

Argentina

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I. Summary

A. Types of Organizations

Argentina is a civil law country and its laws provide for three principal forms of not-for-profit private organizations (NPOs):

- the civil association,
- the foundation, and
- the mutual entity.

Civil associations and foundations are public benefit organizations, while mutual entities are not. Contrary to the practice in many other countries, organizations created for mutual benefit are not a type of civil association in Argentina; rather, they are governed by separate legislation. All three types of NPOs are eligible for tax benefits under certain circumstances.

Three other NPO forms are generally beyond the scope of this Note because they rarely are relevant for U.S. grantmakers: simple associations, referenced in article 46 of the Civil Code, which generally lack legal personality; civil entities, mentioned in section 20(f) of the Argentine Income Tax Law ("ITL") and further described in General Resolution DGI 1432/71; and religious organizations, which are commonly tax-exempt.

B. Tax Laws

Certain civil associations, foundations, and mutual entities in Argentina are eligible for exemption from income tax, but they must apply for this benefit; exempt status is not automatic for any organization. If granted, exempt status covers all types of income.

Argentina imposes a Value Added Tax ("VAT") with a standard rate of 21%. NPOs exempt from income tax are exempt from VAT on services that are directly related to their welfare purposes, with certain exclusions. In general, the sale of goods made by an exempt NPO is subject to VAT. Certain foreign grants are subject to VAT.

Argentina provides limited tax incentives for philanthropy. An Argentine taxpayer can deduct qualifying donations up to 5% of the taxable base under certain conditions. Not all tax-exempt NPOs are eligible to receive tax-deductible donations. To qualify, a donation must be made to a tax-exempt civil association or tax-exempt foundation that engages in certain activities. Donations to mutual entities are not deductible.

II. Applicable Laws

- [National Constitution, articles 14, 14 bis, 28, 31, 33, 43, 75 inc. 22, 23, inc. 24.](#)
- [Civil Code, articles 30 through 50.](#)
- Federal Education Law. Law 24,195 of April 29, 1993, articles 36 and 40.
- Foundations Law. Law 19,836 of September 15, 1972.
- [Mutual Association Law. Law 20,321 of April 27, 1973.](#)
- [Income Tax Law. Law 20,628 of July 11, 1997, as amended \("ITL"\).](#)
- Income Tax Implementing Regulations. Decree 1344/98 of November 19, 1998, as amended ("ITIR").
- Value Added Tax Law. Law 23,349 of August 25, 1986, as amended ("VAT").
- Minimum Deemed Income Tax Law. Law 25,063 of December 7, 1998, as amended.
- Exempt Entities (related to income tax exemption and donations) - Resolution "AFIP" (*Administracion Federal de Ingresos Publicos*) 2681/2009 of October 5, 2009.
- General Resolution DGI 1432 of November 18, 1971.
- General Justice Inspection Procedure - City of Buenos Aires Inspector General of Justice ("IGJ") General Resolution 7/2005 as amended by General Resolution IGJ 6/2007.
- National Registry of Companies and Other Entities - Decree of the Executive Branch 23/99 of January 20, 1999, as amended.

- National Registry of Non-Governmental Organizations - Decree of the National Executive Branch 422/99 of April 27, 1999, as amended.

Other legal authorities and bibliography consulted in preparing this Note:

- [Corte Suprema de Justicia de la Nación, fallo en la causa “ALITT c/Inspección General de Justicia”, 2006.](#)
- [Santiago Mazzeo, Nicole Etchart, Isabel Friz y Guillermo Canova, *Marco Legal y Regulatorio de Autofinanciamiento de las Organizaciones de la Sociedad Civil en Argentina, Nonprofit Enterprise and Self-sustainability Team \(NESsT, 2008\).*](#)
- Pedro M.Gecik, Nicolás L.Maiolo, Francisco J.Vanoli, Miguel A. Franzese, Mariela S.González y Alejandro Baños, *Aspectos Impositivos de Asociaciones Civiles y Fundaciones*, Edicon, Buenos Aires, 2009.

III. Relevant Legal Forms

A. General Legal Forms

Civil associations, based on provisions of the [Civil Code](#), are membership organizations that satisfy the following criteria:

- Their main purpose is to advance the common good by providing benefits to the society or to a given group. ;
- They do not seek profit;
- They own property;
- They are capable of acquiring goods according to their bylaws;
- They are not sustained exclusively from subsidies or donations from the state; and
- They are authorized to carry out their activities by the relevant authority: the Inspector General of Justice for the City of Buenos Aires or the competent Legal Entities in the provinces.

A civil association can modify its objectives by changing its bylaws.

Foundations, governed by Law No. 19,836, as amended, are non-membership organizations that satisfy the following criteria:

- Their main purpose is to provide benefits to the society or to a given group;
- They do not seek profit;
- They directly address a social need, such as medical assistance or aid to disabled people;
- They own property;
- They are capable of acquiring goods according to their bylaws;
- They are not sustained exclusively from subsidies or donations from the state; and

- They are authorized to carry out their activities by the relevant authority: the Inspector General of Justice for the City of Buenos Aires or the Legal Entities Directorate in the provinces.

A foundation cannot change its objectives unless they become impossible to achieve.

In the City of Buenos Aires the relevant rules for establishing a civil association or a foundation are set forth in Book VIII of General Resolution 7/2005 as amended by General Resolution 6/2007.

Mutual entities, governed by [Law No. 20,321](#), as amended, are membership organizations that satisfy the following criteria:

- Their main purpose is to benefit their members (and the members' immediate families) by providing medical aid, subsidies, loans, insurance, cultural events, education, sporting events, travel, or other activities intended to promote members' material or spiritual well-being;
- They do not seek profit;
- Members pay a periodic membership fee or contribution;
- Eligibility for membership is based on profession, age, gender, or like circumstances, but not on creed, race, or ideology;
- Members cannot be expelled or excluded except for specific reasons;
- The organizations are authorized to carry out their activities by the National Institute of Cooperatives and Social Economy (INAES) and are listed in the national registry of mutual entities;
- They hold annual meetings of members; and
- They pay the INAES 1% of their membership fees.

B. Public Benefit Status

Civil associations and foundations pursue public benefit objectives. Mutual entities do not.

IV. Specific Questions Regarding Federal Law

A. Inurement

Civil associations as such are not subject to any limits on compensation. The rights of the members of a civil association are determined by its founding document, governing document, or a separate agreement.

Under the ITL, however, a civil association established for public purposes is not eligible for tax-exempt status if it distributes, directly or indirectly, its earnings or patrimony among the members at any time [[ITL, article 20\(f\)](#)]. Furthermore, tax-

exempt status is not available to a civil association that compensates members of its management board or surveillance (auditing) committee at a rate exceeding 50% of the annual average of the three highest salaries of the administrative staff [[ITL, article 20](#)]. "Compensation" includes lodging, meals, and other benefits in addition to salaries. This limitation does not cover payments to members of the management or surveillance committee who also perform activities for the association beyond their committee functions [ITIR 1.344/98, article 44].

Foundations must devote the majority of their proceeds to fulfilling their objectives [[Law 19,836, article 22](#)]. Board members cannot be compensated for their services [[Law 19,836, article 20](#)]. Furthermore, any contract between the foundation and its founders or their heirs (except contracts covering their donations to the foundation), as well as any resolution of the board of the foundation that directly or indirectly benefits the founders or their heirs in a manner not foreseen in the bylaws, is invalid unless approved by the administrative controlling entity (i.e., the Inspector General for Buenos Aires or the Legal Entities Directorate in the provinces) [[Law 19,836, article 21](#)].

In order to obtain tax-exempt status, a foundation established for public purposes may not distribute, directly or indirectly, its earnings or patrimony among its founders, directors, or other affiliates at any time [[ITL, article 20\(f\)](#)].

The foundation also cannot compensate its board members or the members of its surveillance committee (if it has one) at a rate exceeding 50% of the annual average of the three highest salaries of administrative staff [[ITL, article 20](#)]. As with associations, "compensation" includes lodging, meals, and other benefits in addition to salaries. This limitation does not cover payments to members of the surveillance committee who also perform additional tasks for the foundation [ITIR 1.344/98, article 44].

Mutual entities must devote all funds to the objectives listed in their statutes [[Law 20,321, article 29](#)].

In order to obtain tax-exempt status, a mutual entity may not compensate the members of its governing body or auditing committee at a rate exceeding 50% of the annual average of the three highest salaries of administrative staff [[ITL, article 20](#), last paragraph]. This limitation does not cover payments to members of either group who also perform additional duties for the mutual entities [ITIR 1.344/98, article 44].

B. Proprietary Interest

In general, a donation cannot be revoked unless the recipient NPO fails to fulfill the donor's conditions on using the donation. A donor, however, may lawfully contribute only the use or usufruct of a given property to the NPO, while retaining the property itself.

For a civil association, founders, members and donors generally cannot retain proprietary rights over contributions once the assets have been registered in the civil association's name [[Civil Code, article 39](#)]. If, however, the association fails to use

the donation, or fails to abide by the donor's conditions on its use, the donor may be able to recover the property [[Civil Code, articles 1848-1857](#)].

With regard to foundations, promises of donations made by founders in a constitutive act are irrevocable once the foundation is declared a juridical person by the competent authority. If the founder dies after signing the constitutive act, the promised donation cannot be nullified by the founder's heirs if the entity has sought authorization to function as a juridical person [[Law 19,836, article 5](#)].

A donor can recover his donation to a foundation if the foundation's main purpose becomes impossible to achieve [[Law 19,836, article 31](#)]. For a donor to recover his donation, however, each of the following three circumstances must exist: (1) the foundation's main purpose becomes impossible to achieve; (2) the terms of the donation expressly establish specific means or methods to be used to fulfill the stated purpose; and (3) those means or methods also become impossible [[Law 19,836, article 31](#)].

For a mutual entity, the pertinent rules derive from the Civil Code, Articles 1777 to 1788. These rules allow a member who retires from the organization, or his heirs if he dies while a member, to receive a proportion of the organization's assets based on the member's contributions and the value of the assets [[Civil Code, article 1788](#)].

C. Dissolution

Pursuant to IGJ Resolution 7/2005, in the event a civil association is dissolved, its remaining assets (after payment of debts) must be transferred to an NPO recognized as a legal entity by the Inspector General for Buenos Aires or the Legal Entities Directorate in the provinces and recognized as a tax-exempt entity by the Federal Tax Authorities (*Administración Federal de Ingresos Públicos* – “AFIP”). If the bylaws do not specify the destination of the assets, then the State will acquire them and the National Congress will decide the purpose for which they will be used [[Civil Code, article 50](#)].

Except in the case of a foreign foundation, the remaining assets of a dissolved foundation must be transferred to a public entity or to an Argentine not-for-profit private entity pursuing the public benefit. The controlling administrative authority (the Inspector General for Buenos Aires or the Legal Entities Directorate in the provinces) must approve the transfer of assets [[Law 19,836, article 30](#)].

The INAES oversees the involuntary dissolution of a mutual entity and the distribution of remaining assets [[Law 20,321, Article 36](#)]. Argentine law does not address the distribution of remaining assets when a mutual entity dissolves voluntarily.

D. Activities

1. General

Civil associations, foundations and mutual entities are, as a rule, legal persons, with the attendant rights and obligations. Tax-exempt status imposes minor limitations on activities on civil associations and foundations.

Mutual entities, unlike civil associations and foundations, are not subject to any additional constraints when they receive tax-exempt status.

2. Economic Activities

The essential aim of a **civil association** or a **foundation** must be to benefit the public without a profit-seeking purpose. However, such an organization may engage in commercial, economic or business activities as a means of supporting its public benefit activities. The profits or assets cannot be distributed to members. The relevant laws do not distinguish between “related” and “unrelated” commercial or economic activities.

Tax-exempt status imposes only minor additional restrictions on economic activities of civil associations and foundations. The ITL regulates gambling games, public shows, horse races and similar activities carried out by civil associations and foundations. In addition, foundations and union associations cannot acquire tax-exempt status if they carry out commercial or industrial activities; this restriction does not apply to other types of associations [[Law 25,239, Article 1, e](#), 1999, which modified ITL, adding a 2nd paragraph to Art. 20, f.] Tax authorities have supported this requirement through rulings that stress the importance of the public benefit as the organization's main purpose.

A **mutual entity** is free to undertake economic activities. Tax-exempt status requires only that the organization devote its income and property to advance the social interests named in its statutes [[Law 20,321, Article 29](#)].

Local experts are not aware of any challenge to an NPO's economic activities on the grounds that its tax exemption confers an unfair advantage over for-profit companies (e.g., a foundation dedicated to feeding children that runs a bakery). For a civil association or foundation, however, the public benefit purpose must remain the focus of its principal activities. If the tax authorities conclude that the organization concentrates principally on commercial activities, the organization may lose its tax-exempt status.

3. Political Activities

Generally, there are no restrictions on the ability of civil associations, foundations, or mutual entities to engage in legislative or political activities. In fact, foundations that

analyze the political and economic situation are often closely linked to political parties. Likewise, there are no restrictions on lobbying activities by NPOs.

E. Discrimination

National educational policy requires effective equality of opportunity for all persons and the rejection of discrimination of any kind [Federal Education Law, 24.195, [articles 5\(f\), 8](#)]. This nondiscrimination policy applies to private schools as well as government ones [[Federal Education Law, 24.195, article 8](#)].

F. Control of Organization

In general, no restriction exists on the control of not-for-profit organizations by other organizations or persons. Therefore, it is possible that a charity may be controlled, perhaps indirectly, by a for-profit entity or by an American grantor charity (which requires that the charity specifically so provide in the affidavit).

V. Tax Laws

Argentina has three levels of government and as such of taxation: the Federal, the Provincial, and the Municipal. At the Federal Level, the main taxes are the income tax, the minimum deemed income tax, the value added tax and the tax on debits and credits. At the Provincial level, the main taxes are the turnover tax, the stamp tax and the tax on real estate. Municipalities normally levy tax on services carried out by the Municipality.

A. Income Tax Exemption

The only income tax law in Argentina is at the Federal level: [Law 20,628 as amended](#), with regulations set forth in ITIR 1,344/98, as amended. The minimum deemed income tax is a tax levied on the assets held by an entity at the end of the tax period, and it is supplementary to the income tax.

As a general rule, an NPO formed in Argentina is deemed to be a taxpayer for income tax purposes on the same basis as a corporation unless the NPO applies for and is granted the status as an exempt entity by the AFIP. The exemption applies to both income tax and the minimum deemed income tax. An NPO without tax-exempt status is liable for tax on grants it receives, regardless of whether the donors are foreign or domestic.

To seek tax-exempt status, an NPO must submit a request to the tax authorities. The procedure is outlined in General Resolution AFIP 2681/2009.

Under the General Resolution 2681/2009, an NPO must file an electronic tax return and deliver certain documentation to the tax authorities within a specified period of

time. Certain types of NPOs will be eligible to apply for the tax exempt certificate using a simplified process. The AFIP publishes a list of entities that are granted the income tax certificate. NPOs whose applications are rejected have an avenue to appeal. Under this rule, NPOs that are exempt under prior rules are automatically eligible for the income tax exemption certificate. However, each case should be reviewed on whether a particular filing must be made.

An income tax certificate will enable an NPO to: (i) demonstrate its exempt status (though an exempt NPO must still file an income tax return); (ii) avoid the withholding of income tax on payments to the exempt NPO; (iii) achieve exempt status for VAT for certain services provided by the exempt NPO, thus avoiding VAT withholding on certain payments; and (iv) achieve a reduced tax burden or exempt status for the tax on debits and credits on bank accounts.

General Resolution (AFIP) 2681 also details the forms and procedures for donations.

If granted, the tax exemption encompasses all income and capital gains (including grants), whether from Argentine or foreign sources. Investment and commercial income is generally excluded from the exemption.

For civil associations and foundations, the organization's charitable purpose must remain paramount. If the tax authorities conclude that the organization concentrates principally on economic activities, the civil association or foundation may lose its tax-exempt status. The only restriction governing mutual entities is that they devote their income and property to pursuing the social aims listed in their statutes [Law 20,321, Articles 2, 4, 6 and 15].

Civil associations and foundations:

To be eligible for a tax exemption, a civil association or a foundation must satisfy the following conditions:

- The civil association or foundation must have a public purpose. Current law provides a non-exhaustive list of qualifying purposes: "welfare, public health, charity, beneficence, education and instruction, science, literature, arts, trade union and those of physical or intellectual culture" [[ITL, article 20\(f\)](#), *ASAOTI, Corte Suprema de Justicia de la Nación*, 3 April 2001 and *Servicios de Transporte Marítimo Argentina-Brasil*, 22 February 2005]. Organizations pursuing other public purposes can also qualify [General Resolution DGI 1432, issued on 12 November 1971]. An otherwise-eligible organization can still qualify for tax-exempt status if it undertakes some activities that do not directly pursue a public purpose, so long as those activities are related to and compatible with its public purposes [General Resolution DGI 1432]. [*Asociación Rosarina de Anestesiología c. Fisco Nacional. Corte Suprema de Justicia de la Nación*, 16 November 2009, limited the application of the exemption, stressing that for the exemption to be granted, there must be a complete lack of economic or for-profit benefits for the associates]
- The civil association or foundation must devote its income and its property to pursuing the purposes of its formation, and in no case can income or property be distributed directly or indirectly to its members, founders, directors, or

other affiliates [[ITL, article 20\(f\)](#)]. In practice, it is required that the by-laws state that in the case of dissolution, remaining property shall be distributed to a tax-exempt NPO.

- The civil association or foundation must not raise funds from gambling games, horse-races, or similar activities [[ITL, article 20\(f\)](#)]. The organization can raise funds from public shows so long as doing so is not inconsistent with its public purposes [*Asociación Pro Ayuda a Niños Atípicos c. Fisco Nacional DGI. Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal, sala II*, 4 July 1995, *Impuestos*, LIII-B, p. 2811; Ruling, (DAL) 74/96, 9 December 1996; *La Scala de San Telmo, Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal, sala II*, 8 July 2005.]
- Under a 1995 amendment, a civil association or foundation is disqualified from tax-exempt status if, during a given tax period, it provided any form of compensation (including lodging, food, and similar expenses) to any members of its surveillance or managing board that exceeded 50% of the annual average of the three highest salaries of administrative staff [[ITL, article 20, last paragraph. Ruling, DAT 19/1997](#)]. For foundations, this provision covers only members of the auditing board, inasmuch as members of the managing board cannot be paid. As applied, the provision limits only the remuneration paid to a board member for board-related activities, and not for other activities, such as serving as general manager of the organization [Ruling (DAT) 89/96, 16 August 1996]. Foundations and union associations are prohibited from carrying out commercial or industry activities if they have tax-free status; the restriction does not apply to other types of associations [[Law 25,239, Article 1, e](#), 1999, which modified ITL, adding a 2nd paragraph to Art. 20, f.]. The scope of this limitation has been further interpreted by the tax authorities in administrative rulings.

Sports and cultural associations have their own exemption (art. 20 m). These associations must be not-for-profit and must not exploit gambling activities and/or activities in which the social function is more important than the sporting or cultural function.

Mutual entities:

Under the Income Tax Law, a mutual entity is eligible for a tax exemption if it meets two criteria:

- It must comply with all laws and regulations governing its formation and operations.
- Like civil associations and foundations, it must not provide any form of compensation (including lodging, food, and similar expenses) to any members of its governing or auditing board that represents more than 50% of the annual average of the three highest salaries of administrative staff [[ITL, article 20, last paragraph](#)]. This limitation does not apply to a board member who also performs additional functions for the organization, such as serving as the general manager [Decree 1,344/98, article 44].

This tax exemption covers the mutual entity's income as well as the benefits it provides its members [[ITL, article 20\(g\)](#)].

Other organizations:

In addition to the above provisions, the [Income Tax Law](#) sets forth conditions for other types of entities to qualify for tax-exempt status, including religious institutions [article 20(e)], international NPOs based in Argentina, and certain foreign NPOs with special recognition from the Argentine government [article 20(r)].

B. Incentives for Philanthropy

Argentina provides limited tax incentives for philanthropy. A taxpayer can deduct qualifying donations up to 5% of the taxable base. Not all tax-exempt NPOs are eligible to receive tax-deductible donations.

Civil associations and foundations:

A donation to a tax-exempt civil association or foundation qualifies for deductibility only if the organization's principal purpose is one of the following [[ITL, article 81\(c\)](#)]:

- Not-for-profit charitable medical assistance, including the care and protection of children, the aged, the handicapped, and the disabled;
- Scientific and technology research certified by the Technology and Science Secretary from the Education and Culture Ministry;
- Scientific research on economic, political, and social matters related to the development of political parties' plans; or
- For educational institutions, (1) systematic schooling leading toward a degree at a school certified by the Education and Culture Ministry, or (2) courses offered without charge that seek to promote cultural values.

Mutual entities:

Mutual entities are not eligible to receive tax-deductible donations.

C. Value Added Tax

Argentina imposes a VAT, with a standard rate of 21% and some items subjected to rates of 10.5% or 27%. In principle, there is no minimum threshold for transactions. If an NPO has taxable services, it must register for VAT purposes or claim tax-exempt status, if applicable.

Foreign grants may be subject to VAT if they consist of movable assets imported through customs. As a rule, sales of movable assets made by an NPO are subject to VAT at the relevant rates. An income tax-exempt NPO enjoys an exemption from VAT on the services it provides, including imported services (i.e., rendered abroad and used in Argentina), insofar as the services directly advance the NPO's specific purposes [VAT Law, article 7, subsection h, paragraph 6]. [1]

D. Other Taxes

Some other tax laws confer special treatment on NPOs. For instance, the minimum deemed income tax law exempts NPOs that are exempt from income tax [article 3 (c) of the Minimum Deemed Income Tax Law, N° 25,063 as amended]. The tax on bank accounts is applicable as a rule at the rate of 0.6% on any debit from or credit to a checking account [Law 25,413, Decr. Reg. 380/2001, Art. 7]. Certain NPOs or the qualifying accounts that they use are exempt (e.g., religious institutions, school cooperatives, accounts used for public funds which are shared by a national entity and an exempt NPO). Other eligible NPOs are subject to a reduced rate of 0.25% for credits and 0.25 % for debits, according to Dec. Reg. 1287/2001 (e.g., NPOs that are both exempt from income tax and not subject to VAT on their supplies). NPOs are also exempt from some local regulations on property tax and turnover tax.

E. Double Tax Treaty

No treaty to avoid double taxation on income is currently in effect between the United States and Argentina.

VI. Knowledgeable Contact

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Footnotes:

[1] The scope of the application of the exemptions granted to certain NPOs has been the subject of some discussion; i.e., if all or part of their supplies are exempt from VAT given that the relevant law may grant an exemption to the NPO itself (e.g. NPOs engaged in education, social assistance and public health, Law 16,656).