

# U.S. INTERNATIONAL GRANTMAKING

## Country Information

---

### Peru

Current as of January 2009

#### Table of Contents

- I. [Summary](#)
  - A. [Types of Organizations](#)
  - B. [Tax Laws](#)
- II. [Applicable Laws](#)
- III. [Relevant Legal Forms](#)
  - A. [General Legal Forms](#)
  - B. [Public Benefit Status](#)
- IV. [Specific Questions Regarding Local Law](#)
  - A. [Inurement](#)
  - B. [Proprietary Interest](#)
  - C. [Dissolution](#)
  - D. [Activities](#)
  - E. [Political Activities](#)
  - F. [Discrimination](#)
  - G. [Control of Organization](#)
- V. [Tax Laws](#)
  - A. [Tax Exemptions](#)
  - B. [Tax Deductions for Charitable Contributions](#)
  - C. [General Sales Tax](#)
  - D. [Import Duties](#)
  - E. [Double Tax Treaty](#)
- VI. [Knowledgeable Contacts](#)

## I. Summary

### A. Types of Organizations

Peru recognizes three primary forms for not-for-profit organizations (NPOs):

- associations;
- foundations; and

- committees.

In Peru, the non-governmental organization or NGO is not a separate legal form but a special designation given to those NPOs that engage in “international technical cooperation” activities, as discussed below. NGOs are monitored by Peru’s Agency for International Cooperation or APCI.

Other types of not-for-profit organizations, including religious organizations, political parties, unions, and cooperatives are beyond the scope of this Note given their limited interaction with US grantmakers.

## **B. Tax Laws**

In Peru there is no broad income tax exemption for not-for-profit organizations; instead, exemptions are based on whether the organization: pursues specific purposes established by law; incorporates non-distribution constraints and dissolution provisions in its governing documents that comply with the relevant provisions of the tax laws; and has received an official determination on exemption by Peru’s Tax Administration (the *Superintendencia Nacional de Administracion Tributaria* or SUNAT). Associations and foundations are eligible for exemptions granted under the tax laws; committees are not.

Peru’s tax laws do not provide extensive tax benefits to donors. Donations to associations and foundations that pursue specific purposes can be deductible if several conditions – detailed in Section V below – are met.

Peru subjects the sale of most goods and services to a General Sales Tax. The current tax rate is 19%.

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

## **II. Applicable Laws**

The laws and regulations in this section first are identified by a summary header in English. We have then included a detailed description in Spanish of the law or regulation and its legislative history. This background information may be useful for readers who wish to locate the text of a particular document and/or understand the ongoing development of a particular piece of Peru's legislative framework as it relates to NGOs.

For the convenience of our readers, we have included links to various laws and regulations included in this section. The materials are currently available in Spanish, and work is underway to translate key articles into English.

- Political Constitution of Peru 1993. (Constitución Política del Perú de 1993). Aprobada por el Congreso Constituyente Democrático y ratificada mediante referéndum del 31 de octubre de 1993, promulgada el 29 de diciembre de 1993 (fecha de entrada en vigencia).
- Civil Code of 1984. Promulgado mediante Decreto Legislativo N° 295 de fecha 24 de julio de 1984, en vigencia a partir del 14 de noviembre de 1984. Libro I: Derecho de las Personas, Sección Segunda: Personas Jurídicas. Artículos 76 al 139.
- Law of International Technical Cooperation. Decreto Legislativo N° 719, publicado el 10 de noviembre de 1991, en vigencia a partir del 11 de noviembre de 1991 y su Reglamento, el Decreto Supremo N° 015-92-PCM publicado el 30 de enero de 1992.
- Law on the Creation of the Peruvian Agency for International Cooperation. Ley N° 27692, publicado con fecha 12 de abril del 2002. Entre sus normas modificatorias, cabe destacar la Ley N° 28925, publicada con fecha 08 de diciembre del 2006.
- Income Tax Law. Texto Unico Ordenado de la Ley del Impuesto a la Renta aprobado mediante Decreto Supremo N° 179-2004-EF, publicado con fecha 08 de diciembre del 2004 y normas modificatorias (Artículos 18, 19, y 37 inciso “x”, éste último incorporado por la Ley N° 27804, en vigencia a partir del 01 de enero del 2003)) y su Reglamento aprobado mediante Decreto Supremo N° 122-94-EF, promulgado el 19 de setiembre de 1994 y vigente a partir del ejercicio gravable 1994 (Artículos 8, 21; los cuales fueron modificados mediante Decreto Supremo N° 219-2007-EF, publicado el 31 de diciembre del 2007 y en vigencia a partir del 1 de enero del 2008).
- General Sales Tax Law. Texto Unico Ordenado de la Ley del Impuesto General a las Ventas e Impuesto Selectivo al Consumo aprobado por Decreto Supremo N° 055-99-EF y normas modificatorias, publicado el 15 de abril de 1999 y en vigencia desde el 16 de abril de 1999 (Artículos 2 y 9). Reglamento aprobado mediante Decreto Supremo N° 29-94-EF, publicado el 29 de marzo de 1994 y vigente a partir del 30 de marzo de 1994; mediante Decreto Supremo N° 136-96-EF, publicado el 31 de diciembre de 1996 y vigente a partir del 01 de enero de 1997, se sustituyó el Título I del Reglamento de la Ley del Impuesto General a las Ventas e Impuesto Selectivo al Consumo, el cual, a su vez, ha tenido modificaciones parciales
- Refund of General Sales Tax and Municipal Promotion Tax. Decreto Legislativo N° 783, que trata las adquisiciones con donaciones del exterior e importaciones de las misiones diplomáticas y organismos internacionales, publicado con fecha 31 de diciembre de 1993 y en vigencia a partir del 10 de abril de 1994. Reglamento aprobado por Decreto Supremo N° 36-94-EF, publicado con fecha 10 de abril de 1994.
- Law on Facilitation of the Dispatch of Goods Donated from Overseas. Ley N° 28905, publicada con fecha 24 de noviembre del 2006 y en vigencia a partir del 09 de febrero del 2008; y su Reglamento aprobado mediante Decreto Supremo N° 021-2008-EF, publicado el 08 de febrero del 2008.

- Regulation on the Inapplicability of VAT/GST and Excise Tax to Donations. Decreto Supremo N° 096-2007-EF, publicado el 12 de julio del 2007 y el cual entró en vigencia el 09 de febrero del 2008 (su entrada en vigencia se estableció a partir que, a su vez, entrara en vigencia la Ley N° 28905 sobre facilitación del despacho de mercancías donadas provenientes del exterior).

## III. Relevant Legal Forms

### A. General Legal Forms

Peru's Constitution expressly establishes as fundamental – for both natural and legal persons - the right to associate freely and “to form associations and establish foundations and various forms of legal organizations for nonprofit purposes with no previous authorization and in accordance with the law. Such organizations may not be dissolved by an administrative resolution.” [Article 2 (13)]

The Civil Code of 1984 regulates not-for-profit organizations (NPOs) with legal personality. There are three common forms of organizations in Peru: the association; the foundation; and the committee.

A non-governmental organization or NGO is a not-for-profit organization (i.e., an association, foundation, or committee) that receives a special designation as an NGO because it engages in “international technical cooperation” activities. (See more below.)

#### ***Association***

An association (or "civil association") is defined by the Civil Code as an “organization of natural persons or legal entities, or of both, that pursues a not-for-profit purpose through a common activity.” [Civil Code, Article 80] An association in Peru may pursue any common activity so long as its ultimate purpose is not-for-profit in nature; it is not limited to the pursuit of “social interest” or “public benefit” purposes.

#### ***Foundation***

A foundation in Peru is defined as “a not-for-profit organization created through the endowment of one or more assets for engaging in religious, aid-based, cultural, or social interest purposes.” [Civil Code, Article 99] A foundation must pursue a social interest purpose and, as such, organizations that wish to pursue “private,” “individual,” or “family” interests cannot legally form as foundations under the Civil Code.

Foundations are not common in Peru given the various constraints imposed on their operation. Founders have only limited power over a foundation's operation; for example, they can participate as a foundation's administrators but have little to no decision-making power. The Foundation Oversight Council (*Consejo de Supervigilancia de Fundaciones*), an agency of the Peruvian government, closely controls and monitors

Peruvian foundations; the Council, for example, has the authority to approve the disposition and taxation of certain foundation assets.

### ***Committee***

A committee is a not-for-profit organization with a specific and temporary purpose. It is defined by the Civil Code as “an organization of natural persons or legal entities, or of both, dedicated to public fundraising for an altruistic end.” [Civil Code, Article 111] A committee could form legally, for example, to raise funds to assist victims of an earthquake.

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

In Peru, the non-governmental organization or NGO is not a separate legal form but a special designation given to those NPOs that have as their objective “the pursuit of development activities that involve international technical cooperation in one or more of the categories indicated in the regulation.” [Law of International Technical Cooperation Regulation, Article 73] Peru’s Agency for International Cooperation or APCI maintains a registry of these organizations. [1]

An NGO can form as any of the three types of organizations discussed above.

## **B. Public Benefit Status**

As noted above, associations in Peru are free to pursue any lawful mutual or public benefit purpose. Foundations, on the other hand, must pursue religious, aid-based, or cultural objectives, or other objectives of social interest. The Civil Code does not define the term “social interest.” A committee must have as its exclusive aim the public collection of funds that will be dedicated to an altruistic objective. The Civil Code does not define “altruistic objective.”

# **IV. Specific Questions Regarding Local Law**

## **A. Inurement**

The Civil Code does not expressly speak to the issue of private inurement. Local experts opine, however, that an NPO’s exclusive pursuit of a not-for-profit purpose(s) necessarily precludes the distribution, by any legal means, of profits, income, and in general, property of an NPO to its members or associates. In other words, these experts assert that

the totality of an NPO's income and goods must be directed to the achievement of its stated purpose(s) and not to its members, associates, or founders.

For an NPO to enjoy applicable income tax exemptions, it must state specifically in its governing documents that it will dedicate income to its specific purpose(s), within Peru, and must not distribute, directly or indirectly, income to its members or associates.

There are no specific legal limits on the remuneration or payment of other compensation to an NPO's members, administrators, or employees. As such, local law has been interpreted to allow for remuneration or compensation of an association or committee's members or directors or a foundation's administrators so long as that remuneration or compensation is not an indirect means of distributing an NPO's patrimony. [2]

## **B. Proprietary Interest**

As a general rule, the income and property of an NPO must be dedicated to the achievement of the NPO's stated purpose(s).

### ***Association***

The Civil Code expressly states that former members, excluded members, and descendants of deceased members cannot request reimbursement of any dues already paid to the association.

### ***Foundation***

Once a foundation has taken the steps necessary to form and register, the act is irrevocable. A foundation's founders can act as its administrators but cannot make decisions concerning the disposition or distribution of a foundation's patrimony.

### ***Committee***

Members of a committee's governing body are jointly and severally responsible for the conservation and proper application of resources raised to support the committee's stated objective. [Civil Code, Article 118]

### ***Civil Code Provision on Contracts***

Peru's Civil Code affords contractual protections to donors who opt to retain a reversionary interest in a donation made to an NPO. [Civil Code, Article 1631] It is possible, therefore, to condition the return of a donation to the donor in situations where the donee fails to fulfill obligations for which it bears responsibility in any agreement with the donor.

## **C. Dissolution**

### ***Association***

An association can voluntarily dissolve when it can no longer function in accordance with its governing documents or if, at any time, its General Assembly decides to do so. (The decision must be made in accordance with the minimum quorum requirements established either by law or in the association's governing documents.) The association first must pay its creditors; any remaining balance is distributed to those persons or institutions designated in its governing documents (but never to its members). In situations where the association does not designate a recipient(s) of remaining assets, the relevant Superior Court orders the distribution of assets to further similar purposes in the interest of the community. Preference is given to the province where the association had its seat. [Civil Code, Article 98]

### ***Foundation***

A foundation cannot voluntarily dissolve since its founders do not participate in the "institutional life" of the foundation. As such, a foundation can only be dissolved by judicial order. The Foundation Oversight Council can request the dissolution of a foundation whose objective becomes impossible to achieve. Any remaining assets are dedicated to the purpose outlined in the foundation's constitutive act. When this is not possible, assets are channeled to a foundation(s) with similar purposes or thereafter to the public benefit for works of a similar purpose in the location where the foundation had its seat. [Civil Code, Article 110]

### ***Committee***

When a committee completes its stated purpose, or has not completed that purpose within the timeframe proposed, its governing body initiates the committee's dissolution and the liquidation of its assets and presents the Public Ministry with a final accounting.

Both associations and committees can be dissolved by judicial request of the Public Ministry in situations where an organization's activities or purposes are, or become, contrary to public order or good custom. Under Peruvian law, no NPO can be dissolved by administrative resolution. [Political Constitution of Peru, Article 2, Section 13]

### ***NPOs with Tax Benefits***

It bears mention that to accede to the exemption benefits afforded under Peru's income tax law, associations and foundations must state specifically in their governing documents that the patrimony of an organization must, in the case of dissolution, be directed to the pursuit (in Peru) of any of the purposes listed in the income tax law. (See Section V below.)

## **D. Activities**

### **1. General**

Associations in Peru generally can engage in any lawful, not-for-profit activity. A foundation must pursue a “social interest” purpose. NPOs with legal personality are bound by the “principle of specialization or *especialidad*,” in other words, an NPO is limited to undertaking those purposes specified in its documents of incorporation. This limitation notwithstanding, like any other legal person, an NPO can engage in any activities that contribute to or arise, directly or indirectly, from the purposes included in its governing documents.

## **2. Public Benefit Activities**

The Civil Code mandates that a foundation pursue religious, aid-based, cultural, or other “social interest” purposes.

A committee is limited to the public collection of support destined to an altruistic end.

Foundations and associations that want to accede to the exemption benefits afforded under Peru’s income tax law must pursue - as an exclusive social purpose - one or more of the following purposes:

- a. charity;
- b. social assistance;
- c. education;
- d. culture;
- e. science;
- f. art;
- g. literature;
- h. athletics;
- i. politics;
- j. unions/trade-unions; and/or
- k. housing

For additional information and obligations related to the accession to tax benefits, see Section V below.

## **3. Economic Activities**

The law in Peru does not expressly define or limit the “economic” or “commercial” activities that an NPO may undertake; it can engage in economic activities, including as part of its principal mission or social purpose, so long as its aim is not-for-profit. An NPO can pursue all activities, economic in nature or not, that arise directly or indirectly from its social purpose. [3]

Though the law does not speak specifically to the issue of economic activities, Peru’s Registration Tribunal [4] has opined that “What defines an association is not the common activity that the members engage in – which could be any activity – but rather the

purpose for which it undertakes that common activity, which necessarily must be not-for-profit...”

The income or returns stemming from these activities must be dedicated to the achievement of the NPO’s social purpose or contribute to its sustainability in an effort to guarantee its continued existence.

There currently is no express mention of treatment of an NPO’s economic activities in Peru’s income tax law.

## **E. Political Activities**

There are no express norms that regulate or limit an NPO’s participation in political activities or in lobbying efforts designed to influence the development of new laws or the modification or derogation of existing laws. NPOs may support, assist, and campaign on behalf of political parties and candidates.

Generally, an NPO will include any limitations on the participation in political campaigns in its governing documents.

## **F. Discrimination**

The Political Constitution of Peru recognizes as fundamental the right of every individual to equality before the law, stating that “no one may be discriminated against because of his origin, race, sex, language, religion, opinion, economic status, or any other reason.” [Article 2 (2)]

Peru’s General Education Law establishes as key educational principles the following: 1. equality; 2. inclusion; 3. democracy; and 4. respect for the inter-cultural diversity of Peru.

According to local experts, these provisions prohibit racial discrimination in education in any form.

## **G. Control of Organization**

In general, no restriction exists on the control of not-for-profit organizations by other organizations or persons, foreign or domestic. Control of an association is exercised by the association’s General Assembly of Members. Any organization, foreign or domestic, for- or not-for-profit, can participate as an association member or director, or occupy any other management role. The administration of a foundation is the responsibility of the foundation’s administrators. An entity with legal personality, foreign or domestic, for- or not-for-profit, may act as a foundation administrator, notwithstanding the supervision and control of the State as exercised by the Foundation Oversight Council.

# V. Tax Laws

## A. Tax Exemptions

Exemptions are based on an association or foundation's exclusive pursuit of purposes included in a list established by law. [5] These purposes are:

- Charity;
- Social assistance;
- Education;
- Cultural;
- Science;
- Art;
- Literature;
- Athletics;
- Politics;
- Unions/trade-unions;
- Housing. [Income Tax Law, Article 19(b)]

In addition, foundations that pursue the following purposes – and so state in their governing documents – do not pay income tax:

- Culture;
- Advanced research;
- Charity;
- Medical or social;
- Social benefits for company employees. [Income Tax Law, Article 18 (c)]

If an association or foundation pursues purposes included in the respective articles but also others not incorporated in those articles, the SUNAT will deny an application for exemption for failure to meet the “exclusivity” requirement. As a result, the totality of an association or foundation's income will be subject to taxation. [Tax Court Ruling RTF 3237-3-2003]

Peru's Tax Administration (*Superintendencia Nacional de Administracion Tributaria* or SUNAT) makes a determination on exemption eligibility at the time an association or foundation requests registration in the relevant administrative registry. The SUNAT maintains a registry of organizations that have qualified for income tax exemption. It is the SUNAT determination that confers exemption rights and not the listing in the registry.

The income subject to exemption must: be dedicated specifically to these specific purposes within Peru; must not be distributed, either directly or indirectly, between members/associates; and the organization's governing documents must state that in the event of dissolution, assets must be directed to any of the purposes included in this article. [Income Tax Law, Article 19(b)] [6] The source of the organization's income for purposes of determining exemption is irrelevant. As such, there is no specific mention of the tax treatment of income derived from economic activities in the tax laws.

Exemptions granted under Article 19(b) are temporary, though in practice, these exemptions have been renewed repeatedly. In fact, on December 31, 2008 current exemptions were extended by way of Law No. 29308 until December 31, 2011.

Those associations and foundations that do not qualify for exemption are taxed in the "third category" (corporate tax) rate which currently is 30% of net income.

## **B. Tax Deductions for Charitable Contributions**

In 2003, the income tax law was revised to incorporate limited deductions for donations to a select universe of NPOs. Eligible NPOs must pursue one of the following purposes: charity; social assistance or well-being; education; culture; science; art; literature; athletics; health; indigenous cultural and/or historical patrimony; and other "similar objectives." [Law 27804 (modifying the Income Tax Law), Article 37(x)] They also must be certified by Peru's Ministry of Economy and Finance as eligible to receive tax deductible donations. [7] On December 31 2008, the government published Ministerial Resolution (*Resolución Ministerial*) N° 767-2008-EF/15, which requires NPOs to provide additional documentation to the government in connection with their application for certification Peru's Ministry of Economy and Finance as eligible to receive tax deductible donations.

Covered donors include those taxpayers that: are subject to the payment of taxes under the income tax law; have formed in Peru (with the exception of those eligible for tax exemption); and are registered with the SUNAT donors' registry. [8] Donations made to organizations pursuing the aforementioned purposes are considered third category ("corporate") income-tax-deductible expenses. A donor's deduction is capped at 10% of net income at the third category ("corporate") tax rate.

## **C. General Sales Tax**

Peru subjects the sale of most goods and services to a General Sales Tax (GST). There is no general exemption for NPOs in Peru. The current tax rate is 19%. Those legal persons that do not engage in economic activities are subject to the tax when: 1) they import covered goods, whether habitually or not; and 2) habitually engage in operations contemplated under the purview of the GST. The provision of services is considered "habitual" when they resemble those provided commercially; for example, an

association's provision of consulting services or technical assistance as a means of ensuring its self-sustainability. The following activities are not subject to the GST:

The non-habitual transfer of used goods by natural or legal persons that do not engage in commercial activity [GST Law, Article 2(b)];

The transfer or importation of goods and the provision of services to public or private educational institutions for the pursuit of their objectives [GST Law, Article 2(g)];

The transfer or importation of goods and the provision of services linked to their objectives by cultural or athletic institutions (covered by Articles 18(c) and 19(b) of the income tax law) and that have been qualified by the National Institute of Culture or the Peruvian Athletic Institute.

An NPO can recoup GST paid in connection with the purchase of goods and services in Peru when they are paid for with overseas financing and/or non-reimbursable international technical cooperation funds. Eligible organizations must be registered with the APCI and must be registered with the SUNAT as exempt organizations for income tax purposes.

## **D. Import Duties**

Generally, imported goods are subject to import duties and the GST. In 2006, however, Peru enacted a law designed to facilitate the customs procedures for donated merchandise imported from overseas as part of international technical cooperation. Donated merchandise imported from overseas for assistance purposes and brought in with a "Professional Humanitarian Mission" is not subject to customs duties. [9]

## **E. Double Tax Treaty**

Peru and the United States have not entered into a double tax treaty.

# **VI. Knowledgeable Contact**

Maria Beatriz Parodi Luna  
Attorney  
Lima, Peru  
[beatrizparodi@yahoo.com](mailto:beatrizparodi@yahoo.com)

[1] The APCI also maintains several other registries of NPOs operating in Peru, including a registry of foreign organizations and institutions operating in Peru and undertaking international technical cooperation activities (ENIEX).

In December 2006, Peru passed a law that modified the international technical cooperation (ITC) framework. The modifications were designed to: augment the functions and control that APCI exercises over NGOs undertaking ITC activities in Peru; broaden the universe of organizations subject to APCI oversight; and establish an infractions and sanctions regime applicable to these organizations. Prior to the enactment of 2006 law, the registration requirement generally was interpreted to apply only to NGOs that channeled ITC through state actors and those NGOs wishing to acquire certain tax benefits. The new law, however, expanded the universe of organizations to be included in the APCI registry to include: organizations that manage ITC without the participation of the state but who benefit from a privilege, tax benefit or exemption, use state resources, or when the cooperating entity is a bilateral or multilateral entity of which Peru is a member. Responding to a constitutional challenge to the law, Peru's Constitutional Tribunal opined that registration in the APCI registries is not obligatory for those organizations who do not wish to accede to applicable tax benefits.

[2] Peruvian law also expressly prohibits a foundation's administrators and their relatives (up to the fourth degree) from entering into contracts with their foundation without the express authorization of the Foundation Oversight Council.

[3] In practice, those NPOs that engage in economic activities in Peru typically are associations given the breadth of possible and pursuable objectives.

[4] The tribunal is an administrative arm (of second instance) of Peru's Public Registry. Organizations seeking legal personality register with one of several different registries (for associations, foundations, committees).

[5] Committees are not eligible for exemption benefits.

[6] This article has been the subject of frequent revision. The current iteration came into effect on January 1, 2007 and will remain in effect until December 31, 2008.

[7] Only those organizations that are registered in the SUNAT's registry of tax exempt organizations under the income tax law are eligible to receive tax deductible donations.

[8] Additionally, donors and donation recipients must present donation-related information to SUNAT. For example, donors must inform SUNAT of the donations they make and recipients must inform SUNAT of the application of funds and goods received (backed by payment receipts). Donation recipients also must provide receipts for donations received, identify the donor, and assign a value to the donated goods.

[9] Law 28905's regulations establish the procedure for acceding to this exemption.