

# Guatemala

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## I. Summary

### A. Types of Organizations

The Republic of Guatemala recognizes three basic types of not-for-profit organizations (NPOs):

- Civil Associations;
- Foundations; and
- Non-Governmental Organizations for Development (NGOs).

The traditional NPO forms are associations and foundations. Since the enactment of the Law of Non-Governmental Organizations for Development (Development NGO Law) in 2003, NGOs are recognized as a third type of NPO. Under this law, an organization can

be established from the outset as an NGO, or an existing civil association or foundation can attain the status of an NGO.[\[1\]](#)

## B. Tax Laws

Under Guatemala's Income Tax Law, an NPO is eligible for an income tax exemption if it meets the following requirements:

- The organization's aims are related to charity, assistance, aid or social service, culture, scientific research, education or instruction, arts, literature, sports, politics, religion, or activities typical of trade unions or professional associations;
- It is registered as an exempt organization with the tax authority (*Superintendencia de Administración Tributaria* or SAT);
- Its earned income and assets are derived from donations or from fees, and the income and assets are utilized exclusively for the organization's primary aims; and
- The organization does not distribute profits or assets among its members, either directly or indirectly (Income Tax Law, article 6).

In terms of incentives for philanthropy, the Income Tax Law allows individual or corporate donors to take a deduction of up to 5% of net income, or 500,000 Guatemalan Quetzales (GTQ), for contributions to, *inter alia*, not-for-profit associations and foundations undertaking charity (*asistencia*); social services; scientific and cultural activities; as well as universities, churches, religious organizations, and political parties (Income Tax Law, articles 37(d) and 38(s)). To receive tax-deductible donations, an association or foundation must be duly constituted, and it must be registered as a tax-exempt organization with the tax authority (SAT).

Guatemala has a value added tax (VAT) of 12% (VAT Law, article 10). Exemptions include contributions and donations to non-profit associations, foundations, and institutions that serve educational, cultural, social assistance or service, or religious objectives (VAT Law, article 7(9)). Services provided by these organizations are also exempt from the VAT if the organization is authorized by law, pursues not-for-profit objectives, and does not distribute profits or assets to its associates or members (VAT Law, article 7(13)). Membership fees to social, cultural, scientific, educational, sports and professional associations are exempt from VAT, as are fees to trade unions and political parties (VAT Law, article 7(10)).

## II. Applicable Laws

- *Constitución Política de la República de Guatemala* (Political Constitution of the Republic of Guatemala) (1985) [\[Spanish\]](#)
- *Código Civil* (Civil Code) (1963) [\[Spanish\]](#)
- *Ley de Organizaciones no Gubernamentales para el Desarrollo* (Law of Non-Governmental Organizations for Development) (2003) [\[Spanish\]](#)
- *Código Municipal* (Municipal Code) (2002) [\[Spanish\]](#)

- *Ley Electoral y de Partidos Políticos* (Electoral and Political Party Law) (1985) [[Spanish](#)]
- *Ley del Impuesto Sobre la Renta* (Income Tax Law) (1992) [[Spanish](#)]
- *Reglamento de la Ley del Impuesto Sobre la Renta* (Regulation of the Income Tax Law) (2004) [[Spanish](#)]
- *Ley del Impuesto al Valor Agregado* (Value Added Tax Law) (1992) [[Spanish](#)]
- *Reglamento de la Ley del Impuesto al Valor Agregado* (Regulation of the Value Added Tax Law) (1997) [[Spanish](#)]
- *Ley para la Protección del Patrimonio Cultural de la Nación* (Law for the Protection of the National Cultural Heritage) (1997) [[Spanish](#)]
- *Ley de los Consejos de Desarrollo Urbano y Rural* (Law of the Urban and Rural Development Councils) (2002) [[Spanish](#)]
- *Ley del Registro Nacional de las Personas y sus reformas* (Law of National Registry of Persons and its reforms) (2005) [[Spanish](#)]
- *Código de Notariado* (Notary Code) (1946) [[Spanish](#)]
- *Reglamento de Inscripción de Asociaciones Civiles* (Regulation of Registration of Civil Associations) (1998)
- *Acuerdo COM-020-08: El Registro de Asociaciones de Vecinos y Otras Formas de Organización Comunitaria* (Decree Creating the Registry of Neighborhood Associations and Other Forms of Community Associations) (2008)
- *Acuerdo Ministerial* (Ministerial Agreement) No. 84-2009 containing the Procedural Manual for Budgetary Implementation of Agreements with Non-Governmental Organizations and International Organizations (December 29, 2009) [[Spanish](#)]
- *Ley del Presupuesto General de Ingresos y Egresos del Estado para el Ejercicio Fiscal 2011, Decreto No. 54-2010* (General Budget Law on Revenue and Expenditures of the State for Fiscal Year 2011)

## III. Relevant Legal Forms

### A. General Legal Forms

A not-for-profit organization may be registered as a:

- Civil Association;
- Foundation; or
- Non-Governmental Organization for Development (NGO).

The Civil Code recognizes two kinds of not-for-profit organizations: civil associations and foundations.

#### *Civil Associations*

A civil association is a not-for-profit organization that promotes, exercises or protects trade union, political, economic, religious, social, cultural, professional, or other interests. A civil association is constituted through approval and registration of its notarized

governing documents in the Legal Entities Registry of the *Ministerio de Gobernación* (Ministry of Government) (article 102 of the *Decreto número 90-2005 del Congreso de la República, Ley de Registro Nacional de las Personas*). [2]

### ***Foundations***

A foundation is a legal entity formed by public instrument or will with a minimum capital requirement of GTQ 50,000. A foundation may be set up by at least two natural or legal persons. The foundation's articles of incorporation must describe the foundation's assets, the purposes for which the assets are intended, and how the assets are to be administered. (Civil Code, article 20). A foundation is constituted by registering its notarized governing documents in the Legal Entities Registry in the Ministry of Government (article 102 of the *Decreto número 90-2005 del Congreso de la República, Ley de Registro Nacional de las Personas*). [3]

### ***Non-Governmental Organizations***

An NGO is a third form of not-for-profit entity with cultural, educational, or sports objectives; it provides social services, assistance, or charity; and engages in economic and social development (Development NGO Law, article 2). The NGO's goals must include, among others: the promotion or development of policies that are social, economic, cultural, and environmental in nature (Development NGO Law, article 3). Any civil association or foundation may register as an NGO as long as it complies with the Development NGO Law requirements. Also, an organization with seven founders can be constituted from the outset as an NGO. An NGO is constituted through registration of its notarized governing documents in the Legal Entities Registry of the Ministry of Government (article 102 of the *Decreto número 90-2005 del Congreso de la República, Ley de Registro Nacional de las Personas*). [4] Organizations registered under the Development NGO Law may access the government fund created under Article 242 of the Constitution.

When an NGO undertakes activities financed with public funds, it is required to follow the Procedural Manual for Budgetary Implementation of Agreements with Non-Governmental Organizations and International Organizations. The Manual details various guidelines and restrictions regarding the use and management of public funds, including the submission, at least monthly, of updates on the progress of work or activities undertaken and related expenditures. Agreements covered by this decree also should comply with the General Budgetary law on State Income and Discharges. [5]

## **B. Public Benefit Status**

Guatemalan law provides tax exemptions to organizations that pursue public and social objectives as listed in section V (A) below. A sub-class of these organizations also is entitled to receive tax-deductible donations.

# IV. Specific Questions Regarding Local Law

## A. Inurement

### *Civil Associations*

Guatemala's Civil Code does not explicitly prohibit civil associations from distributing profits or assets to their founders or board members. Nor does the Civil Code prohibit self-dealing, or limit income that civil associations may pay to their employees or board members. According to a local expert, however, these prohibitions are usually included in the governing documents of civil associations; otherwise they would not enjoy any tax exemption. To qualify for tax exemption, the Income Tax Law prohibits associations from distributing, directly or indirectly, profits and assets among their members (Income Tax Law, article 6(c)).

### *Foundations*

Guatemala's Civil Code does not explicitly prohibit foundations from distributing profits and assets to their founders or board members. Nor does the Civil Code prohibit self-dealing, or limit income that foundations may pay to their employees or board members. According to a local expert, however, these prohibitions are usually included in the organizational documents of foundations; otherwise they would not enjoy any tax exemption. To qualify for tax exemption, the Income Tax Law prohibits foundations from distributing, directly or indirectly, their profits, benefits or assets among employees, members, founders, and others that make up the organization (Income Tax Law, article 6(c)).

### *Non-Governmental Organizations*

NGOs are expressly prohibited from distributing dividends, utilities, profits, benefits or privileges to their members (Development NGO Law, article 18).

## B. Proprietary Interest

### *Civil Associations*

The Civil Code does not prohibit donors from retaining a proprietary interest in a donation they make to a civil association or from revoking their donation or contribution. Also, the Civil Code does not prohibit donors from placing conditions on their donations.

### *Foundations*

The Civil Code does not prohibit donors from retaining a proprietary interest in a donation they make to a foundation or from revoking their donation or contribution. Also, the Civil Code does not prohibit donors from placing conditions on their donations.

### ***Non-Governmental Organizations***

The Development NGO Law does not expressly prohibit donors from retaining a proprietary interest in a donation they make to an NGO or from revoking their donation or contribution. Also, the Development NGO Law does not prohibit donors from placing conditions on their donations.

## **C. Dissolution**

### ***Civil Associations***

Guatemala's Civil Code states that a civil association can be dissolved by the majority vote of its members according to the grounds established in its governing documents (Civil Code, article 25). Also, a competent court at the request of the *Ministerio Público* (Public Prosecution Office) may dissolve an association if evidence shows that it is perpetrating illegal activities (*Id.*). According to a local expert, the assets must be transferred to an organization with similar objectives upon dissolution, but not necessarily with the same tax status (i.e., a civil association with tax exemption could distribute its assets upon distribution to a civil association that does not possess the benefits – or obligations -- of tax exempt status). If nothing is stated in the governing documents of the association, then its assets would be transferred to the State (Civil Code, articles 26).

### ***Foundations***

A foundation can be dissolved voluntarily according to the procedure established in its governing documents. Also, a competent court may dissolve a foundation if evidence shows that its funds are inadequate to achieve the stated objectives, its objectives are unattainable, or if its goals are excessively onerous. On dissolution, the foundation's resources would be incorporated into a foundation or other institution pursuing a similar objective, but not necessarily with the same tax status, unless the founder has provided otherwise (Civil Code, article 21).

### ***Non-Governmental Organizations***

Once an NGO decides to dissolve or is ordered to do so, one or two liquidators are chosen to pay off the organization's debts and dispose of the remaining assets (Development NGO Law, article 20). Once the organization's debts are paid, all remaining assets are either turned over to the State or transferred to a social assistance entity with similar goals, as determined at the extraordinary general meeting that decided to dissolve the organization (Development NGO Law, article 21).

## **D. Activities**

### **1. General**

Guatemala's Civil Code provides that a civil association must promote, exercise, or protect trade union, political, economic, religious, social, cultural, professional, or other

objectives stated in its governing documents. The Civil Code states that a foundation's organizational documents must specify the purpose for which it is intended, and its form of management (Civil Code, article 20). The Development NGO Law states that NGOs are not-for-profit organizations with cultural, educational, or sports objectives; provide social services, assistance, or charity; and engage in economic and social development (Development NGO Law, article 2). The NGO's goals must include among others promoting develop policies that are social, economic, cultural, and environmental in nature (Development NGO Law, article 3).

## **2. Public Benefit Activities**

All three types of NPOs (associations, foundations, and NGOs) may engage in public benefit activities.

## **3. Economic Activities**

According to a local expert, an NPO should not have the pursuit of economic activities as its primary purpose. An NPO, however, may conduct economic activities to obtain funds for furthering its goals, but without unfair competition to commercial enterprises; otherwise the NPO's fiscal benefits will be canceled.

## **4. Political Activities**

The Civil Code allows civil associations to engage in political activities, though it does not specifically refer to lobbying or influencing legislation (Civil Code, article 15(3)). The Civil Code does not explicitly place limits on foundations with regard to the kinds of political or lobbying activities in which they may engage. The Civil Code is silent on whether civil associations and foundations may use mass media to encourage the public to contact their legislators about proposed legislation. The Development NGO Law is also silent on these issues.

## **E. Discrimination**

Article 4 of the Guatemalan Constitution states:

**“Liberty and equality.** In Guatemala all human beings are free and equal in dignity and rights.... No person can be subject to slavery or servitude or to any other degrading condition of his or her dignity. Human beings should observe a brotherly conduct among them.”

## **F. Control of Organization**

An association or foundation may be controlled, directly or indirectly, by a for-profit entity or by an American grantor charity. Under Guatemala's Development NGO Law,

up to 25% of an organization's members or founders may be foreign, provided they are residents of Guatemala (Development NGO Law, article 7(c)).

## V. Tax Laws

### A. Tax Exemption

Income obtained by an NPO is exempt from income tax if:

- The organization's objectives are related to charity, assistance, aid or social service, culture, scientific research, education or instruction, art, literature, sports, trade unions, politics, professional associations, or religion;
- The organization is registered as an exempt organization with the tax authority (SAT);
- The organization's earned income and assets are derived from donations or from fees, and they are applied exclusively to the organization's primary objectives; and
- The organization's profits and assets are not distributed among members, either directly or indirectly (Income Tax Law, article 6).

### B. Deductibility of Charitable Contributions

The Income Tax Law allows individual or corporate donors to take a deduction of up to 5% of their net income, or GTQ 500,000 for contributions to, *inter alia*, not-for-profit associations and foundations undertaking charity; social services; scientific and cultural activities; as well as universities, churches, religious organizations, and political parties (Income Tax Law, articles 37(d) and 38(s)). To receive tax-deductible donations, an association or foundation must be duly constituted and registered as a tax-exempt organization with the SAT. [\[6\]](#)

### C. Value Added Tax

In Guatemala the base rate for VAT is 12% (VAT Law, article 10). Exemptions include contributions and donations to not-for-profit associations, foundations, and institutions that serve educational, cultural, social assistance or service, or religious objectives (VAT Law, article 7(9)). Services provided by these organizations are also exempt from VAT, provided that the organization is authorized by law, pursues not-for-profit objectives, and does not distribute profits or assets to its associates or members (VAT Law, article 7(13)). Membership dues and fees paid to social, cultural, scientific, educational, and sports associations, as well as political parties and professional associations are exempt from VAT (Value Added Tax Law, Article 7(10)).

## D. Double Tax Treaties

Guatemala and the United States have not entered into a double taxation treaty.

## VI. Knowledgeable Contacts

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### Footnotes

[1] Cooperatives; *patronatos* and committees for recreational, public or social works; religious organizations; neighborhood and indigenous associations regulated by the Municipal Code; and associations regulated by the Protection of the Cultural National Heritage Law are beyond the scope of this Note.

[2] A civil association presents its application for registration to the *Gobernación Departamental* (Departmental Government Office) which submits the application and accompanying governing documents to the Ministry of Government for registration at the Legal Entities Registry. Later, a notarized resolution, which appoints the president of the board of directors and its legal representative, should be submitted to the *Ministerio de Gobernación* for registration at the Legal Entities Registry. Civil associations with political goals must be registered with the *Registro de Ciudadanos* (articles 115 to 117 of the *Ley Electoral y de Partidos Políticos*). In July 2008, the Municipality of Guatemala issued a decree that establishes a Registry of Neighborhood Associations and other forms of Community Organizations (*Acuerdo COM-020-08: El Registro de Asociaciones de Vecinos y Otras Formas de Organización Comunitaria*). As a result, the process by which covered organizations obtain legal personality no longer involves registration with the Legal Entities Registry. Associations covered by the decree include: neighborhood associations, community development organizations, community associations of indigenous populations, and community development councils. Covered organizations must register in the municipality where their governing documents were notarized.

Foreign NPOs may establish a branch in Guatemala to pursue their goals, if their governing documents and goals are not against the Guatemalan laws. The procedure to register foreign NPOs is similar to the procedure for domestic NPOs.

[3] A foundation also presents its application for registration to the *Gobernación Departamental*, which submits the application and accompanying governing documents to the Ministry of Government for registration at the Legal Entities Registry. Later, a notarized resolution appointing the president of the board of directors and its legal representative should also be submitted to the *Ministerio de Gobernación* for registration at the Legal Entities Registry.

[4] Like civil associations, an NGO presents its application for registration to the *Gobernación Departamental*, which submits the application and accompanying governing documents to the Ministry of Government for registration at the Legal Entities Registry.

[5] In November 2010, the Guatemalan Congress passed the government's annual budget for 2011; the law imposes new requirements related to the receipt and management of public funds by civil associations and NGOs as well as other organizations not included in the scope of this Note. These additional requirements include: a time limit for the execution of activities with public funds, i.e., the end of fiscal year 2011, and the registration of agreements in the government's Integrated Accounting System (*Sistema de Contabilidad* or *SICOIN*). Public funds managed by organizations referenced in the law are subject to audit by the state. Details are contained in Guatemala's General Budget Law on Revenue and Expenditures of the State for Fiscal Year 2011 (*Ley del Presupuesto General de Ingresos y Egresos del Estado para el Ejercicio Fiscal 2011*).

[6] NPOs authorized to receive deductible donations are subject to audit by the SAT to ensure compliance with the law and to verify the use of received donations. To obtain a deduction, a donor must take a receipt from the donee (the organization receiving the donation). At the end of the tax year, the donee must present a list of donations received, and prove that the funds were used to further its not-for-profit objective(s). SAT matches donor receipts to donee lists. If the organization does not record the donation, is unable to show that the funds were used appropriately, or the donor does not have a receipt, the donor is not permitted to take the deduction.