

# Venezuela

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## I. Summary

### A. Types of Organizations

Venezuela is a civil law country with two traditional forms of nongovernmental, not-for-profit organizations (NPOs):

- Civil Associations and
- Foundations.

Other not-for-profit legal forms, such as religious congregations and political parties, are outside the scope of this Note due to their limited interaction with foreign grantmakers. The Note also excludes cooperatives and community councils. [\[1\]](#)

## B. Tax Laws

NPOs receive significant incentives and fiscal benefits in Venezuela. Foundations and associations may qualify for exemption from paying income tax under Article 14(3) and (10) of the Law on Income Tax (LISR). The LISR and its regulations set forth the requirements for qualifying and registering for the exemption, which is granted by the Tax Administration. Certain foundations and associations are also eligible for exemption from paying taxes on inheritance and donations.

Corporations and individuals may deduct certain contributions to foundations and associations pursuing publicly beneficial purposes.

Although associations and foundations are not exempt from VAT *per se*, some services and transfers of certain goods are exempt.

## II. Applicable Laws

- Constitution (1999)
- Código Civil (CC) (Civil Code)
- El Codigo Organico Tributario (Tax Code) (2001)
- Ley de Impuestos Sobre la Renta (LISR) (Income Tax Law) (as amended in 2007 by the Reforma Parcial de la Ley de Impuestos Sobre la Renta)
- Ley de Impuesto Sobre Sucesiones y Donaciones (Law on Taxation of Inheritance and Donations)
- Ley para Personas con Incapacidades (Law for Disabled Persons) (2007)
- Ley de Impuestos Valor Agregado (LIVA) (Value Added Tax) (as amended in 2007 by the Reforma Parcial de la Ley que establece el Impuesto al Valor Agregado (partial reform of the statute that creates VAT))
- Ley Organica de Aduanas (Customs Law) (1999)
- Ley Organica de la Educacion (Education Law)
- Ley Organica para la Protección del Niño y del Adolescente
- Reglamento de la Ley de Impuestos Sobre la Renta (RLISR) (Regulation to the Income Tax Law)
- Reglamento de la Ley que Establece el Impuesto al Valor Agregado (Regulation to the VAT Law) (1999)
- Decreto con rango, valor y fuerza de ley de la reconversión monetaria (Presidential Decree on Monetary Reconversion) (2007)
- Ley Orgánica Contra el Crimen Organizado

# III. Relevant Legal Forms

## A. General Legal Forms

Venezuelan law recognizes two primary forms of NPOs: civil associations and foundations.

### Civil Associations

The Civil Code recognizes civil associations without defining them. [CC § 19] In Venezuelan jurisprudence, “civil association” has been defined as an assembly of persons organized in a corporate form to realize a common purpose that is not-for-profit in character. <http://www.usig.org/countryinfo/venezuela.asp> - [ftn1# ftn1\[2\]](#) Civil associations may dedicate themselves to any purpose not contrary to law or public order.

### Foundations

The Civil Code also does not explicitly define “foundations,” though it makes clear that they may be formed only to conduct public benefit activities of an artistic, scientific, literary, charitable, or social nature. [CC § 20] In Venezuelan jurisprudence, “foundation” has been defined as a collection of assets dedicated exclusively and permanently to the attainment of a specific objective. [\[3\]](#)

## B. Public Benefit Status

No administrative process formally designates a not-for-profit organization as a “public benefit organization.” However, by definition, a foundation must pursue public interest in one of five areas: art, science, literature, charity, or social activities. [CC § 20] In addition, the Tax Administration implicitly recognizes that particular organizations engage in public benefit activities by granting them tax exemptions under the LISR Articles 14 (3) and (10) and the accompanying regulation.

Under the regulation, two types of organizations qualify for income tax exemption: charitable institutions and social assistance institutions. These are not distinct types of legal entities, but rather special designations conferred on eligible associations and foundations.

To be eligible for tax exemption, an organization must also comply with certain requirements regarding financial operations and other matters (see Section V-A, below).

# IV. Specific Questions Regarding Local Law

## A. Inurement

The Civil Code is silent with respect to unjust enrichment and use of association or foundation assets for personal ends. However, according to local experts, common doctrine and jurisprudence maintain that in order to be “non-profit,” an organization cannot distribute profits, benefits, or any part of its assets to founders, associates, or members of any kind in the form of dividends, fees, or shares; or use the resources of the organization for any purpose other than the statutory ones.

Organizations registered as exempt from income tax are precluded from making distributions or providing benefits, directly or through third parties, to founders, associates, or members. [[LISR §§14\(3\) and \(10\)](#)] In addition, those organizations that qualify for exemptions under 14(10) may only make those payments that are normal and necessary for the activities to which they are dedicated. [[4](#)] [[LISR § 14\(10\)](#)]

## B. Proprietary Interest

As a general matter, a donor to an association or foundation can retain a proprietary interest in the donation while allowing it to be used by the organization through the civil code doctrine of “usufruct.” [[5](#)]

## C. Dissolution

Upon the dissolution of an association, its assets are distributed according to its governing documents. An association's documents will often require the distribution of the remaining assets to another NPO, either an organization to be determined by the General Assembly or one indicated in the statutes themselves. With respect to an association registered for income tax exemption, the Venezuelan tax authority (SENIAT) has sometimes required that the organization's governing documents provide that upon dissolution, the remaining assets will pass to another institution with similar purposes. [[6](#)] However, this is a general rule and not a formal requirement.

Upon dissolution, the assets of a foundation typically are distributed according to the organization's governing documents. In the absence of any provision in the governing documents, the court overseeing the dissolution will generally distribute the assets to another NPO with a similar purpose, so long as that purpose has not become unlawful or impossible to fulfill. However, this is a general rule and not a formal requirement. [[CC § 23](#)]

## **D. Activities**

### **1. General Activities [\[7\]](#)**

Associations, once registered, are legal persons. As such, they are permitted to engage in a broad range of activities, both for mutual and public benefit, so long as the activities are enumerated in the organization's governing documents.

In order to gain tax-exempt status, however, an organization must engage in particular activities: charitable activities (providing medical or educational services, or providing food, clothing, or shelter to the destitute, or providing funds for those purposes); social assistance activities (preventing or reducing sickness, misery, vice, or other social ills, or providing funds for these purposes); or activities in one of the following areas--religious, artistic, scientific, conservation, environmental, technological, cultural, sports, professional, or unions (guilds).

Foundations may only dedicate themselves to public interest activities in the areas of art, science, literature, charity, and social activities.

### **2. Economic Activities**

Like any natural or legal person, an NPO may carry out any type of lawful economic activity. It can buy, sell, and mortgage property, real and personal; make domestic or foreign investments; and buy shares in companies and receive dividends.

Although the Civil Code is silent on the matter, local experts state that Venezuelan jurisprudence requires that NPOs pursue economic activities only as a means of advancing their not-for-profit goals, self-sustainability, and financial autonomy. This requirement must be met for an organization to register as tax exempt under [LISR 14\(3\) and \(10\)](#).

## **E. Political Activities**

As a legal matter, Venezuelan NPOs are permitted to promote legislation and support candidates except during voting periods, when all political campaigning is prohibited. They also can undertake advocacy activities on behalf or in support of their target populations and to protect their respective organization or collective interest. [\[8\]](#)

## **F. Discrimination**

[Article 21 of the Venezuelan Constitution](#) prohibits discrimination based on, among other things, race, sex, creed, or social condition.

In addition, Article 6 of the Organic Law of Education provides that all persons have the right to an education without discrimination on the basis of race, sex, creed, economic

and social position, or otherwise. This provision applies to all levels of education in Venezuela, from preschool through university.

## **G. Control of Organization**

Venezuelan charities may be established by natural or legal persons, domestic or foreign. Therefore, it is possible that a Venezuelan NPO may be controlled by a for-profit entity (which will lead to additional IRS scrutiny) or by an American grantor charity (which requires that the charity specifically so provide in the affidavit).

### **NPOs and the Law Against Organized Crime.**

The *Ley Orgánica Contra el Crimen Organizado* (Organic Law against Organized Crime), includes NPOs as “obligated subjects” of the Law, along with other entities including banks and other financial institutions, insurance companies, hotels, jewelry and antiques sellers, and casinos. Thus, NPOs are treated as institutions susceptible to becoming instruments for money laundering and other organized crime activities. As “obligated subjects” of this law, NPOs therefore are under scrutiny and surveillance by the Executive Organ in charge of the fight against organized crime and their activities could be criminalized.

## **H. Currency and Monetary Issues**

Venezuela has an exchange control regime. Any donation must be in Venezuela’s local currency, Bolívares. Dollars must be exchanged and declared to CADIVI, which is the national commission for the administration of foreign currency.

In March 2007 the *Ley de Reversión Monetaria* (Monetary Reconversion Act) was enacted. The statute set the stage for transition to a new local currency called the Bolívar Fuerte. The Bolívar Fuerte is the result of dividing Bolívares (as used in the past) by 1000; 1000 Bolívares became 1 Bolívar Fuerte effective January 1, 2008.

Notwithstanding, from October 1, 2007 until a new order is issued from the Venezuelan Central Bank, every reference to local currency must be expressed both in Bolívares and Bolívar Fuerte. Fines from 10 Unidades Tributarias to 10.000 Unidades Tributarias can be imposed in case of non-compliance with the *Ley de Reversión Monetaria*. [\[9\]](#)

## **V. Tax Laws**

The following section discusses relevant tax legislation, recognizing that taxes may affect the amount of the grant actually flowing to the grantee.

### **A. Tax Exemptions**

Under LISR 14(3), charitable and social assistance organizations (as defined in the Income Tax regulation) are eligible for exemption from payment of income tax if they meet the following requirements:

- Their income was obtained with the aim of furthering their charitable purpose;
  - They must not distribute earnings, profits of any kind, or any part of their assets to their founders, associates, or members; and
  - They must not make payments in the form of distribution of profits or assets.
- [LISR §14(3)]

Charitable and social assistance organizations are not distinct types of legal entities, but rather special designations conferred on eligible associations and foundations.

A “charitable institution” is understood to be one that:

- renders medical and educational services to the destitute;
- provides food, clothing, and shelter to the destitute; or
- provides funds for those purposes.

A “social assistance” institution is understood to be one that:

- engages in activities directed at preventing or reducing sickness, misery, vice, or other social ills; or
- provides funds for those purposes.

In addition, under LISR 14(10), institutions dedicated exclusively to activities in the following categories are exempt from payment of Income Tax: religious, artistic, scientific, conservation, environmental, technological, cultural, sports, professional, and unions (guilds). Such institutions also must meet certain requirements, generally similar to those imposed on charitable and social assistance organizations:

- They must not pursue for-profit purposes;
- Their income must be obtained to achieve their purposes;
- They must not distribute earnings or profits of any kind or any part of their assets to their founders, associates, or members; and
- They can make only those payments that are normal and necessary for carrying out their activities. [\[10\]](#)

In order to enjoy exemption from income tax, organizations must register with the Tax Administration (SENIAT) and demonstrate that they have met all applicable requirements. [LISR 14] Universities and educational institutions are exempt from paying income tax when they meet the conditions stipulated by the National Executive. [LISR §14 (10)]

## **B. Deductibility of Charitable Contributions**

Under the Income Tax Law, corporate and individual taxpayers can deduct donations to civil associations and foundations that pursue not-for-profit purposes and that dedicate the donations to one or more of the following purposes:

- Charitable
  - Religious
  - Cultural
  - Educational
  - Artistic
  - Scientific
  - Conservation
  - Defense and betterment of the environment
  - Technological
  - Sport
  - Betterment of urban or rural workers
- [LISR § 27, Twelfth Paragraph]

In addition, donations to a branch of government (national, state, municipality, or official autonomous institute) are deductible. [LISR § 27, Twelfth Paragraph]

The amount of the deduction is limited to:

- 10%, when the net income of the donor does not exceed 10,000 Tributary Units;
  - 8%, for the portion of net income that exceeds 10,000 Tributary Units; and
  - 1%, if the contributor carries out economic activities relating to hydrocarbons or the exportation of minerals. [\[11\]](#)
- [LISR §27, Thirteenth Paragraph]

Per the Law for the Protection of Children and Adolescents (LOPNA), donors who contribute to programs or entities for the protection of children or adolescents can deduct the amount of those donations up to double the percentages listed above; when the donation is made to the Foundation for Projection of Children and Adolescents, the percentages are tripled. [LOPNA, Article 344]

For all of the foregoing deductible donations, the deduction can be taken only if the donee is domiciled in Venezuela, and cannot be taken if the donor suffered losses in the immediately preceding fiscal year. [LISR §27]

The Executive Branch is authorized to exempt NPOs from paying the tax on inheritance and donations if they dedicate themselves principally to charitable activities, social assistance, social protection, or the funding of such activities; religious centers accessible to the public; or scientific, educational, artistic, cultural, sports, or recreational activities, or activities of a similar nature. [Law on Inheritance and Donations; Decree 2001, 1997]

To take advantage of the exemption, organizations must report each inheritance or donation to the Tax Administration within 30 days. [Decree 2001, 1997] If a donation is not exempt, the donor and donee are jointly liable for payment of the tax.

Finally, the Organic Law of Science, Technology and Innovation (*Ley Orgánica de Ciencia, Tecnología e Innovación*), enacted in August 2005, promotes the development of scientific, innovative, and technological activities in Venezuela. Under the law, every “large corporation” has a duty to make an annual contribution of up to 2% of its gross income to an activity considered to be science, technology, or innovation. A “large corporation” is defined as any legal person that has an annual gross income of more than 100.000 “tributary units” (In 2008, one Tributary Unit is equivalent to 46 Bolívares Fuertes or 21.40 US\$). The definition of a “large corporation” also includes civil associations, foundations, and other legal and economic entities.

Contributions can be made via cash donations to beneficiaries such as The Science, Technology and Innovation Ministry; state-funded or private universities and other academic institutes; research and development centers, laboratories, or scientific societies; or by investing in a company’s own science, technology, or innovation activities.

In September 2007, the “*Sala Político-Administrativa*” of the Supreme Court of Venezuela determined that these contributions can be deducted from a company’s income taxes. Deductibility will depend on the type of contribution made: if the contribution is made in cash to any of the above mentioned beneficiaries, it will be deducted as a paid tax (Article 27 LISLR); if the contribution is made via an investment in the company itself, it will be deducted as an expense.

## **C. Value Added and Turnover Taxes**

There is no specific exemption from the VAT for not-for-profit organizations, but certain goods and services are exempt. For example, goods donated from abroad to NPOs and to universities for the accomplishment of their goals may be exempt upon approval of the Tax Administration. Also exempt from the VAT are transfers of certain goods, including medicines, wheelchairs, catheters, valves, artificial organs and prostheses, books, pamphlets and magazines. [LIVA §18] Certain services, including certain educational, medical, and cultural activities, are also exempt from VAT. [LIVA §19]

## **D. Customs Duties**

Customs duties are governed by the *Ley Organica de Aduanas* (Customs Law), No. 150, 25 May 1999. Goods imported by NPOs are exempt if they are specifically dedicated to the purposes of the organization and its “beneficiaries.” Other exempt goods include religious goods and those for public welfare and social assistance.

Under the 2007 *Ley para Personas con Incapacidades* (Law for Disabled Persons), certain imports by organizations serving the disabled are exempt from custom duties if they meet certain requirements. Products eligible for exemption are medicines, technical assistance, equipment, specialized materials, and any other technological resources or other useful and necessary resources for the personal, family-related or social integration of the disabled. (Article 45)

## **E. Double Tax Treaties**

A double taxation treaty between Venezuela and the United States went into effect in 2000.

## **VI. Knowledgeable Contacts**

Marcos R. Carrillo Perera  
Escritorio Jurídico Lloan & Asociados  
Av. Francisco de Miranda, Centro Plaza,  
Torre A, piso 17, Of. H-I,  
Los Palos Grandes, Caracas, 1060, Venezuela  
Telephone: (58) (212) 2838544  
E-mail: [mrcarrillop@gmail.com](mailto:mrcarrillop@gmail.com)

Antonio L Itriago Machado and Miguel Angel Itriago Machado  
Avda. Abraham Lincoln, Cruce con Las Acacias  
Torre Lincoln, Piso 2 Oficina 2H, Sabana Grande  
Caracas 1050 Venezuela  
[alnilak@cantv.net](mailto:alnilak@cantv.net)  
[mitriago@cantv.net](mailto:mitriago@cantv.net)  
Telephone: 0058212-793-79-68

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## **Footnotes**

[1] The Law of Community Councils of April 2006 creates councils that seek to enable the public to collectively exercise management over public policy and projects that respond to the needs and aspirations of communities supporting equity and social justice.

[2] See Miguel Angel Itriago Machado and Antonio L. Itriago Machado, *Las Asociaciones Civiles en el Derecho Venezolano* 58 (1998).

[3] See Miguel Angel Itriago Machado and Antonio L. Itriago Machado, *Asociacion Civil y Fundacion* 13 (1994), *citing* Jose Luis Aguilar Gorrondona, *Derecho Civil-Personas* 52 (1979).

[4] A payment is “normal” if it is of a type that would be made in the normal course of business of an institution. See Daniel Leza Betz, *Beneficios Fiscales de las Instituciones Sin Fines de Lucro en Venezuela* 88 (1999). Payments indispensable to the production of income are considered “necessary.” *Id.*

[5] Usufruct can involve real or personal property and it can be outright, for a fixed period of time, or subject to conditions. In this way, a donor can retain ownership of property while allowing the organization to use it. (A donor can also transfer ownership of property to the organization and retain, for him or herself or for specified others, the right to use the property.) [[CC § 582 et seq.](#)]

[6] See Antonio L. Itriago and Miguel Angel Itriago, “Leyes y Regulaciones de Organizaciones Sin Fines de Lucro en Venezuela,” p. 8.

[7] It bears mention that in June 2006, the Venezuelan National Assembly approved a draft Law on International Cooperation. The law would govern all international cooperation activities, including the transfer and exchange of goods, services, capital, and public or private resources from outside of Venezuela and from Venezuela overseas. The draft law would create a mandatory integrated registration system for all foreign and domestic NPOs. Registration would be a prerequisite to engaging in activities financed with international cooperation funds as well as qualifying for tax benefits.

[8] As noted above, the proposed Constitution would restrict the ability of foreigners to fund NPOs with political purposes.

[9] The fine is denominated in “Unidades Tributarias” (Tributary Units).

[10] See note 4, above.

[11] Net income is calculated before deducting the amount of the donation(s).