

U.S. INTERNATIONAL GRANTMAKING

Country Information

Mexico

Current as of May 2006

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I. Summary

A. Types of Organizations

Mexico, a civil law country with a federal structure, has four principal organizational forms for nongovernmental, not-for-profit organizations (NGOs):

- the civil association (AC), established pursuant to state civil codes;
- the “Institución de Asistencia Privada,” (IAP) or Private Assistance Institution, established pursuant to state laws governing the subject [\[1\]](#);
- the civil society (SC), established pursuant to state civil codes;
- and the trust, established pursuant to federal law (Ley General de Titulos y Operaciones de Credito (LGTOC)) [\[2\]](#)

Any of these organizational forms is entitled to seek certain benefits by registering under the Income Tax Law and/or the Law for Promotion of Civil Society Organizations. Registration under these laws is voluntary. An organization must meet specified criteria in order to register and to be eligible for attendant benefits.

Other not-for-profit legal forms, which are outside the scope of this Note because of their limited interaction with U.S. grantmakers, include religious associations, labor unions, and chambers of commerce.

B. Tax Laws

An organization registered under article 97 of the Mexican Income Tax Law is an “authorized donee,” and as such is entitled to issue tax deductible receipts to donors. Authorized donees are entitled to exemptions from the Income Tax Law.

The Law on Value Added Tax contains exemptions relevant to NGOs, including exemptions covering educational services, health services, and, under certain circumstances, the importation of goods donated by foreign residents.

The United States has entered into a bilateral tax treaty with Mexico that enables U.S. taxpayers to make tax-deductible donations to certain NGOs from Mexican source income.

In IRS Information Letter 2003–0158, March 17, 2003, the IRS stated that “[i]f the Mexican authorities have granted special authorization to a Mexican charity as an organization described in Article 70–B, a U.S. private foundation or other grant-maker may treat the Mexican charity as equivalent to a section 501(c)(3) organization classified as a public charity described in section 509(a)(1) or (2).” Prior to the issuance of Information Letter 2003–0158, however, Mexico amended its Income Tax Law. Among other revisions, provisions that had appeared in Article 70-B were moved to Article 97. Efforts are underway to confirm that a U.S. private foundation, public charity or other grant-maker may treat a Mexican charity, determined by the government of Mexico to be an Article 97 charity, as well as to determine what information is necessary to evidence this determination.

II. Applicable Laws

- [Constitution of Mexico](#)
- [Código Civil para el Distrito Federal \(CCDF\)](#)

- Código Civil (CC) del Estado de:
 - Aguascalientes
 - Durango
 - Nayarit
 - Sonora
 - Baja California
 - Guanajuato
 - Nuevo Leon
 - Tabasco
 - Baja California Sur
 - Guerrero
 - Oaxaca
 - Tamaulipas
 - Campeche
 - Hidalgo
 - Uebla
 - Tlaxcala
 - Chiapas
 - Jalisco
 - Queretaro
 - Veracruz
 - Chihuahua
 - Mexico
 - Quintana Roo
 - Yucatan
 - Coahuila
 - Michoacan
 - San Luis Potosi
 - Zacatecas
 - Colima
 - Morelos
 - Sinaloa
- Código Administrativo del Estado de Chihuahua(Cod. Adm. Chihuahua)
- Ley del Impuesto Sobre la Renta (LISR)
- Ley de Instituciones de Asistencia Privada para el Distrito Federal (LIAPDF)
- Ley de Instituciones de Asistencia Privada del
- Estado de México (LIAP México)
- Ley de Asistencia Social y Privada para el Estado de Quintana Roo
- Ley de Instituciones de Beneficencia para el Estado de Baja California (LIBP BC)
- Ley de Instituciones Beneficencia Privada del Estado de Nuevo León
- Ley de Instituciones de Asistencia Privada del Estado de Campeche
- Ley de Instituciones de Asistencia Privada para el Estado de Guerrero
- Ley de Instituciones de Asistencia Privada del Estado de Michoacán
- Ley de Instituciones de Beneficencia Privada para el Estado Libre y Soberano de Puebla (LIBP Puebla)

- Ley de Instituciones de Asistencia, Promoción Humana y Desarrollo Social Privadas del Estado de Oaxaca (Decreto 312 Oaxaca)
- Ley para el Fomento y Regulación de las Instituciones de Asistencia Privada del Estado de Querétaro
- Ley Sobre Fundaciones y Asociaciones de Beneficencia Privada para el Estado de Durango
- Ley del Impuesto al Valor Agregado (LIVA, or, in English, VAT)
- Ley de Inversión Extranjera
- Ley General de Educación
- Ley Federal de Fomento a las Actividades Realizadas por Organizaciones de la Sociedad Civil (Federal Law for the Promotion of Activities Undertaken by Civil Society Organizations) (Promotion Law)
- [Ley General de Títulos y Operaciones de Crédito \(LGTOC\)](#)
- Ley de Fomento a las Actividades de Desarrollo Social de las Organizaciones Civiles para el Distrito Federal (LFADF)
- Reglamento de la Ley del Impuesto Sobre la Renta (RLISR)
- Reglamento para las Instituciones de Asistencia Privada del Estado de Sonora
- Reglamento de la Ley Federal de Fomento a las Actividades Realizadas por Organizaciones de la Sociedad Civil

Other legal authorities consulted in preparing this Note:

- United States-Mexico Tax Treaty
- [Vivian L. Cavalieri, “Grantmaking in Mexico” in International Dateline \(Issue 48, August 1998\) \(PDF\)](#)
- Emilio Carrillo Gamboa, Mexico Country Report, in *The International Guide to Nonprofit Law* (Lester M. Salamon, Ed., 1997).
- Consuelo Castro , Mexico Country Report in “Las Fundaciones en Iberoamérica: Régimen Jurídico” (José Luis Piñar Mañas, ed.,1997).
- Consuelo Castro , Mexico Country Report in “El Tercer Sector Iberoamericano: Fundaciones, asociaciones y ONGs.” 2001 (José Luis Piñar Mañas,Ed., 2000).

III. Relevant Legal Forms

A. Civil Associations

"A civil association (AC) is formed when various individuals agree to join together, in a manner that is not entirely transitory, to realize a common purpose that is not prohibited by law and that is not predominantly economic in character" [[CC DF § 2670](#)]. There is no minimum number of persons needed to form an association, though it is clear that there must be more than one. Foundations can be formed as civil associations in all states.

Although the civil codes state that ACs are governed by their statutes, the codes typically provide a structure of governance for the association to follow. An AC must register its name at the Ministry of Foreign Affairs and register its statutes with the Public Registry

of Property. The supreme authority of an association resides in its general assembly. [See, for example, [CC DF §2674](#); CC Chiapas §2647; CC Chihuahua §2572.]

An AC can be terminated for several reasons other than those provided in its statutes: if the term fixed for its duration concludes, if the purpose for which it was founded has been completely accomplished, or if the association has become incapable of realizing the object for which it was founded. An AC can also be terminated by consent of the general assembly or by a decision promulgated by the competent authority in the state where the association is registered. [See [CC DF §2685](#); CC Chiapas §2658; CC Chihuahua §2583.]

B. Private Assistance Institutions

A Private Assistance Institution (IAP) is an organization formed in accordance with state law for the purpose of providing social and humanitarian assistance. [See, e.g., *Ley de Instituciones de Asistencia Privada para el Distrito Federal*; *Ley de Beneficencia para el Estado de Baja California*; *Código Administrativo del Estado de Chihuahua*; *Ley de Asistencia Privada del Estado de México*.] IAPs are closely regulated by state bodies called *Juntas de Asistencia Privada* or *Juntas de Beneficencia Privada*.

Private Assistance Institutions carry out their activities with private property and do not seek a profit. [See [LIAPDF §1](#).] They may not designate specific individuals as beneficiaries. [See [LIAPDF §1](#); LIBP §1.] Natural or legal persons may form an IAP, and it can be set up as a foundation or an association. [See [LIAPDF §3](#) ; LIBP. BC §46; LIBP §7.]

An IAP may be formed for a temporary purpose--for example, to meet the needs brought about by a natural disaster, war, or other calamity.[See [LIAPDF §6](#); LIBP BC §50; LIBP §9.]

IAPs, like other organizations, must register for authorized donee status.

C. Civil Societies

A civil society (SC) is formed by a contract in which the members mutually obligate themselves to combine their resources or efforts in order to realize a common purpose of a predominantly economic character. The goal of the society must not, however, constitute commercial speculation. [See [CC DF §2688](#) ; CC Chiapas §2661; CC Chihuahua § 2586; [CC Jalisco §208](#) ; CC México § 2541; CC Nuevo León §2581; CC Sinaloa §2570.]

A society is governed by the provisions of its social contract, which must be included in the Public Registry of Property to have effect vis-à-vis third parties. [See CC BC §2546; CC Chihuahua §2592; CC Nuevo León §2566.] At least two people are needed to form a civil society.[See, e.g., CC DF §2688; CC Chihuahua §2586 (referring to the plural “socios” as forming a society without specifying an exact number)].

D. Trusts

Trusts, called “fideicomisos” in Spanish, are governed by the federal General Law of Titles and Operations of Credit (LGTOC). A trust is created when a donor dedicates property to a particular lawful purpose, which may be either private or public benefit [LGTOC §346]. The trust may be created during the life of the donor (through a trust instrument) or upon the death of the donor (through a will). The donor designates a fiduciary institution, which must be authorized under the General Law of Titles and Operations of Credit, to carry out this purpose as trustee. [See LGTOC §§346, 350.] A trust may be established for up to 30 years. [See LGTOC § 359 (prohibiting trusts with a duration of over 30 years).]

IV. Public Benefit Status

Under the Income Tax Law, organizations are eligible for “authorized donee status” if they engage in certain publicly beneficial activities and comply with certain rules and regulations. This status entitles the authorized donee to issue tax-deductible receipts to donors.

The Promotion Law provides for registration of organizations that are engaged in certain publicly beneficial activities and that meet certain requirements. Registration under this law makes an organization eligible to receive government funding for certain activities, but does not by itself provide any benefits.

The two laws' lists of eligible “public benefit” activities overlap, but only in part.

Authorized Donees. Organizations eligible to seek authorized donee status include the following: ACs, IAPs, SCs, and trusts that:

(1) Provide aid to the needy (including subsistence, medical, legal, and funeral assistance); engage in education certified by the Ministry of Education, scientific or technological research, environmental protection, or support for culture and the arts; preserve national treasures; or defend and promote human rights;

(2) Grant scholarships; or

(3) Make grants to other authorized donees.

An authorized donee, regardless of its particular form (IAP, civil society, trust, civil association), must comply with a number of operational and financial rules set forth in LISR §97. [See LISR §98(III) (applying §97(II) requirements to eligible scholarship-granting organizations); LISR §96 (governing grantmaking organizations)].

Specifically, an authorized donee must pursue the goals for which it was founded as its primary purpose, and devote its assets exclusively to the purposes for which it was organized. It may not disburse assets to any individual or entity except for payment for

services rendered or transfers to other organizations with authorized donee status. It may not participate in political activities. Upon the organization's dissolution, any surplus must be transferred to another organization eligible to receive tax-deductible donations; further, this rule must be set forth in an irrevocable provision of the organization's statutes.

Law on Promotion of Civil Organizations . Organizations that may register under the Law on Promotion are those incorporated as an AC, IAP, or SC that engage in one or more of the following activities:

Social assistance, social health, civic development, legal assistance, rural and indigenous development, promotion of gender equality, support for services for differently abled persons, community development, defense and promotion of human rights, promotion of sports, health and sanitation, environmental protection, urban and rural development, promotion of education, culture, the arts, science and technology, improving the economy, civil protection, and support for the creation and strengthening of civil society.

Registrants are entitled, among other things, to participate as consultative bodies in conformity with the Law of Planning and other applicable laws; to integrate themselves into organs of participation and consultation established by the Federal Public Administration (FPA); to cooperate with competent authorities in agreements to lend public services; and to participate in planning, executing, and monitoring politics, programs, projects, and processes that FPA undertakes.

To qualify for registration, the organization must heed operational, accounting, and reporting rules set forth in the law. These include having an accounting system consistent with generally accepted accounting rules; reporting, annually, to the Commission of Promotion of Activities for Civil Society Organizations about activities, accomplishments, financial balance, and use of public support and benefits; and directing the remainder of assets, in the case of dissolution, to another registered organization.

The registry established under the Promotion Law was created in January 2005. Although the law's full implications remain to be seen, registration is now required in order to receive particular benefits. For example, only registered organizations are eligible for some forms of governmental funding, including the so-called Coinvestment Development Funds given by the Ministry of Social Development. The registry is overseen by the Social Development Institute (Instituto de Desarrollo Social, or INDESOL), in collaboration with the Social Development Ministry.

V. Specific Questions Regarding Local Law

Generally speaking, authorized donees and organizations registered under the Promotion Law are subject to stricter rules than are organizations that opt not to apply for authorized donee status or to register under the Promotion Law.

A. Inurement

Authorized Donees. Private inurement is prohibited for authorized donees. In order to be eligible for authorized donee status pursuant to [LISR §97\(III\)](#) , an organization's activities must have as their primary purpose attainment of the goals for which they were founded. The organization must devote its assets exclusively to the purposes for which it was organized [LISR 97(II)]. It may not disburse assets to any individual or entity except for payment for services rendered or transfers to other organizations with authorized donee status [LISR§ 97(III)]. Upon the organization's dissolution, any surplus must be transferred to another organization eligible to receive tax-deductible donations [LISR§ 97(IV)] and this must be irrevocably included in the organization's bylaws.

Scholarship-granting associations and civil societies with authorized donee status pursuant to §98 must comply with the same rules. [LISR § 98(III) (requiring compliance with particular §97 provisions)] The scholarships must be open to the general public, and must be granted for studies at educational institutions acknowledged officially by the Ministry of Education (domestic institutions) or the National Council of Science and Technology (CONACyT) (foreign institutions).

A grantmaking organization or trust with authorized donee status pursuant to §96 must apply all revenue to the purpose for which it was created; and, upon liquidation, it must transfer any surplus to other organizations with authorized donee status. These requirements must be included in the organization's bylaws and must be irrevocable. [LISR § 96]

Organizations Registered under Promotion Law. An NGO qualifying under the Promotion Law must dedicate its assets to the authorized activities listed in the law. It cannot stop undertaking those activities once it has obtained support for them, or undertake activities outside the social objective. It must not undertake activities in pursuit of self-interest or the mutual interest of the organization's members, including distributing profits or any material benefits to members. It must not have relationships of interest or familial relationships between its directors and its beneficiaries. In the event of dissolution, the organization must transfer the remainder of its assets to another organization registered under the Promotion Law.

Civil Associations (AC) without Authorized Donee Status and Not Registered under Law of Promotion. Civil codes governing civil associations do not specifically prohibit inurement to private persons or for-profit organizations.

Private Assistance Institutions without Authorized Donee Status and Not Registered under Law of Promotion. Both state and federal laws applicable to IAPs prohibit private inurement. Under state law, the IAP generally cannot designate individual beneficiaries. [See [LIAPDF §1](#); LIBP BC §44; Cod. Adm. Chihuahua §1137; LIAP México §2; LIBP Puebla §1.] Board members cannot buy or lease the assets of the institution, or make any contract concerning the assets, to benefit themselves or anyone related to them. [See [LIAPFD §53\(XV\)](#); Cod. Adm. Chihuahua §1191(XXIII); Dec. 312 Oaxaca §70(X).]

Diversion of the institution's funds for purposes distinct from those of the institution can lead to removal of the responsible board members. [See [LIAPDF §146\(VI\)](#) ; LIAP México §57(V); Dec. 312 Oaxaca §116(VI); LIBP §124 (V).]

Civil Societies (SC) without Authorized Donee Status and Not Registered under Law of Promotion. Under the civil codes, a civil society must not limit its benefits (or its losses) to specific members. An arrangement to the contrary will render the society void. [See [CC DF §2696](#); CC Chihuahua §2594; [CC Jalisco §217](#); [CC Tabasco § 779](#).]

Trusts without Authorized Donee Status and Not Registered under Law of Promotion. Property held in trust must be used for the purposes for which the trust was founded. [LGTOC §381-414]. The fiduciary duty of the trustee, who is obligated to carry out the activities of the trust according to its constitutive act, provides additional protection against private inurement.

B. Proprietary Interest

The Mexican Income Tax Law prohibits donors from retaining a proprietary interest in contributions to NGOs with authorized donee status. Authorized donees must dedicate their assets strictly to the stated purposes. [LISR §97(II) (governing IAPs and eligible civil associations and civil societies); LISR §98(III) (applying §97(II) requirements to eligible scholarship-granting organizations); LISR §96(I) (governing grantmaking organizations)]. Upon liquidation, these organizations must distribute their assets to the government or to other organizations eligible to receive tax-deductible donations. [LISR §97(IV) (governing IAPs and eligible civil associations and civil societies); LISR §98(III) (applying §97(IV) requirements to eligible scholarship-granting organizations); LISR §96(II) (governing grantmaking organizations)]. Grantmaking organizations must address these issues in irrevocable bylaws. [LISR §97(V); LISR §98(III); LISR §96.]

Organizations Registered under the Promotion Law. An NGO qualifying under the Promotion Law must dedicate its assets to the authorized activities. In the event of dissolution, the organization must transfer the remainder of its assets to another organization qualifying under the Promotion Law.

Civil Associations (AC) without Authorized Donee Status and Not Registered under Law of Promotion. The members of a civil association can retain a proprietary interest in their contributions to the organization. [See, e.g., CC Chiapas §2659 (stating that in the case of dissolution, the general assembly may return to each member only the amount that the member contributed to the association).]

Private Assistance Institutions (IAP) without Authorized Donee Status and Not Registered under Law of Promotion. State law applicable to IAPs address the question of proprietary interest. Under state law, once an IAP is established, the founder may not reclaim his contribution to the IAP endowment. [See [LIAPDF § 9](#); LIBP BC §41; Cod. Adm. Chihuahua §1134; LIAP Mexico §11.] However, where the government interferes with the assets (e.g., enters into contracts concerning the assets of an IAP by substituting

itself for the board of the institution), the assets may revert to the founder or his/her heirs. See [LIAPDF § 9](#); LIBP BC §§33-4; Cod. Adm. Chihuahua §§1125-27; LIAP Mexico §12.]

Civil Societies (SC) without Authorized Donee Status and Not Registered under Law of Promotion. The members of a civil society can retain a proprietary interest in their contributions to the organization. [See, e.g., CCDF §2689; CC Chiapas §§2701, 2703 (treating the return of contributions to members upon the liquidation of a society).]

Trusts without Authorized Donee Status and Not Registered under Law of Promotion. Under the federal law governing trusts, the founder of a trust or his/her heirs retain a reversionary interest in the property given for the establishment of the trust. [[LGTOC § 358](#)].

C. Dissolution

General

Here again, the key distinction is whether an NGO has authorized donee status and/or is registered under the Promotion Law. If either of those conditions applies, then upon its dissolution, the NGO's assets must be assigned to another NGO with the same status (authorized donee status and/or Promotion Law registration). If, by contrast, the NGO neither has authorized donee status nor qualifies under the Promotion Law, then it is generally free to dispose of assets as it wishes upon dissolution.

Authorized Donees

If an organization has authorized donee status, then its assets, upon dissolution, must be transferred to another NGO with authorized donee status or to a government body. [See LISR §97(IV) (governing IAPs and eligible civil associations and civil societies); LISR §98(III) (applying 97(IV) requirements to eligible scholarship-granting organizations; LISR §96(II) (governing grantmaking organizations)]. The issue must be addressed in an irrevocable bylaw. [LISR §97(V); LISR §98(III); LISR §96.]

Organizations Registered under the Promotion Law

If an organization registers under the Promotion Law, then its assets, upon dissolution, must be transferred to another NGO qualifying under the Promotion Law.

Civil Associations without Authorized Donee Status and Not Registered under the Promotion Law

Upon dissolution, the assets of a civil association (AC) must be disposed of in accordance with its statutes. If the statutes do not address dissolution, the board must decide how to dispose of the assets. In such a case, the board may return members' contributions. The remaining assets will be transferred to another association or foundation with a similar

purpose or to state-controlled public welfare agencies. [See, for example, [CC DF §2687](#) ; CC Chiapas §2659; CC Chihuahua §2584; CC México §2539; CC Nuevo León §2579; CC Sinaloa §2568.]

Private Assistance Institutions without Authorized Donee Status and Not Registered under the Promotion Law

An IAP will be terminated upon petition of its board or by declaration of the Junta de Asistencia Privada, the official regulatory body. Upon the termination of an IAP, the Junta may, before the liquidation of the institution, resolve that the assets will become part of the endowment of another IAP. The Junta may also use the assets to unilaterally create a new IAP. [See, e.g., [LIAPDF §127](#); LIAP BC §195; Cod. Adm. Chihuahua §1236; Dec. 312 Oaxaca §100; LIAP. Puebla §90.] After the liquidation takes place, the Junta disposes of the remaining assets, subject to the wishes of the founder. If the statutes do not address the distribution of remaining assets upon dissolution, the assets will pass to an IAP with similar purposes chosen by the Junta. [See [LIAPDF §134](#); LIAP BC §200; Cod. Adm. Chihuahua §1241; LIAP México §30; Dec. 312 Oaxaca §103; LIBP Puebla §97.]

Civil Societies without Authorized Donee Status and Not Registered under the Promotion Law

Where a civil society (SC) is voluntarily dissolved, its capital and profits may be shared by its members upon dissolution and before liquidation of the society, unless there is agreement otherwise. [See, e.g., [CC DF §2729](#).] After the society has paid its debts, the members will be reimbursed the contributions they made. Any profit remaining will be dedicated to local public welfare organizations. [See, e.g., CC DF 2720; CC Chiapas §2665; CC Nuevo León §2585; [CC Tabasco §775](#).]

Trusts without Authorized Donee Status and Not Registered under the Promotion Law

Upon the termination of a trust, trust property given by the donor for the establishment of the trust is returned to the donor or his/her heirs. [[LGOTC §358](#)]

D. Activities

1. General

Authorized Donees. Authorized donees are eligible for this status by virtue of engaging exclusively in certain types of nonprofit activities deemed to be in the public benefit. (See below.)

Organizations Registered under the Promotion Law. Similarly, organizations that qualify to register under the Promotion Law are those that engage exclusively in certain activities

deemed to be in the public benefit. The public benefit activities listed in the Tax Law (governing authorized donees) and those listed in the Promotion Law differ but overlap.

Civil Associations without Authorized Donee Status and Not Registered under the Promotion Law. A civil association may undertake any lawful activity to realize any purpose that is not predominantly economic in character. [See [CC DF §2670](#) ; CC Chiapas §2643; [CC Jalisco §172](#) ; CC Mexico §2523.]

Private Assistance Institutions without Authorized Donee Status and Not Registered under the Promotion Law. Generally speaking, IAPs carry out activities with a humanitarian or philanthropic purpose. [See LIBP BC §28; Cod. Adm. Chihuahua §1119; [LIAPDF §1](#); Dec. 312 Oaxaca §1.]

Civil Societies without Authorized Donee Status and Not Registered under the Promotion Law. Societies are formed to realize an economic purpose, but the purpose may not constitute “commercial speculation.” [See [CC DF §2688](#) ; CC Chiapas §2661; [CC Jalisco §208](#) ; CC Mexico §2541.]

Trusts without Authorized Donee Status and Not Registered under the Promotion Law. A trust may be established to carry out any lawful purpose. [[LGTOC § 346](#)] A fiduciary institution serving as a trustee may engage in any action required to carry out the purpose of the trust, subject to the norms and limitations established upon the creation of the trust. [[LGTOC §356](#)]

2. Public Benefit Activities

Authorized Donees. Authorized donees are eligible for this status by virtue of engaging exclusively in certain types of activities deemed to be in the public benefit. Activities that qualify an organization for authorized donee status are provision of aid to the needy (including subsistence, medical, legal, training for employment and funeral assistance); educational institutions, technological or scientific research, support for culture and the arts, environmental protection, and preservation of national treasures; granting scholarships for studies at certified educational institutions; and aid or grants to authorized donees or to the government, and the defense and promotion of human rights.

Organizations Registered under the Promotion Law. Organizations are eligible to register under this law if they engage in the following activities deemed to be in the public benefit: social assistance, social health, civic development, legal assistance, rural and indigenous development, promotion of gender equality, support for services for differently abled persons, community development, defense and promotion of human rights, promotion of sports, health and sanitation, environmental protection, urban and rural development, promotion of education, culture, the arts, science and technology, improving the economy, civil protection, and support for the creation and strengthening of civil society.

Civil Associations without Authorized Donee Status and Not Registered under the Promotion Law. Civil associations need not pursue public benefit activities unless they seek authorized donee status or registration under the Promotion Law.

Private Assistance Institutions without Authorized Donee Status and Not Registered under the Promotion Law. Generally speaking, IAPs carry out activities with a humanitarian or philanthropic purpose. [See LIBP BC §28; Cod. Adm. Chihuahua §1119; [LIAPDF §1](#); Dec. 312 Oaxaca §1.] Examples of acceptable activities include assistance, education, protection of persons in need, and the incorporation of marginalized persons into productive life. [See LIAP México §2; LIBP Puebla §1.] Temporary IAPs may be formed to provide aid after a natural disaster, war, or economic hardship. [See, for example, [LIAPDF §6](#).]

Civil Societies without Authorized Donee Status and Not Registered under the Promotion Law. Civil societies need not pursue public benefit activities unless they seek authorized donee status or registration under the Promotion Law.

Trusts without Authorized Donee Status and Not Registered under the Promotion Law. A charitable trust establishes its purposes in its trust document. It need not pursue public benefit activities unless it seeks authorized donee status or registration under the Promotion Law.

3. Economic Activities

No specific rules prohibit authorized donees or organizations registered under the Promotion Law from engaging in economic activities. NGOs authorized to receive tax-deductible donations from other countries under the Double Taxation Treaty, however, must not receive an excessive amount of income from leases, interest, dividends, gifts, or activities unrelated to their social purpose. [[LISR §97\(I\)](#)] The threshold for "excessive" is one-third of total annual income. [RLISR 116; Gamboa, 229].

Civil Associations (AC). The civil codes do not prohibit civil associations from engaging in economic activities. However, the primary purpose of a civil association must not be of a predominantly economic character. [[CC DF §2670](#)].

Private Assistance Institutions. Generally speaking, IAPs may carry out any type of economic activities to raise funds, with certain prohibitions on their ability to invest in certain securities, make loans, purchase real estate, and fundraise. [[LIAPDF §72](#)] Many economic activities must first be approved by government regulators.

Civil Societies (SC). Nothing in the civil codes precludes civil societies from carrying out any type of economic activity. In fact, the activities of a society in general are economic in nature. The one limitation is that a society is barred from engaging in “commercial speculation.”

Trusts. A fiduciary institution may engage in any action required to carry out the purpose of the trust, subject to the norms and limitations established upon creating the trust.

[[LGTOC §356](#)]

E. Political Activities

NGOs with authorized donee status "shall not be entitled to intervene in political campaigns or to become involved in activities of propaganda or intended to influence legislation." [LISR §97(II)]

NGOs qualifying under the Promotion Law must not promote partisan political ends.

Other NGOs generally are free to engage in political activities.

F. Racial Discrimination

The Constitution of Mexico prohibits discrimination on the grounds of race. [Art. 1, ¶3] NGOs qualifying under the Promotion Law, in addition, must act with impartiality and non-discrimination in determining beneficiaries.

G. Control of Organizations

Mexican charities may be established by natural or legal persons, both domestic and foreign. Therefore, it is possible that a Mexican NPO may be controlled by a for-profit entity or an American grantor charity, either of which will lead to additional IRS scrutiny.

VI. Tax Laws

A. Tax Exemption

The following organizations are exempt from Income Tax pursuant to LISR §95: organizations with authorized donee status (whether IAP, AC, SC, or trust) that provide aid to the needy; engage in teaching or scientific research; promote environmental protection, support culture and the arts, or preserve national treasures; promote education certified under the General Education Act; engage in scientific or technological research and recorded in the National Registry of Scientific and Technological Institutions, or engage in the promotion and defense of human rights.

Other organizations are subject to the 28% corporate income tax. (LISR §10)
Nondeductible expenditures will also subject an organization to the corporate tax.

Qualification for authorized donee status depends on Section 95, as well as the corresponding provisions of Section 96, 97, or 98 of the Federal Income Tax Law of Mexico.

B. Tax Treatment of Donations

Legal persons based in Mexico making donations to organizations with authorized donee status can deduct the full amount of the donation from their taxable base, upon which income tax is calculated [[LISR §97](#)]. Donations to other organizations are not deductible.

C. Value Added Tax

Natural and legal persons that engage in the transfer of goods, the provision of services, the grant of temporal use or enjoyment of goods, or the importation of goods or services within the national territory of Mexico are obligated to pay value added tax, the impact of which must be taken into account by U.S. grantmakers when calculating the amount of grants. [Ley del Impuesto al Valor Agregado (LIVA), §1]. The standard rate for the tax is 15%. Private charity institutions and associations must pay the VAT. [LIVA §1] Exemptions relevant to not-for-profit organizations include:

- educational services [LIVA §15(IV)]
- health services [LIVA §15(XV)]
- public shows [LIVA §15(XIII)]
- publishing books, magazines, newspapers [LIVA §9(III)]
- lotteries, raffles [LIVA §9(V)]
- the importation of goods donated by foreign residents as authorized by the Secretaría de Hacienda y Crédito Público [LIVA §25(IV)].

D. Double Taxation Treaty

Mexico is a party to a Double Taxation Treaty with the United States. Article 22 of the Treaty deals with exempt organizations. It provides:

"2. If the Contracting States agree that a provision of Mexican law provides standards for organizations authorized to receive deductible contributions that are essentially equivalent to the standards of United States law for public charities:

- (a) an organization determined by Mexican authorities to meet such standards shall be treated, for purposes of grants by United States private foundations and public charities, as a public charity under United States law; and
- (b) contributions by a citizen or resident of the United States to such an organization shall be treated as charitable contributions to a public charity under United States law."

Such contributions are deductible only for U.S. taxpayers with income from Mexican sources, and the extent of the deduction depends on the magnitude of the Mexican source income. [See <http://www.irs.gov/formspubs/page/0,,id%3D11918,00.html>.]

In IRS Information Letter 2003–0158, March 17, 2003, the IRS stated that “[i]f the Mexican authorities have granted special authorization to a Mexican charity as an organization described in Article 70–B, a U.S. private foundation or other grant-maker may treat the Mexican charity as equivalent to a section 501(c)(3) organization classified as a public charity described in section 509(a)(1) or (2).” Prior to the issuance of Information Letter 2003–0158, however, Mexico amended its Income Tax Law. Among other revisions, provisions that had appeared in Article 70-B were moved to Article 97. Efforts are underway to confirm that a U.S. private foundation, public charity or other grant-maker may treat a Mexican charity, determined by the government of Mexico to be an Article 97 charity, as well as to determine what information is necessary to evidence this determination.

VII. Knowledgeable Contact

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Footnotes

[1] IAPs are further denoted as either associations or foundations, but the distinction is not generally significant for the purposes of this Note.

[2] Organizations carrying the name "foundation" can be civil associations or IAPs.

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