

U.S. INTERNATIONAL GRANTMAKING

Country Information

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.

Both civil associations and foundations are public benefit organizations; 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 NPO are eligible for tax benefits in some circumstances.

Three other NPO forms are generally beyond the scope of this Note because they rarely interact with 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 type of 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 generally exempt from VAT as well, with certain exclusions. 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. 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 particular activities. Donations to mutual entities are not deductible.

II. Applicable Laws

- [National Constitution, articles 1, 5, 14, 16, 31, 43, 75 inc. 22, inc. 24, 121.](#)
- [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.
- Donations Proof (related to income tax exemption) - Resolution "AFIP" (Administracion Federal de Ingresos Publicos) 684 of September, 1999, as amended. Donations Requirements (related to income tax exemption) – Tax Director General Resolution (AFIP) 1675 of May 7, 2004.
- General Resolution DGI 1432 of November 18, 1971.
- General Justice Inspection Procedure - City of Buenos Aires Inspector General of Justice (“IGJ”) General Resolution 6/80 of January 22, 1981.
- Foundations: Constitution - IGJ General Resolution 6/00 of December 18, 2000.
- Foundations: Control - IGJ General Resolution 4/93 of March 2, 1993.
- Foundations: Minimum Capital - IGJ General Resolution 3/93 of March 2, 1993.
- Foundations: Re-standardization - IGJ General Resolution 5/93 of March 2, 1993.
- Civil Associations: Re-standardization - IGJ General Resolutions 3/94 of August 1, 1994, and 7/94 of December 15, 1994.
- National Registry of Companies and Other Entities - Decree of the Executive Branch 23/99 of January 20, 1999, as amended.
- National Registry of Stock Companies, Non-stock Companies, Foreign Companies and Civil Associations and Foundations - IGJ General Resolution 4/99 of July 14, 1999.
- National Registry of Exempt Organizations – General Resolution AFIP 1815 of January 12, 2005, 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 consulted in preparing this Note:

Alejandro E. Messineo's "[Country Report: Argentina](#)" (2006)

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 maintained 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 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 maintained 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.

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;
- Argentineans are eligible to join;
- Members cannot be expelled or excluded except for particular reasons;
- The organizations are authorized to carry out their activities by the National Institute of Mutual Action and are listed in the national registry of mutual entities;
- They hold annual meetings of members; and
- They pay the National Institute of Mutual Action either 1% of their membership fees or 20 cents per member, whichever is larger.

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 ruled 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\(f\)](#)]. Further, tax-exempt status is not available to a civil association that compensates members of its management board or surveillance (auditing) committee at a rate of more than 50% of the annual average of the three highest salaries of administrative staff [[ITL, article 20](#)]. "Compensation" here 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 purposes [[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 foundation board 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. And it cannot compensate 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 more than 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, 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 heed the donor's conditions on its use, the donor may be able to recover the property [[Civil Code, articles 1848-1850, 1858](#)].

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, a 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 [[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; (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 come from the Civil Code, Articles 1777 to 1788 bis. 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 bis](#)].

C. Dissolution

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. If the bylaws do not specify the destination of the assets, the State will acquire them and the National Congress will decide the purpose to which they will be dedicated [[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 AFIP, or *Administracion Federal de Ingresos Publicos*, must recognize an entity as eligible for tax-exempt status before the tax authorities will grant such status.

The National Institute of Mutual Action 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 and **foundations** complying with [articles 33 and 45](#) of the [Civil Code](#) are, as a rule, legal persons, with the attendant rights and obligations. Tax-exempt status imposes additional limitations on the activities. [See also Foundations Law, article 1].

Mutual entities complying with [articles 33 and 45 of the Civil Code](#) are, as a rule, legal persons, with the attendant rights and obligations. Mutual entities, unlike civil associations and foundations, are not subject to 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/economic activities.

Tax-exempt status imposes only minor additional restrictions on economic activities of civil associations and foundations. The ITL regulates such matters as gambling games, public shows, horse races and similar activities carried out by civil associations and

foundations. In addition, foundations and union associations cannot achieve tax-free status if they carry out commercial or industry activities; this restriction does not apply to other types of associations. 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 the 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 runs a bakery). For a civil association or foundation, however, the public benefit purpose must remain the focus of its principal activities. If 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

State educational policy requires effective equality of opportunity for all citizens 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 7](#)].

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 (which will lead to additional IRS scrutiny) or by an American grantor charity (which requires that the charity specifically so provide in the affidavit).

V. Tax Laws

A. 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.

As a general rule, an NPO formed in Argentina is deemed to be an income taxpayer on the same basis as a corporation, unless the organization applies for and is granted status as an exempt entity by the AFIP. 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 file an application with the AFIP, attaching the relevant articles of association and other required documents and forms. After analyzing the petition, the tax authorities will grant or deny the exemption. If the exemption is denied, the NPO may appeal. Currently, the procedures for requesting tax-exempt status are laid out in Tax Director General Resolution AFIP 1815, published on January 14, 2005, as amended. Qualifying organizations appear on a Registry of Exempt Entities.

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, however, 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 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 partial 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\(f\)](#)]. 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].
- 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\(f\)](#)].
- 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.]

- 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 board that exceeded 50% of the annual average of the three highest salaries of administrative staff [[ITL, article 20, last paragraph](#)]. (For foundations, this provision covers only members of the auditing board, inasmuch as members of the board of directors 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.

Mutual entities:

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

- It must comply with all laws and regulations governing its formation and operation.
- 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 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)]; sporting associations [article 20(m)]; and international NPOs based in Argentina, as well as 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 of 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 of transactions. If an NPO has taxable supplies, it must register for VAT purposes or claim exempt status, if applicable.

Foreign grants may be subject to VAT if they consist of movable assets imported through customs. A tax-exempt NPO enjoys an exemption from VAT on the services it supplies, 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].

D. Other Taxes

Some other tax laws confer special treatment on NPOs. For instance, the minimum deemed income tax law exempts those NPOs that are exempt from income tax [article 3 (c) of the Minimum Deemed Income Tax Law, N° 25,063 as amended]. 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] Civil entities, mentioned in section 20(f) of the Tax Code and further described in Tax Director General Resolution 1432, can be formed as simple associations. To qualify for tax-exempt status, a simple association established as a civil entity must be capable of having rights and obligations as an entity separate from its members, through a public deed or a private instrument certified by a public notary; and it must prove that its purposes and activities satisfy the other criteria listed here for tax-exempt status [Tax Director General Resolution 1432] .