Philippines

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Table of Contents

I. Summary

A. Types of Organizations

In the Philippines, not-for-profit organizations (NPOs) are typically organized as "non-stock corporations" registered under the Corporation Code. Non-stock corporations can be formed for charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civic service, or similar purposes, such as trade, industry, agricultural and similar chambers, or any combination thereof (Corporation Code Section 88).

In turn, the tax laws provide additional benefits to two categories of non-stock corporations: accredited “non-stock, non-profit corporations or organizations” (hereinafter “non-stock, non-profit corporations”), and accredited “non-governmental organizations” (NGOs).

Among other requirements, accredited **non-stock, non-profit corporations** must be organized exclusively for one or more of the following purposes: religious, charitable,

scientific, athletic, social welfare, or cultural purposes, or the rehabilitation of veterans (Revenue Regulation No. 13-98 Section 1(a)).

Accredited **NGOs** must be organized and operated exclusively for one or more of the following purposes: scientific, research, educational, character-building, youth and sports development, health, social welfare, cultural, or charitable purposes (Revenue Regulation No. 13-98 Section 1(b)).

Other not-for-profit forms not generally discussed in this Note due to their limited interaction with foreign grantmakers include: unregistered NPOs, labor unions, trade unions, mutual savings banks, cooperatives, and entities established or governed by special laws. [1] This Note also excludes "mutual benefit associations" which, under Philippine law, are insurance companies and are explicitly precluded from assuming the character of a "charitable or benevolent organization" (Insurance Code Chapter VII Title I).

B. Tax Laws

Exemption from income tax is extended to a broad range of organizational forms, including:

- Non-stock corporations organized exclusively for religious, charitable, scientific, athletic or cultural purposes, or for the rehabilitation of veterans;
- Civic leagues or organizations operated exclusively for the promotion of social welfare; and
- Non-stock, non-profit educational institutions (Tax Code Section 30(e), (g), and (h)).

Each of these entities is exempt from income tax on donations, grants, and gifts, provided that the organization's net income does not inure to the benefit of any private shareholder or individual and the business is not operated for the benefit of private interest, such as those of the founder or his/her relatives, or conducted with a trade or business purpose that is not related to the organization's tax-exempt status (Revenue Memorandum Order 20-2013 Section 5(b)). Profits generated from business activities are taxed, regardless of the disposition of the income (Tax Code Section 30).

An NPO may seek additional tax benefits by becoming an accredited non-stock, non-profit corporation or an accredited NGO (collectively referred to hereinafter as "accredited NPOs"). This certification vests the organization with donee institution status, which entitles it to receive tax-deductible donations. [2]

In the case of an accredited non-stock, non-profit corporation, donations are deductible up to 5% of taxable income for corporate donors and 10% for individual donors (Revenue Regulation No. 13-98 Section 3(a)). For this purpose, "income" refers to the donor's income derived from trade, business, or profession as computed without the benefit of this deduction (Revenue Regulation No. 13-98 Section 3(a)).

In the case of an accredited NGO, donations are deductible in full, subject to additional restrictions (Revenue Regulation No. 13-98 Section 3(b)). For example, in order to qualify to receive fully deductible donations, an accredited NGO cannot devote more

than 30% of its total expenses for the taxable year to administrative expenses (Revenue Regulation No. 13-98 Section 1(b)(ii)).

II. Applicable Laws and Regulations

- The Constitution of the Philippines, 1987;
- The Corporation Code of the Philippines (*Batas Pambansa Bilang* 68);
- Philippine Omnibus Election Code (*Batas Pambansa Bilang* 881);
- The Local Government Code (Republic Act No. 7160);
- National Internal Revenue Code Republic Act No. 8424 ("Tax Code"), as amended by Republic Act No. 9337;
- Revenue Regulations No. 13-98, December 8, 1998 ("Revenue Regulation No. 13-98"); Revenue Memorandum Order No. 20-2013 as amended by Revenue Memorandum Order No. 28-2013, July 2013 ("Revenue Memorandum Order No. 20-2013"); Revenue Regulation 16-2005; and Revenue Regulation 16-2011;
- Tariff and Customs Code Republic Act No. 1937, as amended by PD 1464 ("Customs Code");
- The Securities and Exchange Reorganization – (Presidential Decree No. 902-A);
- SEC Memorandum Circular No. 2, series of 2006;
- SEC Memorandum Circular No. 8, series of 2006;
- Securities Regulation Code (SRC) Rule 68, as amended 2011 (on annual SEC filings)

III. Relevant Legal Forms

A. General Legal Forms

Under the Corporation Code, a non-stock corporation may be formed or organized for charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civil service, or similar purposes, such as trade, industry, agriculture and similar chambers, or any combination thereof (Corporation Code Section 88). By definition:

1. No part of the income of non-stock corporations shall be distributed as dividends to their members, trustees, or officers; and
2. Any profit incidental to their operations shall be used in furtherance of their purpose or purposes (Corporation Code Section 87).

A non-stock corporation may use the word "foundation" in its corporate name, provided that it:

- meets the requirements stated above;
- has initial capital of at least one million Philippine Pesos (PHP 1,000,000, or approximately USD 22,800), as evidenced by a Notarized Certificate of Bank Deposit issued by the bank;
- conducts its public fundraising campaigns in compliance with applicable law and consistent with its submitted Modus Operandi or Plan of Operation; and

- submits to the Securities and Exchange Commission (SEC) in the Philippines (which is also the registration authority for non-stock corporations) a written statement of its willingness to allow the Commission to conduct an audit of its corporate books and records.

An SEC-registered foundation is required to file annually with the Commission the following documents:

- General Information Sheet;
- Audited Financial Statement with a sworn statement by its President and Treasurer on (a) Source and Amount of Funds, (b) planned, ongoing and accomplished Program/Activity, and (c) Application of Funds; [3] and
- Certification from the local government office and/or the national Social Welfare and Development or Health Agencies on the existence of the subject Program/Activity in the locality in which it exercises jurisdiction (SEC Memorandum Circular No. 8, series of 2006 and SRC Rule 68 Part I Section 4B).

All other SEC-registered non-stock, non-profit organizations are required to include with their annual financial statements a schedule showing the nature and amount of each items comprising the total receipts and disbursements according to sources and activities (e.g. pursuant to primary purpose or commercial activity) (SRC Rule 68 Part I Section 4A).

In the context of SEC-registered foundations, the term "foundation" refers to a non-stock, non-profit corporation established for the purpose of extending grants or endowments to support its goals, or raising funds to accomplish charitable, religious, educational, athletic, cultural, literary, scientific, social welfare or other similar objectives (SEC Memorandum Circular No. 8, series of 2006).

A non-stock, non-profit corporation, including an NGO, that intends to engage in microfinance activities, is required to state in its incorporation papers that it is conducting microfinance operations pursuant to Republic Act No. 8425 (otherwise known as the Social Reform and Poverty Alleviation Act). For this purpose, an NGO is defined under RA 8425 as a duly registered non-stock, non-profit organization that focuses on the "upliftment of the basic or disadvantaged sectors of society by providing advocacy, training, community organizing, research, access to resources and other similar activities" (SEC Memorandum Circular No. 2, series of 2006).

B. Public Benefit Status

An NPO may seek to become an accredited non-stock, non-profit corporation or an accredited NGO (Revenue Regulation No. 13-98 Section 1).

To qualify for accreditation, a non-stock, non-profit corporation must be organized for one or more of the following purposes:

- religious;
- charitable;
- scientific;
- athletic;

- cultural;
- rehabilitation of veterans; or
- social welfare. (Revenue Regulation No. 13-98 Section 1(a))

Further, no part of the net income or assets of the accredited organization may belong to or inure to the benefit of any member, organizer, officer, or specific person (Tax Code Section 30(E); Revenue Regulation No. 13-98 Section 1(a)).

To qualify for accreditation as an NGO, an NPO must be organized and operated exclusively for one or more of the following purposes:

- scientific;
- research;
- educational;
- character-building;
- youth and sports development;
- health;
- social welfare;
- cultural; or
- charitable purposes. (Tax Code Section 34(H)(2)(c)(1))

Further, no part of the net income of the NGO may inure to the benefit of any private individual (Tax Code Section 34(H)(2)(c)(1)); Revenue Regulation No. 13-98 Section (1)(b)). Accredited NGOs are also subject to other requirements, including restrictions on the amount of administrative expenses that can be incurred (limited to 30% of total expenses) and limitations on the distribution of assets upon the organization's dissolution (Revenue Regulation No. 13-98 Section 1(b)). [4]

IV. Specific Questions Regarding Local Law

A. Inurement

No part of the income of an NPO may inure to the organization's members, trustees, or officers. Any earnings of the organization must be used exclusively to promote its statutory objectives (Corporation Code Section 87).

Accredited NPOs are prohibited from undertaking a variety of transactions that would lead to direct or indirect private inurement. These include:

- lending any part of the organization's income or property without adequate consideration (with an exception for some formal micro-credit or micro-finance programs);
- purchasing any security and/or property for more than adequate consideration;
- selling any of the organization's property for less than adequate consideration;

- diverting income or property rights of the organization to founders, principle officers, directors, and persons closely related to them or to any corporation controlled directly or indirectly by those same individuals;
- using any part of its property, income or seed capital for any purpose other than that for which the corporation was created or organized; or
- engaging in any activity which is contrary to law, public order or public policy (Revenue Regulation No. 13-98 Section 10).

Further, the members of the Board of Trustees of accredited NPOs are prohibited from receiving compensation or remuneration. They may, however, receive reasonable per diem (Corporation Code Section 30, as read in conjunction with Corporation Code Section 87). There is no such prohibition against remuneration of corporate officers. For accredited NGOs, administrative expenses, including compensation and remuneration, may not exceed, on an annual basis, 30% of total expenses for the taxable year (Revenue Regulation No. 13-98 Section 1(b)(ii)).

B. Proprietary Interest

NPOs are prohibited from having stockholders. No part of the income of an NPO is distributable as dividends to its members, trustees or officers; and all profits shall be used in furtherance of the organization's objectives (Corporation Code Section 87). In addition, for accredited non-stock, non-profit corporations, the law specifically states that no part of the net income or assets may "belong" to any member, organizer, officer, or specific person (Revenue Regulation No. 13-98 Section 1(a); Tax Code Section 30(E) and (G)).

C. Dissolution

An NPO's assets remaining after the satisfaction of liabilities and other obligations are generally distributed in the following manner:

- When the assets are held upon a condition requiring a return, transfer or conveyance, the same shall be returned, transferred or conveyed in accordance with such requirements (Corporation Code Section 94(2)).
- When the assets are received or held subject to limitations permitting their use only for charitable or similar purposes but not held upon a condition requiring return, they shall be transferred or conveyed to one or more corporations, societies, or organizations engaged in activities in the Philippines substantially similar to those of the dissolving corporation (Corporation Code Section 94(3)).
- Otherwise, the remaining assets of non-stock corporations may be distributed in the manner and to those individuals or organizations indicated in the Articles of Incorporation (Corporation Code Section 94(4)).

More restrictive rules apply to accredited NGOs. Assets remaining upon dissolution must be distributed to another accredited NGO for similar purposes, or distributed by a competent court to another accredited NGO to be used in such manner which, in the court's opinion, will best accomplish the general purpose for which the dissolved NGO was organized (Revenue Regulation No. 13-98 Section 1(b)(iii). The regulation also states that the assets may be distributed to the state for a public purpose.).

D. Activities

1. General Activities

An NPO can sue and be sued in its corporate name, admit members, buy and sell real and personal property, and "exercise such other powers as may be essential or necessary to carry out its purpose or purposes as stated in the articles of incorporation" (Corporation Code Sections 36 and 87).

NPOs may be formed or organized for charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civic service, or similar purposes (such as trade, industry, agricultural and similar chambers), or any combination thereof (Corporation Code Section 88). Those with NPO accreditation, however, are limited to narrower lists of purposes (Revenue Regulation No. 13-98 Section 1(a) and (b)).

2. Public Benefit Activities

As noted above, NPOs may have a wide range of purposes. In contrast, accredited non-stock, non-profit corporations must exclusively advance one or more of the following purposes: religious, charitable, scientific, athletic, cultural, or social welfare purposes, or the rehabilitation of veterans (Revenue Regulation No. 13-98 Section 1(a)). Similarly, accredited NGOs must be organized and operate exclusively for one or more of the following purposes: scientific, research, educational, character-building, youth and sports development, health, social welfare, cultural or charitable purposes (Revenue Regulation No. 13-98 Section 1(b)). Revenue Regulation 13-98 defines each of these terms.

In general, accredited NPOs can advance their purposes by exercising the powers of non-stock corporations, listed above.

3. Economic Activities

NPOs may not engage primarily in business or economic activities. They may engage only in those income-generating activities expressly allowed in their governing documents (i.e., articles of incorporation) or that are necessary or incidental to the statutory objectives of the organization. Any profit generated from economic activities must be used in furtherance of the organization's objectives (Corporation Code Section 87). These rules apply to both accredited and unaccredited NPOs.

E. Political Activities

NPOs may engage in lobbying activities, but such activities must conform to the norms for acceptable advocacy under Article 19 of the Civil Code. NPOs may not directly expend funds on "any political party or candidate or for purposes of partisan political activity" (Corporation Code Section 36(9)). As for campaign activities, NPOs receiving government funding and those receiving tax benefits are prohibited from making indirect or direct contributions for purposes of partisan political activity (Philippine Omnibus Election Code Section 95(b to f) and (h)).

Section 81 of the Election Code states that it is unlawful for any foreigner, whether a judicial or natural person, to aid any candidate or political party, directly or indirectly, or take part in or influence any election, or to contribute or make any expenditure in connection with any election campaign or partisan political activity. The Election Code also states that it is unlawful for any person, including a political party or public or private entity, to solicit or receive, directly or indirectly, any aid or contribution of whatever form or nature from any foreign national, government or entity for the purposes of influencing the results of an election (Philippine Omnibus Election Code Sections 81 and 96).

F. Discrimination

The Philippine Constitution contains general provisions obligating the state to ensure access to education for all children (Constitution Article XIV Section 4). There are no provisions in the Constitution or Corporation Code, however, that explicitly address discrimination by educational institutions on the basis of race.

G. Control of Organization

There are no provisions under Philippine law restricting the ability of foreign entities or individuals to control NPOs. It is thus possible that a Philippine NPO may be controlled by a for-profit entity or by an American grantor charity (which requires that the charity specifically so provide in the affidavit). [5] However, the ownership of a branch by a foreign non-stock, non-profit corporation may have tax consequences (BIR Revenue Memorandum Order 20-2013 Section 6 (d)).

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

The income tax law provides an exemption for a variety of organizations, including:

- non-stock corporations and associations organized exclusively for religious, charitable, scientific, athletic or cultural purposes, or for the rehabilitation of veterans, provided that no part of the organization's net income or assets shall belong to or inure to the benefit of any member, organizer, officer or any specific person (Tax Code Section 30 (e));
- civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare (Tax Code Section 30 (g)); and
- non-stock, nonprofit educational institutions (Tax Code Section 30 (h).

This exemption explicitly applies to grants and contributions, whether from domestic or foreign sources. The organizations are, however, required to pay tax on their activities "conducted for profit" regardless of the disposition of such income (Tax Code Section 30). [6]

NPOs must secure from the tax authority confirmatory rulings or certifications and/or revalidations of their tax-exempt status (Revenue Memorandum Order No. 20-2013 Sections 1 and 2). A tax exemption ruling shall be valid for a period of three years unless revoked or cancelled before the three years is completed (Revenue Memorandum Order No. 20-2013 Section 9) Exemptions shall be deemed revoked upon expiration of the three year ruling unless a renewal application is filed (Revenue Memorandum Order No. 20-2013 and Revenue Memorandum Order No. 28-2013 Section 10). [7]

A branch office of a foreign non-stock, non-profit corporation cannot qualify as a tax-exempt corporation under Section 30 of the Tax Code (Revenue Memorandum Order No. 20-2013 Section 5(a)). Unless the branch is able to establish tax exemption under a special law, treaty, or a provision of the Tax Code other than Section 30, income generated by NPOs having this control setup will be subject to regular income taxes.

B. Incentives for Philanthropy

Corporations and individuals who derive income from a trade, business, or profession may deduct gifts, donations or contributions to accredited non-stock, non-profit corporations up to 5% of taxable income for corporate donors and 10% for individual donors (Revenue Regulation No. 13-98 Section 3(a)). "Income" refers to the donor's income derived from a trade, business or profession as computed without the benefit of this deduction. Donations to accredited NGOs, by contrast, can be deducted in full, subject to some limitations (Revenue Regulation No. 13-98 Section 3(b)).

In addition to income tax, donations and gifts to accredited NPOs (and certain other entities) are also exempt from the donor's tax, provided that not more than 30% of the donations and gifts for the taxable year are used by the accredited NPO for administrative expenses (Revenue Regulation No. 13-98 Section 3(c)).

C. Value Added Taxes and Tax on Gross Receipts

An organization regularly engaged in commercial or economic activities with gross sales (for sale of goods) or receipts (for sale of services) in excess of PHP 1,919,500 during any twelve-month period must register as a VAT taxpayer (Revenue Regulation 16-2011 Section 3, VAT-Exempt Transactions). The standard VAT rate is 12%.

Certain goods and services are exempted from VAT, including medical, dental, and hospital services, except those rendered by professionals; also exempt are educational services provided by private and government educational institutions (Tax Code Section 109(l) and (m), as amended; Revenue Regulation 16-2005 Section 4.109-1(g) and (h), VAT-Exempt Transactions).

Non-stock, non-profit organizations and associations engaged in trade or business whose gross sales or receipts do not exceed PHP 1,919,500 for any twelve-month period or an amount as adjusted every after three years thereafter depending on the annual Consumer Price Index are required to register with the Bureau of Internal Revenue as non-VAT entities and pay the corresponding registration fee (Revenue Regulation 16-2005 and Revenue Regulation 16-2011 Section 9.236-2(3) and (4) as to the threshold limit). Non-VAT registered entities are subject to a tax of 3% of their monthly gross sales or receipts (RA 9337 Section 7, which amends Tax Code Section 109(z); Revenue Regulation 16-2005 Section 4.116-1).

D. Import Duties

Certain goods relevant to NPOs may be exempted from customs duties, including among others:

• Imported articles donated to, or for the account of, any duly registered relief organization, not operated for profit, for free distribution among the needy, upon certification by the Department of Social Services and Development or the Department of Education, Culture and Sports;

 Economic, technical, vocational, scientific, philosophical, historical, and cultural books and/or publications or those educational, scientific and cultural materials covered by international agreements or commitments binding upon the Philippine Government so certified by the Department of Education, Culture and Sports;

• Religious books and other publications for religious uses;

• Goods that may be granted exemption by the President upon prior recommendation of the National Economic and Development Authority in the interest of national economic development (Customs Code Section 105); and

• Food, clothing, medicine, and equipment for use in government relief and rehabilitation programs for calamity affected areas (Memorandum Order 36 Section 1992).

E. Double Tax Treaties

The Republic of the Philippines and the United States signed a double-tax treaty which entered into force on October 16, 1982.

VI. Knowledgeable Contacts

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Footnotes

[1] Entities governed by special laws include those termed "nongovernmental educational institutions." Though classified as corporations, they are distinct from non-stock corporations formed for educational purposes under Section 88 of the Corporation Code. Rather, nongovernmental educational institutions are governed in the first instance by special laws, then by special provisions of the Corporation Code, and then by general provisions of the Corporation Code. As discussed below, they are also subject to special tax treatment.

[2] To acquire donee institution status, an NGO must first receive certification from the Philippine Council for NGO Certification (PCNC), an accrediting entity, on the basis of which the Bureau of Internal Revenue will issue the Certification of Registration as a Qualified Donee Institution (Executive Order 720, April 11, 2008). Under a prior

executive order, several government agencies – including the Department of Science and Technology, the Department of Social Welfare and Development, and the Commission on Higher Education – were responsible for accrediting qualified donee institutions. The relevant agency depended on the focus area of the donee.

[3] These sworn statements embodied in SEC Forms – Sworn Statement on the Sources, Amount and Application of Funds and Program/Activity Planned, Ongoing, and Accomplished (SSSAA) and Certificate of Existence of Program/Activity (COEP) – are integral attachments to the Audited Financial Statements. See SEC Notice dated April 18, 2013 for guidelines on the submission of these documents.

[4] In addition, accredited NGOs are subject to detailed "utilization" rules requiring the expenditure of funds within a certain time period (Revenue Regulation No. 13-98 Sections 1(b) and (c)).

[5] While Philippine law is silent on the ability of foreign entities or individuals to control NPOs, it is advisable that foreign entities contemplating such "controlling" structures seek consultation with the Philippine SEC prior to corporate registration, in order to be advised as to the proper registration requirements (i.e. documentary requirements and capitalization, if applicable as a foreign investor) specific to their circumstances and intended operations in the country.

[6] A complication arises with regard to non-stock, nonprofit educational institutions. Under the Constitution, *all* revenues and assets of such entities used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties (Philippine Constitution 1987 Article XIV Section 4). Privately owned educational institutions are allotted similar exemptions, though limited by restrictions on dividends and reinvestment. Notwithstanding the constitutional provision, however, Section 30(f) of the Tax Reform Act of 1997 imposes tax on the income of non-stock educational institutions derived from any of their properties (real or personal) or their economic activities. The constitutional dilemma created by this provision has yet to be resolved, and the provision in the tax code is still enforced by the Bureau of Internal Revenue.

Furthermore, Section 27(B) of the Tax Reform Act of 1997, as amended by RA 9337, imposes on proprietary educational institutions and hospitals, which are not-for-profit, a 10% tax on their taxable income (except passive sources of income) with the further limitation that, if the gross income from unrelated trade, business or other activity exceeds 50% of the total gross income derived by such educational institutions or hospitals from all sources, the tax applicable to for-profit entities shall be imposed on the entire taxable income.

The term "unrelated trade, business or other activity" means any trade, business or other activity, the conduct of which is not substantially related to the exercise or performance by such educational institution or hospital of its primary purpose or function.

A "Proprietary educational institution" is any private school maintained and administered by private individuals or groups with an issued permit to operate from the Department of Education, Culture and Sports, or the Commission on Higher Education, or the Technical Education and Skills Development Authority, as the case may be, in accordance with existing laws and regulations.

[7] The Bureau of Internal Revenue (BIR, Philippine Taxing Authority) issued this Memorandum Order to formalize the requirement that all tax-exempt corporations falling under the enumeration of tax-exempt entities under Section 30 of the Tax Code are required to secure a formal BIR ruling/certification that confers upon them tax-exempt status. The Memorandum Order contains a comprehensive listing of the documentary requirements as well as the procedure pertinent to the filing of said application.