

Mexico

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Table of Contents

- I. [Summary](#)
 - A. [Types of Organizations](#)
 - B. [Tax Laws](#)
- II. [Applicable Laws](#)
- III. [Relevant Legal Forms](#)
 - A. [Civil Associations and Societies](#)
 - B. [Private Assistance Institutions](#)
 - C. [Civil Societies](#)
 - D. [Trusts](#)
- IV. [Public Benefit Status](#)
- V. [Specific Questions Regarding Local Law](#)
 - A. [Inurement](#)
 - B. [Proprietary Interest](#)
 - C. [Dissolution](#)
 - D. [Activities](#)
 - E. [Political Activities](#)
 - F. [Racial Discrimination](#)
 - G. [Control of Organizations](#)
- VI. [Tax Laws](#)
 - A. [Tax Exemption](#)
 - 1. [Federal Income Tax](#)
 - 2. [Flat Rate Business Tax \(IETU\)](#)
 - B. [Tax Treatment of Donations](#)
 - 1. [Federal Income Tax](#)
 - 2. [Flat Rate Business Tax \(IETU\)](#)
 - C. [Value Added Tax](#)
 - D. [Import Taxes](#)
 - E. [Double Taxation Treaty](#)
- VII. [Knowledgeable Contact](#)

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 Títulos y Operaciones de Crédito* (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.

II. Applicable Laws

- [Constitution of Mexico](#)
- [Código Civil para el Distrito Federal \(CCDF\)](#)
- [Código Civil de los Estados Unidos Mexicanos](#)
- Código Civil (CC) del Estado de:
 - Aguascalientes
 - [Durango](#)
 - [Nayarit](#)
 - [Sonora](#)
 - [Baja California](#)
 - [Guanajuato](#)
 - [Nuevo Leon](#)
 - [Tabasco](#)
 - [Baja California Sur](#)
 - [Guerrero](#)
 - Oaxaca
 - Tamaulipas
 - Campeche
 - [Puebla](#)
 - Tlaxcala
 - [Chiapas](#)
 - [Jalisco](#)
 - [Querétaro](#)
 - [Veracruz](#)
 - [Chihuahua](#)

- [México](#)
- [Quintana Roo](#)
- [Yucatán](#)
- Coahuila
- [Michoacán](#)
- San Luis Potosí
- Zacatecas
- Colima
- Morelos
- [Sinaloa](#)
- [Hidalgo](#)
- 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 de la Junta de Asistencia Privada del Estado de Chihuahua
- [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) [[Spanish](#)] [[English](#)]
- Ley de Fomento a las Actividades de Desarrollo Social de las Organizaciones Civiles para el Distrito Federal (LFADF)
- [Ley General de Títulos y Operaciones de Crédito \(LGTOC\)](#)
- [Ley de Fomento a las Actividades de Bienestar y Desarrollo Social para el Estado de Baja California](#)
- [Ley de Fomento a las Actividades de las Organizaciones Civiles del Estado de Morelos](#)
- [Ley de Fomento a las Actividades de las Organizaciones Civiles del Estado de Tamaulipas](#)
- [Ley de Fomento a las Actividades de Desarrollo Social de las Organizaciones Civiles para el Estado de Veracruz-Llave](#)
- [Ley que Regula el Otorgamiento de Recursos Publicos a las Organizaciones Sociales del Estado de Tlaxcala](#)
- [Ley de Fomento a las Actividades Realizadas por la Organizaciones de la Sociedad Civil en el Estado de Zacatecas y sus Municipios](#)
- Reglamento de la Ley del Impuesto Sobre la Renta (RLISR) [Spanish]
- 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 \(Issue 48, August 1998\)](#)
- 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." [See, for example, 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]

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]

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] Natural or legal persons may form an IAP. [See LIAPDF §8] An IAP can be set up as a foundation or an association.

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 §2, IX]

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]

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-á-vis third parties. [See See CC DF §2691] At least two people are needed to form a civil society. [See, e.g., CC DF §2688 (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 for 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 §§ 381]

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, psychological, education and training for employment, prevention and attention in disasters, intra-family violence, legal, disasters, and funeral assistance, those working with refugees and migrants, and on gender equity issues); engage in education certified pursuant to the General Education Act; scientific or technological research; environmental protection; 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.

Authorized donee status must be renewed every year and may be revoked by the Tax Administration Service (*Servicio de Administración Tributaria*, SAT). Also, pursuant to fiscal reform that entered into effect in 2008, an authorized donee must inform the tax authorities about any transactions with related parties, and about services provided and goods acquired from the organization's donors. [See LISR §97(VII)] Likewise, an authorized donee is subject to transparency rules drafted by the SAT.

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 the 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, and registration is 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), the activities that an organization undertakes must be designed to accomplish the goals for which the organization was 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] 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 LIAPDF § 45 XIII] 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 §103(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]

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 §381-407] 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 transfer their assets to other organizations eligible to receive tax-deductible donations. [LISR §97; LISR §98(III); LISR §96] Government entities are also eligible to receive tax-deductible donations for this purpose. Organizations must address these issues in irrevocable bylaws.

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 addresses 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 §6] 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 §6]

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; 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 CC DF § 7906]

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 unilaterally use the assets to create a new IAP. [See, e.g., LIAPDF §39] 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 §39]

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

When 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 §2728] After the society has paid its debts, the members will be reimbursed the contributions they made.

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 trustee or beneficiaries, unless agreement otherwise. [LGOTC §393]

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 for 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 prohibited by law and is not predominantly economic in character. [See CC DF §2670]

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 LIAPDF §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]

Trusts without Authorized Donee Status and Not Registered under the Promotion Law. A trust may be established to carry out any lawful purpose. [LGTOC § 381] 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, psychological, prevention and attention in disasters, intra-family violence, legal, disasters, 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. Examples of acceptable activities include assistance, protection of persons in need, and the incorporation of marginalized persons into productive life. Temporary IAPs may be formed to provide aid after a natural disaster, war, or economic hardship. [See, for example, LIAPDF § 2 IX]

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] However, a new provision in the tax law effective as of May 2010 permits organizations with authorized donee status to engage in "unrelated business activities." [LISR §93] In 2012 authorized donees will pay taxes for "unrelated business activities" if they exceed 10% of the organization's income.

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 §45, 60, 61, 62, 63] 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 must not discriminate when 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.

VI. Tax Laws

In September 2007, the Mexican Congress approved new tax legislation that entered into effect in 2008 ("2008 Tax Reform"). This legislation modifies the Federal Income Tax and creates a new minimum business tax called the Flat Rate Business Tax. Both the Federal Income Tax and the Flat Rate Business Tax impact NPOs and are discussed below.

A. Tax Exemption

1. Federal Income Tax

The following organizations are exempt from Income Tax pursuant to Section 95 of the Federal Income Tax Law of Mexico [*Ley del Impuesto sobre la Renta*(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, preserve national treasures, promote education certified under the General Education Act, engage in scientific or technological research with accompanying registration in the National Registry of Scientific and Technological Institutions, or engage in the promotion and defense of human rights.

Effective May 2010, a new provision of the LISR permits organizations with authorized donee status to perform "unrelated business activities." [LISR §93] However, beginning in 2012, if the income from unrelated business activities exceeds 10% of the organization's total annual income, it is subject to income tax. Donations, membership fees, and bank interest, as well as income from the disposition of property or from the lease of real property, are not considered to constitute business activities and are therefore tax exempt.

The general rate for income tax is 28%. [LISR §10]

2. Flat Rate Business Tax

In 2007, Mexico created a new Flat Rate Business Tax (*Impuesto Empresarial a Tasa Única*, hereinafter "IETU"). IETU, which replaces the asset tax, is a tax imposed on corporate and individual taxpayers on the sale of goods, the rendering of services, and the rental of property. IETU is calculated by subtracting certain deductions, including charitable donations to authorized donees.

The income of certain not-for-profit organizations is exempt from IETU. Article 4(III) establishes that authorized donees' income is exempt from IETU. Also, Article 4(II) of the Law IETU (LIETU) lists the following entities' income as exempt from IETU (provided that the income also is considered as exempt under the LISR): political parties; political associations, and political coalitions; unions and their umbrella organizations; organizations (AC and SC) pursuing scientific, political, religious, and cultural goals (except for those organizations providing services with sport facilities, when the value of these facilities exceeds 25% of the total value of the facilities); chambers of commerce and professional associations, including their umbrella organizations; cooperatives; and the income from the sale of goods and the provision of services by authorized donees, if that income is applied to their social goals.

B. Tax Treatment of Donations

1. Federal Income Tax

Legal persons based in Mexico making donations to organizations with authorized donee status can deduct up to 7% of the *utilidad fiscal* (taxable income) paid in the prior fiscal year. [See LISR §31(I)] On May 27, 2008, the SAT published new administrative guidelines that explicitly identify those organizations that meet the requirements for authorized donees under Mexican Tax Law. Also, eligibility for authorized donee status was extended to more classes of organizations, including those promoting civic activism, those working with refugees and migrants, and those working on gender equity issues. Donations to other organizations that do not have authorized donee status are not deductible. [3]

2. Flat Rate Business Tax

IETU includes deductions for donations to organizations with authorized donee status with the same limit of 7% of the *utilidad fiscal* (taxable income) as set forth in the Mexican Federal Income Tax Law. [See LIETU § 5(VIII)]

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. [*Ley del Impuesto al Valor Agregado*(LIVA), §1] The standard rate for the tax is 16%. 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 to organizations with authorized donee status as authorized by the *Secretaría de Hacienda y Crédito Público*. [LIVA §25(IV)]

D. Import Taxes

Organizations with authorized donee status that receive goods donated from abroad may apply for import tax exemption.

An organization may structure these donations in one of two ways. It may directly import the goods by retaining the services of a professional customs agency to handle procedures involved in the import. Alternatively, an organization may arrange to have Mexican fiscal authorities act as intermediaries and facilitate the acquisition of relevant permits before other ministries such as the Ministry of Health (*Secretaría de Salud*), and the Ministry of Economy (*Secretaría de Economía*) among others. The goods, which are received by the fiscal authorities, ultimately are transferred to the organization.

The following types of exempt in-kind donations may be of particular relevance to NGOs: ambulances and mobile clinics, school buses and computers for educational institutions, fire engines, garbage trucks, medical equipment and laboratory instruments, wheel chairs, and orthopedic equipment.

E. 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.

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 grantmaker may treat a Mexican charity, determined by the government of Mexico to be an Article 97 charity as equivalent to a section 501(C)(3) organization, as well as 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.

[3] Qualifying organizations [See LISR Article 95, paragraphs VI and XII] that lose authorized donee status are allowed to transfer their donations to another authorized donee without the 7% deductibility limit of taxable income, during the fiscal year in which the authorization was revoked or not renewed. [See LISR § 97] Private Assistance Institutions are not allowed to transfer donations after losing authorized donee status.