree 4381 of September 17 th, 2002.
- Law 6.015 of December 31st, 1973 added on October 30 th, 1975 - Title III, Chapter II, articles 114 to 126
- Law on Voluntarism – Law 9.068 of February 18 th, 1998

Provisional Measure (“Medida Provisória”) no. 2.113 of April 26, 2001, article 59 and Law no. 9249 of December 26, 1995, article 13, § 2, III ([Portuguese](#))

III. Relevant Legal Forms

A. General Legal Forms

1) *Association*: An association (sometimes referred to as a not-for-profit civil society) is a self-governed, voluntary organization formed for one or more purposes set forth in its founding documents and charter. An association organizes its members’ activities in order to achieve its aims. An association acquires legal personality when its charter is registered in the proper public register office. [Civil Code article 45; Law 6.015/73 §120]

The Constitution of Brazil guarantees the freedom of association. The exception to this general rule is that people may not form a military group or associate for unlawful purposes. [Federal Constitution §5 (XVII)] Therefore, under normal circumstances, an association must merely register its charter in a public register office to obtain legal personality. An association need not seek any other kind of public authority permit to register as a not-for-profit private legal entity.

2) *Private Foundation*: A private foundation, often referred to simply as a foundation, is a not-for-profit private legal entity with an endowment. According to Brazilian legal doctrine, a foundation is defined as a collection of assets granted legal personality by operative law and devoted to public interest purposes (though, as discussed below, only certain public interest purposes qualify). The foundations goals are recorded in a written declaration, which must be registered with a notary public.

The old Civil Code allowed foundations to pursue any lawful purpose. Currently, foundations are limited to religious, moral, cultural, or assistance purposes. There is a debate over the exclusion of other public interest purposes, such as education, environmental preservation, and research and development.

The Civil Code requires that a foundation have and disclose sufficient assets to achieve its purposes [Civil Code article 63]. A foundation is controlled and managed in the manner set forth in its charter by the person or persons appointed by the founder in the letter of establishment.

A foundation is established in Brazil by submitting its letter of establishment, constitutive acts, and charters to the Attorney General's Office ("Ministério Público"). Upon receiving the Attorney General's approval, the founders have to register their founding documents in the proper public register office [Civil Code articles 62 to 69; Law 6.015/73 §120]. Once registered, the Attorney General's Office has oversight authority over a foundation's administration. [Civil Code article 66].

3) *Public Foundation*: A public foundation is a not-for-profit private legal entity created by legislative authorization to undertake public activities not necessarily assigned to the government. Public foundations have independent administrators and boards, as well as their own assets, which may come from the federal government or other sources [Law 7596/87 §5 (IV)]. Public foundations, like their private counterparts, become legal entities through the registration of their constitutive acts in the public register office. Unlike private foundations, however, public foundations are not subject to oversight by the Attorney General's Office [Law 7596/87, §5 (IV)(3)].

B. Special Designations

a) Civil Society Organizations for the Public Interest ("Organização da Sociedade Civil de Interesse Público" - OSCIP): The permissible activities for an OSCIP are found in the 3rd article of Law 9.790/99. They include:

- social assistance;
- promotion of culture;
- historical preservation and cultural heritage;
- education;
- health care;
- nutrition and food security;
- environmental protection;
- promotion of voluntary work;
- promotion of economic and social development;
- experimentation with alternative employment and credit systems;
- protection of rights;
- promotion of citizenship and democracy; and
- development of alternative technologies.

An OSCIP may not distribute any surplus revenues (either general or liquid), dividends, bonuses, or assets gained through performance of its activities to any of its members or participants, advisors, directors, employees, or donors. Therefore, an OSCIP must use all of its assets and income in pursuit of a relevant public purpose.

Until 2003, OSCIPs could not receive tax benefits if they paid their Directors [Law 9.532/97 Article 15, § 3]. Under Law no. 10.637/02 Article 34, however, the governing staff's remuneration is no longer an obstacle to tax benefits. The salaries cannot exceed the limit established for the remuneration of the Federal Executive Power (the president and ministers of Brazil). Only the OSCIP designation allows Directors to be paid a salary.

The law also created a special sort of contract called *Termo de Parceria*, governing partnerships between an OSCIP and the government. Through this contract, an OSCIP may receive government funds or other government support to execute projects in the public interest. This contract aims to improve cooperation between government and these organizations and to encourage OSCIPs to undertake the public interest activities set forth in the law.

b) Social Organizations (*Organizações Sociais – OS*): The title OS can be granted to any not-for-profit private legal entity created to privatize the administration of a public asset (e.g., monuments, museums, transportation public companies, public universities).

The goal is to facilitate the privatization of public services to not-for-profit institutions. Accordingly, the tasks of these organizations are quite restricted and always depend on a specific concession from the government. The concession of the right to manage a public company or asset is formalized through a legal instrument called the Management Agreement or *Contrato de Gestão*, created by Article 5 of Law 9.637/98.

The control of an OS by its founding members is restricted by the Management Agreement, as well as by the structure of the board of directors, called the Administration Council, which always includes members of the government and the community in addition to the founding members.

The government may disqualify or terminate an OS that does not comply with the requirements of the agreement, after an administrative procedure has been followed [Law 9.637/98 Article 16].

c) Public Utility Status (*Declaração de Utilidade Pública – DUP*): The criteria for qualifying as a public utility organization are stringent. To be eligible for public utility status, an organization must have as its objective the promotion of education, scientific research, culture, or philanthropy. It must also:

1. be properly registered as a legal entity;
2. be formed in Brazilian territory;
3. have carried on a public interest activity for more than three years;

4. not remunerate its directors under any circumstances, or distribute among any of its members or participants, advisors, directors, employees or donors any eventual surplus revenues (either general or liquid), dividends, bonus, and/or assets; and
5. publish a balance sheet and income statements every year
[Decree 50.517/61 Article 2]

Further, a not-for-profit legal entity with public utility status must report on its activities annually to the Ministry of Justice. The Ministry of Justice may revoke the public utility status of a not-for-profit entity if the entity ceases to promote its objectives, remunerates its directors or distributes income or assets, or fails to report on its activities to the Ministry of Justice for three consecutive years [Decree 50.517/61 §6].

d) Social Assistance Registry: Social Assistance Registry is a designation granted to a not-for-profit private legal entity that carries out or promotes "social assistance," which includes:

- Providing social assistance to needy families, mothers, children, youth, and people with disabilities;
- Promoting and developing rights;
- Promoting of citizenship;
- Combating social differences;
- Enhancing social and popular movements; and
- Providing leadership capacity building;
[Law 7,742/93, Articles 2 and 3, regulated by Resolution 191 of November, 10th, 2005]

An entity with this designation may apply for government subsidy grants and some types of tax exemptions on imports [Legislative Decree no. 37 of November 18, 1966]. In addition, it may enter into special collaborative agreements (convênios) with the government to obtain public funding [Law 8742 §10]. It cannot pay its Directors.

e) Social Assistance Beneficent Entity Certification (Certificado de Entidade Beneficente de Assistência Social) - This designation allows entities to qualify for certain special tax benefits, such as exemption from required payments of certain fringe benefits and social security taxes.

In order to obtain Social Assistance Beneficent Entity Certification, a not-for-profit legal entity must be considered a charitable social assistance, educational, or health organization that carries on activities and/or contributes to programs for:

- Family, mothers, children, youth and aid to the elderly;
- Education and rehabilitation of handicapped people;
- Assistance to children and youth from troubled homes; and
- Promotion of education and health assistance without charge.

To be entitled to the Certification, such a not-for-profit legal entity must fulfill the following requirements:

1. Be properly registered as a legal entity in Brazilian territory, and have been engaged in public interest activity for more than three years by the time of application;
2. Be registered with the National Council of Social Service Agencies in accordance with Law 1.493/51;
3. Provide evidence that its resources, income, profits and operational results are used only in the national territory and only for advancing its goals;
4. Provide evidence that at least 20% of its revenues originating from payments for service, sale of goods and operational contributions are used to provide services free of charge;
5. Provide evidence that subventions granted by the Government are used to accomplish the entity's aims;
6. Not remunerate under any circumstances its directors, or distribute among any of its members or participants, advisors, directors, employees or donors any surplus revenues (either general or liquid), dividends, bonus, and/or assets;
7. Not form either total or partially the assets of a for-profit organization;
8. Provide in its charter that in the case of dissolution, the entity's assets must be transferred to another organization with Social Assistance Beneficent Entity Certification or a public interest entity with similar aims; and
9. Perform its activities without discriminating against anyone under any circumstances.

According to Article 5 of the Decree 752/93, the National Council of Social Services can revoke a Social Assistance Beneficent Entity Certification anytime, subject to a right of appeal.

IV. Specific Questions Regarding Local Law

A. Inurement

Brazilian laws contain stringent prohibitions against inurement in tax-exempt nonprofit entities and entities with special designations.

Organizations with tax-exempt status conferred by the Brazilian Constitution (discussed below) must not distribute assets or profits among members [National Tax Code, article 14]. They also cannot remunerate their board members or governors in any way. Tax-exempt organizations must devote all of their funds to the pursuit of their objectives [Law No. 9532/97, article 12]

In addition, the laws that grant special designations -- the Law on Civil Society Organizations and the Law on Social Organizations -- prohibit inurement of personal

benefit to private individuals or for-profit entities. In general, the organization must have in its governing documents a provision stating that it shall not, under any circumstances, remunerate any directors (with exception of OSCIPs) or distribute among any of its members or participants, advisors, directors, employees or donors any surplus revenues (both general and liquid), dividends, bonuses, and/or assets or equity [Law 9,790/99 §1(1)]. Fringe benefits are also prohibited.

Under an opinion from the Legal Department of the Ministry of Social Welfare, however, a director of an organization with any type of special designation may receive reasonable remuneration for any additional services, beyond those of a director [Legal Department decision 639/96 - D.O.U. October 10, 1996].

An OSCIP, in addition, can remunerate its directors for their board activities and for leading the organization [Law 9,790/99 § 4 (VI)].

Managers and employees of an organization with any type of special designation may be paid reasonable salaries determined with reference to the market average.

A not-for-profit entity without tax-exempt status and without any special designation is not subject to limitations on inurement.

B. Proprietary Interest

1) *Associations*: Founders, members, and donors lose all property rights over assets contributed to an association once the assets are registered in the association's name, except that they can recover the assets they donated if the association dissolves [Article 61 of the new Brazilian Civil Code].

2) *Foundations*: In Brazil the foundation's collection of assets in its entirety is the legal entity, and so no founder, member, or donor can retain a proprietary interest in assets contributed to the foundation.

3) *Special Designations*: Founders and members of entities granted special designations, and donors to those entities, cannot retain a proprietary interest in assets they contribute to the organization.

C. Dissolution

1) *Associations*:

An association may be dissolved: (i) by free decision among its members, (ii) according to provisions set forth in its constitutive acts, or (iii) involuntarily, by judicial order after due process of law [Federal Constitution article 5 (XVIII)]. An association's articles of incorporation may provide that in the event of its dissolution, the member can get back the funds that he or she gave to the organization (but nothing more). Any additional

assets remaining upon dissolution must be transferred to a non-for-profit organization with similar objectives or to a government entity.

2) *Foundations*:

A foundation may be terminated if its purpose becomes illicit or impossible to achieve, or if it reaches the end of its term as stipulated in its constitutive acts. Any assets remaining upon dissolution must be transferred to a not-for-profit organization with similar objectives or to a government entity [Civil Code, article 69].

3) *Special Designations*:

If any organization with special designation dissolves, or has its designation revoked, all assets acquired from the government must be transferred to another organization that has the same designation and similar aims. These provisions must appear in the organization's founding documents [For example see Law 9790/99 § 4 (IV), Law 9637/98 §2 (I) (j) and CNAS Resolution no. 31/99, article 3, IV].

In addition, the assets managed by Social Organizations under the Management Agreement are public property and must revert to public administration at the time of the organization's dissolution.

D. Activities in General

Associations. Associations are generally permitted to engage in any lawful activities, restricted only by their charters. The exception to this general rule is that people may not form a military group.

Foundations. Foundations by definition must serve public benefit or public interest purposes. Their activities are restricted to those set forth in their constitutive documents. According to the New Civil Code, the activities of foundations are now limited to religious, moral, cultural, and assistance objectives.

Special Designations. Organizations granted special designations are limited to prescribed activities:

a) Civil Society Organization for the Public Interest (OSCIP):

- Promote social assistance programs;
- Promote cultural activities and the protection and maintenance of historic and artistic assets;
- Promote free education;
- Promote free health care;
- Carry on food aid programs and nutritional education programs;
- Promote sustainable development and environmental protection programs;
- Promote volunteerism programs;

- Promote social and economic development and fight poverty;
- Carry on not-for-profit experiments regarding new patterns for social production activities and alternatives for the production, commerce, employment, and credit systems;
- Promote creation and consolidation of legal rights;
- Promote legal services;
- Promote ethics, peace, citizenship, democracy, human rights and other universal values; and
- Study, research, and develop new technologies and disseminate scientific and technical knowledge regarding the activities mentioned herein.

b) Social Organizations:

- Promote education;
- Promote scientific research;
- Promote technological development;
- Promote environmental protection and preservation; and
- Promote cultural activities and health care.

c) Public Utility Status:

- Promote education and scientific research programs; and
- Carry on scientific research, cultural activities, and non-discriminatory philanthropic activities.

d) Social Assistance Registry:

- Provide social assistance to needy families, mothers, children, youth and people with disabilities;
- Promote and develop rights;
- Promote of citizenship;
- Fight social differences;
- Enhance social and popular movements; and
- Provide leadership capacity building.

e) Social Assistance Beneficent Entity Certification:

Same as the activities listed under Social Assistance Registry.

E. Economic Activities

In general, not-for-profit organizations in Brazil may pursue economic activities. They can invest in the stock market, participate in mergers and acquisitions, and acquire control of companies. However, there are two restrictions.

First, economic activities cannot constitute the primary purpose of the organization.

Second, no profits or income of any kind may be distributed to employees, directors, managers, collaborators or members under any circumstances. Instead, any surplus must be used to carry out the purposes of the organization. Further, the revenues resulting from such activities must be fully applied in Brazil to fulfill the organization's purpose [article 14, II of the Brazilian Tax Code].

An organization's founding documents may impose additional restrictions on its economic activities.

The new Civil Code defines associations as entities organized for non-economic purposes instead of not-for-profit. It is generally thought, however, that the two terms are synonymous.

F. Political Activities

Brazilian law generally imposes no restrictions on the ability of foundations and associations to engage in legislative or political activities. These entities may freely support candidates for public office as well as any kind of legislation. Any restriction on political activities would be contained in the organization's governing documents.

The only explicit limit concerns Civil Society Organizations for the Public Interest, which may not take part in a political campaign under any circumstances, or support political parties or politicians in any way [Law 9790/99, article 16]. These restrictions cover political party activity and the nomination of candidates for parliamentary and local governmental elections at the county level.

The law does not expressly bar political or legislative activities by public foundations or social organizations. However, the nature of their structures and activities may implicitly keep them from participating in political issues.

G. Racial Discrimination

Brazilian law imposes criminal penalties against anyone who denies or restricts a student's admission to a public or a private educational institution on the basis of race or disability [Article 6 of the Federal Law 7,716/89, altered by law. 9,459/97 and Law 7,853,89 Article 8]. In addition, a Social Assistance Beneficent Entity Certification organization may not discriminate against any person under any circumstances [Article 3, § 1 of Decree 2536/98].

H. Control of Organization

In general, no restriction exists on the control of not-for-profit organizations by other organizations or persons. It is possible that a Brazilian not-for-profit may be controlled by a foreign entity (which will lead to IRS scrutiny) or by an American grantor charity (which requires that the charity specifically so provide in the Affidavit).

V. Tax Laws

In order to understand the tax benefits available to not-for-profit organizations, it is necessary to have an overview of the Brazilian tax system. The power to create and collect taxes ("*tributos*") is shared by the Federal Government, the States, the Federal District, and the Municipalities, and is defined and regulated by the Federal Constitution, the Brazilian Tax Code, and several other statutes. The expression *tributos* includes duties ("*impostos*"), public service fees ("*taxas*"), social contributions ("*contribuição social*"), improvement charges ("*contribuições de melhoria*"), and economic domain intervention contribution ("*contribuição de intervenção no domínio econômico*").

A. Tax Benefits for Not-for-Profit Private Legal Entities

1. Constitutional Tax Exemption

In Brazil, tax benefits depend on the nature of the not-for-profit organization's activities, rather than the nature of the organization itself. This means that the legal form of a not-for-profit is irrelevant in determining its tax benefits.

Article 150 (VI)(c) of the Brazilian Constitution stipulates that the federal government, States, Federal District and cities are not allowed to tax *educational and social assistance* not-for-profit private legal entities. This tax exemption applies only to those assets, income, and services related to the essential activities of the entity. In addition, the article provides that statutes may specify criteria that educational and social assistance organizations must satisfy in order to obtain the tax benefit.

Article 14 of the National Tax Code stipulates that to obtain tax exemption, an educational or social assistance entity

- (i) shall not distribute its assets or profits among its members;
- (ii) shall keep accounting books in order to promote transparency of its activities and accounts; and
- (iii) shall limit the use of its resources to the Brazilian territory and to maintaining and developing its aims.

Other laws impose additional conditions. In order for an educational or social assistance organization to be eligible for tax exemption, it must also:

- (i) not remunerate in any way its board members or governors (managers and staff can be remunerated);
- (ii) invest all its funds in the maintenance and development of its objectives;

- (iii) keep full records of income and expenses using proper accounting procedures;
- (iv) keep records for at least five years to demonstrate the origin of revenues, the nature of expenses, and any other acts and transactions that may change its net worth;
- (v) submit income tax statements to the Federal Revenue Office annually;
- (vi) make sure that in the event of merger, acquisition, liquidation, or discontinuance, its assets are transferred to another similar organization that is also eligible for exemption; and
- (vii) comply with additional requirements set out in statutes related to the operation of tax-immune organizations.

[Law No. 9532/97, article 12].

These criteria are not considered restrictions on the constitutional benefits, but means of promoting the public interest and transparency duties of an organization granted tax benefits.

Provided that the foregoing requirements are met, the educational or social assistance entity needs merely to declare that it is eligible for the exemption before Revenue Service Authorities (“Receita Federal”).

2. Federal Tax Exemptions for not-for-profit private legal entities:

To be granted other tax benefits not stipulated in the Federal Constitution, a not-for-profit entity must fulfill several requirements.

The following Federal Laws concerning taxes and duties (“impostos”) are applicable to not-for-profit organizations. Unless otherwise specified, the requirements apply to all types of not-for-profit entities:

1) **Revenue Tax (Imposto de Renda – IRPJ)** - Full exemption from payment of the revenue tax; however, the entities granted this benefit must fully complete the income tax form every year. Therefore, they must comply with the requirements of article 12, items (i) to (v), of Law 9532/97 cited above. [Article 15 of Law 9532/97; Federal Constitution §150(VI)(c); Tax Code Law 3470/58 §113; Law 5172/66, §§9 (IV)(c) and 14 (I-III); 1999 Income Tax Law (RIR/99) §808 (3)]

2) **Social Contribution on Profit (Contribuição Social Sobre o Lucro)** – Full exemption from payment of the revenue tax; however, the entities granted this benefit must fully complete the income tax form every year. Therefore, they must comply with the requirements of article 12, items (i) to (v), of Law 9532/97 cited above. [Article 15 of Law 9532/97]

- 3) **Social Integration Program Contribution (Programa de Integração Social-PIS)** - Since 2003 education and social assistance entities must collect and pay 1% of all employees' salaries. Other not-for-profit entities must pay 0.65% of their receipts. [Federal Constitution §195(I)(7); Law 10.637/02].
- 4) **Social Security Financial Contribution (Contribuição para o Financiamento da Seguridade Social-COFINS)** – Full payment exemption for educational and social assistance entities. Since 2004, other not-for-profit entities must collect and pay 7.6% of their receipts. [Federal Constitution §195(I)(7); Law 10.833/03].
- 5) **Social Welfare Contribution (Contribuição Previdenciária - INSS)** - Full exemption to social assistance organizations that are granted both federal Public Utility Status and Social Assistance Beneficent Entity Certification. [Federal Constitution §195(I)(7); Law 8.212/91 §55].
- 6) **Work Accident Fund Contribution (Contribuição para Acidente do Trabalho)** - Full exemption to social assistance organizations that are granted both federal Public Utility Status and Social Assistance Beneficent Entity Certification. [Federal Constitution §195(I)(7); Law 8.212/91 §55].
- 7) **Contribution on Financial Transactions (Contribuição Provisória sobre a Movimentação Financeira - CPMF)**- Full exemption to social assistance organizations that are granted both federal Public Utility Status and Social Assistance Beneficent Entity Certification. [Federal Constitution §195(I)(7); Law 9.311/96 §3(V)].
- 8) **Importation Tax (Imposto de Importação-II)** - According to §2(I)(a) of Law 8032/90, social assistance and educational private legal entities are given special treatment on payment of the Importation Tax on products imported for their activities.
- 9) **Industrialized Products Tax (Imposto de Produtos Industrializados -IPI)** –The social assistance and educational entities' products are fully exempted from IPI, since they are for their own use or distributed to their students freely. (Decree 2637/98)
- 10) **Credit, Exchange and Insurance Operations Tax (Imposto sobre operações de crédito, câmbio e seguro- IOC e Imposto sobre Operações Financeiras-IOF)** - There are no exemptions from payment of the Credit, Exchange and Insurance Operations Tax or the Financial Operations (capital gains) Tax. [Law 5143/66]
- 11) **Rural Real Estate Tax (Imposto Territorial Rural - ITR)** – Full exemption from payment of the Rural Real Estate Tax if the amount exempted is used to pursue the goal of the entity. [Federal Constitution §150(VI)(c); Decree 4.382/02, article 3o (Decree 4382/02, article 3º)]

B. State and Municipal Tax Exemptions

As long as the Federal Constitutional principles are observed, state and municipal governments have the right to grant not-for-profit private legal entities exemptions from state and municipal taxes.

C. Contributions to Brazilian not-for-profit private legal entities by individuals and corporations based in Brazil

1. Contributions to not-for-profit private legal entities granted Public Utility Status or OSCIP special designations.

Corporate contributions to organizations granted federal Public Utility Status or Civil Society Organization for the Public Interest designations may be deducted up to 2% of the corporation's tax base operating profit (lucro operacional) before the corporation calculates its revenue tax liability [Law 9.249/95 article 13(2)].

Only corporations may claim tax benefits for such contributions. Since 1996, individuals have not been eligible for tax benefits for contributions to not-for-profit organizations.

2. Contributions to Cultural Projects.

Law no. 8.313/91 (“Lei Rouanet”) created the National Program of Support to Culture (Pronac), which allows for approved projects to receive sponsorships and donations from companies and individuals, which may deduct, totally or partially, the amounts invested from their income tax. According to this law, sponsorships differ from donations as the sponsor can utilize 25% of the cultural products for promotional issues.

A company may deduct 40% of a donation to, and 30% of a sponsorship for, cultural projects. The total amount of the deduction may not exceed 4% of the total tax liability [Law 8,313/91 Article 26 and Law 9,532/97].

An individual may deduct 80% of a donation to, and 60% of a sponsorship for, cultural projects. The total amount of the deduction may not exceed 6% of the person’s total tax liability [Law 8,313/91 Article 26 and Law 9,532/97].

In addition, individuals and companies may deduct 100% of a donation or sponsorship that support:

- Theater;
- Books on arts, literature and humanities;
- Instrumental and erudite music;
- Arts exhibitions; and
- Libraries and museums.

Many states have laws concerning contributions for cultural projects and tax exemptions of ICMS for donors and sponsors. Some examples include Bahia- Law 7,015/96; Ceará - Law 12,464/95; Rio de Janeiro - Decree nº 22.486/86; Pernambuco , Law nº 11.005/93 and nº 11.236/95 and São Paulo - Lei nº 8.819/94. Many municipal governments also have laws that provide deductions for cultural activities. Examples include Rio de Janeiro - Municipal Law nº 1,940/9, and São Paulo - Municipal Law nº 10.923/90.

3. Contributions to not-for-profit private legal entities certified by the Council of Public Policies for the Children and Youth.

The Council of Public Policies for the Children and Youth has a Fund composed of revenue of the government as well as corporate and individual donations. The fund is used on Public Policies for Children and Youth and it can be distributed to certified organizations. Donations to the Fund are deductible as follows:

- Corporate donation - Full deduction of the donation up to a limit of 1% of the income tax due; and
- Individual donation - Full deduction of the donation up to a limit of 6% of the income tax due.

D. Double Tax Treaty

There is no double tax treaty between Brazil and the United States.

VI. Knowledgeable Contacts

Laís Vanessa Carvalho de Figueirêdo Lopes
Daniela Pais Costa
Rua Tutóia, nº 795, casa 05 - Paraíso
São Paulo - SP - Brasil - CEP 04007-004
Tel/Fax: (55) (11) 3884 3416 or 3884 4072
lais@figueiredolopes.com.br or lais.lopes@uol.com.br
daniela_pais@hotmail.com

Footnotes

[1] In 2003, Law no. 10.825 introduced expanded the Code Code to include religious organizations as a new type of organization. (Law no. 10.825/2003). According to this Law, every religious organization is free to establish, organize and define its internal structure. Moreover, the State cannot deny its registration and existence. This law also

states that the Chapter concerning for-profit organizations also applies in part to associations.

[Council on Foundations](#) · 1828 L Street, NW · Washington, DC 20036
202/466-6512 · FAX: 202/785-3926 · info@usig.org
[Disclaimer](#) · Copyright © 2005 All rights reserved.