

PERU

Current as of October 2018

Comments related to any information in this Note should be addressed to [Lily Liu](#).

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 (NGO) is not a separate legal form, but a special designation given to NPOs that engage in “international technical cooperation” activities, as discussed below. NGOs are monitored by Peru's Agency for International Cooperation (APCI).

Other types of NPOs, 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 NPOs. Instead, exemptions are based on whether the organization a) pursues specific purposes established by law; (b) incorporates non-distribution constraints and dissolution provisions in its governing documents that comply with the relevant provisions of the tax laws; and c) 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 are met (See Section V).

Peru subjects the sale of most goods and services to a General Sales Tax. The current tax rate is 18 percent.

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

II. APPLICABLE LAWS AND REGULATIONS

The following laws and regulations form Peru's legislative framework as it relates to NPOs:

- General Education Law. *Ley General de Educación: Ley No. 28044 (julio 2003)*
- Political Constitution of Peru of 1993. *Constitución Política del Perú de 1993*
- Civil Code of 1984. *Código Civil Peruano de 1984. Derecho de las Personas, Sección Segunda: Personas Jurídicas, Artículos 76 al 139*
- Law of International Technical Cooperation. *Ley de Cooperación Técnica Internacional: Decreto Legislativo No. 719 (noviembre 1991), modificado parcialmente por Decreto Legislativo N° 1451 (septiembre 2018) y su Reglamento: Decreto Supremo N° 015-92-PCM (enero 1992)*
- Law on the Creation of the Peruvian Agency for International Cooperation. *Ley de Creación de la Agencia Peruana de Cooperación Internacional: Ley No. 27692 (abril 2002) modificado por Ley No. 28925 (diciembre 2006), modificado parcialmente por Decreto Legislativo N° 1451 (setiembre 2018)*
- Income Tax Law. *Texto Unico Ordenado de la Ley del Impuesto a la Renta, Decreto Supremo No. 179-2004-EF (diciembre 2004). Artículo 19 inciso b) modificado por Decreto Legislativo No. 1120 (julio 2012)*

- *Ampliación de plazo exoneración Impuesto a la Renta en favor de asociaciones y fundaciones hasta el 31 de diciembre del 2018 (Artículo 19 inciso b Ley Impuesto a la Renta): Ley N° 30404 (diciembre 2015)*
- *General Sales Tax Law. Texto Unico Ordenado de la Ley del Impuesto General a las Ventas e Impuesto Selectivo al Consumo: Decreto Supremo No. 055-99-EF (abril 1999) y normas modificatorias*
- *Refund of General Sales Tax and Municipal Promotion Tax. Reglamentan la aplicación del beneficio tributario de devolución de impuestos pagados en las compras de bienes y servicios efectuadas con financiación de donaciones y Cooperación Técnica Internacional No Reembolsable: Decreto Legislativo No. 783 (diciembre 1993). Reglamento aprobado por Decreto Supremo No. 36-94-EF (abril 1994). Ley N° 30404 (diciembre 2015) amplía beneficio hasta el 31 de diciembre del 2018*
- *Law on Facilitation of the Dispatch of Goods Donated from Overseas. Ley de facilitación del despacho de mercancías donadas provenientes del exterior: Ley No. 28905 (noviembre 2006). Reglamento: Decreto Supremo No. 021-2008-EF (febrero 2008)*
- *Ley General de Aduanas: Decreto Legislativo N° 1053 (junio 2008) Reglamento: Decreto Supremo Nro. 010-2009-EF (enero 2009)*
- *Regulation on the Inapplicability of VAT/GST and Excise Tax to Donations. Aprueban Reglamento para la Inafectación del IGV, ISC y derechos arancelarios a las Donaciones: Decreto Supremo No. 096-2007-EF (julio 2007). Modificado por Decreto Supremo N° 54-2017-EF (marzo 2017). Ley que promueve la donación de alimentos y facilita el transporte de donaciones en situaciones de Desastres Naturales: Ley Nro. 30498 (Agosto 2016). Ley que amplía el límite de deducibilidad de gastos por concepto de donaciones de alimentos en buen estado para efectos del Impuesto a la Renta: Ley N° 30631 (agosto 2017, en vigencia a partir del 1 de enero del 2018). Decreto Supremo Nro. 055-2017-EF: Reglamento de la Ley Nro. 30498 (Marzo 2017)*
- *Regulation on Registration of Legal Persons: Reglamento de Inscripciones del Registro de Personas Jurídicas: Resolución de Superintendente Nacional de los Registros Públicos No. 038-2013-SUNARP-SN (febrero 2013)*

III. RELEVANT LEGAL FORMS

A. GENERAL LEGAL FORMS

Peru's Constitution establishes as fundamental—for both natural and legal persons—the right to associate freely and “to establish foundations and other forms of not-for-profit legal organizations without prior authorization and in accordance with the law. These organizations may not be dissolved by administrative resolution” (Constitution Article 2(13)).

The Civil Code of 1984 regulates NPOs with legal personality. There are three common forms of NPOs in Peru: associations, foundations, and committees.

A non-governmental organization, or NGO, is an NPO (i.e., an association, foundation, or committee) that receives a special designation as an NGO because it engages in “international technical cooperation” activities.

Association

An association (or "civil association") is defined by the Civil Code as an organization of natural persons or legal entities, or 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 other 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. For example, founders have only limited power over a foundation's operation; 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. Among other things, the Council 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 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 Organization

In Peru, the non-governmental organization (NGO) is not a separate legal form but a special designation given to NPOs that have as their objective the pursuit of development activities involving international technical cooperation in one or more of the categories designated by regulation (Law of International Technical Cooperation Regulation Article 73). Peru's Agency for International Cooperation (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 as long as it is not-for-profit in nature. **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.")

IV. SPECIFIC QUESTIONS REGARDING LOCAL LAW

A. INUREMENT

The Civil Code does not expressly address the issue of private inurement. Local experts advise, 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 generally allow NPOs to remunerate or compensate members, directors, or administrators, so long as that remuneration or compensation is not an indirect means of distributing an NPO's assets. [\[2\]](#)

In order to obtain the income tax exemption, however, *Decreto Legislativo No.1120* established that the income of foundations and associations must not be distributed directly or indirectly among its associates or linked parties (See Section V).

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 (Civil Code Article 91).

Foundation

Once a foundation has taken the steps necessary to form and register, the act is irrevocable (Civil Code Article 102). A foundation's founders can act as its administrators but cannot make decisions concerning the disposition or distribution of a foundation's assets.

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 donor's donation in situations where the donee fails to fulfill obligations for which it bears responsibility in an agreement with the donor.

C. DISSOLUTION

Under Peruvian law, an NPO cannot be dissolved by administrative resolution (Constitution Article 2 Section 13).

Associations

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 dissolve the association (Civil Code Article 94). 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 (Civil Code Articles 95 and 98). 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).

Associations may also be subject to judicial dissolution, following a request by the Public Ministry, in situations where the association's activities or purposes are, or become, contrary to public order or good custom (Civil Code Article 96).

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 (Civil Code Article 109). 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 if it 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 (Civil Code Article 121).

Like associations, committees can also be dissolved by a judicial decision, following a request by the Public Ministry, if the committee's activities or purposes are, or become, contrary to public order or good custom (Civil Code Article 120).

NPOs with Tax Benefits

In order to receive the exemption benefits afforded under Peru's Income Tax Law, associations and foundations must state specifically in their governing documents that the assets of an organization must, in the case of dissolution, be directed toward the pursuit (within Peru) of any of the purposes listed in the Income Tax Law (See Section V).

D. ACTIVITIES

General

Associations in Peru generally can engage in any lawful, not-for-profit activity (Civil Code Article 80). A foundation must pursue a "social interest" purpose (Civil Code Article 99). NPOs with legal personality are bound by the principle of "specialization" (*especialidad*); in other words, an NPO is

limited to undertaking the 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.

Public Benefit Activities

The Civil Code mandates that a foundation pursue religious, aid-based, cultural, or other “social interest” purposes (Civil Code Article 99). A committee is limited to the public collection of support destined to an “altruistic” end (Civil Code Article 111). Foundations and associations that want to receive the exemption benefits afforded under Peru’s Income Tax Law must exclusively pursue one or more of the following purposes (Income Tax Law Article 19(b)):

- Charity,
- Social assistance,
- Education,
- Culture,
- Science,
- Art,
- Literature,
- Athletics,
- Politics,
- Unions/trade-unions, and/or
- Housing.

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

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 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...” [\[4\]](#)

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 the treatment of an NPO’s economic activities in Peru’s Income Tax Law.

E. POLITICAL ACTIVITIES

The law does not expressly regulate or limit an NPO's participation in political activities. NPOs may engage in lobbying efforts designed to influence the development of new laws or the modification of existing laws. NPOs may also support, assist, and campaign on behalf of political parties and candidates.

Generally, an NPO will include any self-imposed limitations on participation in political campaigns in the NPO's 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 person shall be discriminated against based on origin, race, sex, language, religion, opinion, economic situation, or any other reason (Constitution Article 2(2)).

Furthermore, 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 (General Education Law Article 8).

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 (Civil Code Article 84). Any organization, foreign or domestic, for- or not-for-profit, with legal personality, can participate as an association member or director, or occupy any other management role. Similarly, for foundations, 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, and

- 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 and social assistance, and
- 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, Peru's National Tax Administration (*Superintendencia Nacional de Aduanas y de Administracion Tributaria*, or 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). In addition, *Decreto Legislativo No. 1120* established that when the SUNAT decides that an association or foundation that is already registered did not fulfill the requirements for the income tax exemption, the total income of the association or foundation involved will be subject to taxation, but related to the taxable year subject to investigation by the SUNAT. [\[6\]](#)

The SUNAT makes a determination on exemption eligibility at the time an association or foundation requests registration in the relevant administrative registry. It is this determination, via an administrative resolution, that confers exemption rights. The SUNAT maintains the Income Tax Exemption Registry, recording those organizations that have qualified for income tax exemption.

The income subject to exemption must: a) be dedicated specifically to the above specific purposes within Peru; b) must not be distributed, either directly or indirectly, between members or associates or affiliated parties (*partes vinculadas*); and c) 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)). The requirement that an organization include the aforementioned dissolution provision in its governing documents does not apply to those foreign organizations registered in APCI's Registry of Foreign Organizations or Institutions of International Technical Cooperation (ENIEX).

Article 19(b) of *Decreto Legislativo No. 1120* was modified to be more precise on issues related to the non-distribution of income directly or indirectly to associates or members or affiliated parties, and also establishes what the SUNAT will consider to be indirect distribution of income, such as the delivery of money and goods not subject to subsequent tax control. If the SUNAT verifies that an entity is distributing income, directly or indirectly, then the SUNAT will exclude (*dar de baja*) the entity from the Income Tax Exemption Registry and will also cancel the resolution of the entity eligible to receive tax-deductible donations (See item "B" below). The foundation or association will not be granted the income tax exemption in the taxable year that it was excluded from the Registry and the following taxable year, but after that the entity can submit a new registration before the SUNAT (after the two taxable years). *Decreto Legislativo No. 1120* is regulated by *Decreto Supremo No. 258-2012-EF*, which was published on December 18, 2012.

The source of the organization's income for the purposes of determining exemption is irrelevant as long as the organization pursues the specific purposes "eligible" for tax exemption. [8] 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 repeatedly renewed. In fact, on December 31, 2008, current exemptions were extended by way of Law No. 29308 until December 31, 2011. Similar extensions were granted via Law No. 29820, Law No. 29966, and Law No. 30404 (published 30th December 2015), such that the 19(b) exemptions are now effective through December 31, 2018.

Associations and foundations that do not qualify for exemption are taxed in the "third category" (corporate tax) rate, which is 29.5% of their net income (Legislative Decree No. 1261 of December 10, 2016 on the Modifications to the Income Tax Law, establishing the new rate for corporations and taxpayers of the "third category" (rentas empresariales)). This new rate entered into force on January 1, 2017. , **acB. 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; or other "similar objectives" (Income Tax Law (as modified by Law 27804) Article 37(x)). They must also be certified by Peru's Ministry of Economy and Finance via ministerial resolution as eligible to receive tax deductible donations (Income Tax Law (as modified by Law 27804) Article 37(x)). [8] . *Decreto Legislativo No. 1112* established that the SUNAT is in charge of the certification of an entity eligible to receive tax-deductible donations. This certification is for a period of three years and is subject to renewal by the entity involved. The SUNAT Resolution No. 300-2017-SUNAT (in force from November 2017) simplified the requirements for registration and renewal of entities eligible for tax-deductible donations.

Covered donors include taxpayers that are subject to the payment of taxes under the Peruvian Income Tax Law, that have formed or registered in Peru (with the exception of those eligible for tax exemption), and that have provided information to SUNAT on the donation. The organization receiving the donation also must be authorized by the SUNAT through a resolution (Resolution No.300-2017-SUNAT). [9] Donations made to organizations pursuing the aforementioned purposes are considered third category ("corporate") income-tax-deductible expenses. [10] A donor's deduction is capped at 10 percent 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), at a current tax rate of 18 percent. There is no general exemption for NPOs in Peru. 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) they habitually engage in operations contemplated under the purview of the GST. The provision of services is considered "habitual" when the services 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 (GST Law Article 2(g)); and
- The import or transfer of goods on a gratuitous basis (*a título gratuito*) to Foreign Organizations or Entities of International Technical Cooperation (ENIEX), national nongovernmental organizations (ONGD-PERU), and private and nonprofit institutions that are eligible to receive donations of a charitable or educational character (IPREDA). A recipient organization (NPO) must be duly registered in the corresponding APCI administrative registry and also registered by SUNAT as eligible to receive tax deductible donations. Law N° 30498 eliminated provisions requiring approval by Ministerial Resolution (GST Law Article 2(k), modified by Law N° 30498).

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 with the SUNAT as exempt organizations for income tax purposes.

D. IMPORT DUTIES

Imported goods are generally 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. Accordingly, donated merchandise imported from overseas for assistance purposes and brought in with a “Professional Humanitarian Mission” is not subject to customs duties. [\[11\]](#)

Law N° 30498 modified the *inafectación* of import duties related to donations made in favor of Foreign Organizations or Entities of International Technical Cooperation (ENIEX), national nongovernmental organizations (ONGD-PERU), and private and nonprofit institutions that are eligible to receive donations of a charitable or educational character (IPREDA) duly registered in APCI. The modification established that these organizations must also have been previously registered as eligible entities to receive tax-deductible donations before SUNAT.

E. DOUBLE TAX TREATIES

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

VI. KNOWLEDGEABLE CONTACT

Maria Beatriz Parodi Luna
 Attorney
 Lima, Peru
beatrizparodi@gmail.com

FOOTNOTES

[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 Law No. 28925 modifying 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 the 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. Law No. 28925, however, expanded the universe of organizations to include in the APCI registry: organizations that manage ITC without the participation of the state but who benefit from a privilege, tax benefit or exemption, use state resources (Decreto Legislativo N° 1451-September 2018 clarified that this includes national or foreign 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 in 2007 that registration in the APCI registries is not obligatory for those organizations who do not wish to accede to applicable tax benefits.

In May 2015, the APCI issued the *Resolución Directoral Ejecutiva N° 085-2015-APCI-DE*, modifying the requirements for NGO and foreign organizations undertaking international technical cooperation activities to renew their registration, in the national NGO Registry and ENIEX, respectively. Accordingly, in order to renew their registration, such organizations must a) establish that the APCI supervised their use of Non-Refundable International Cooperation (CINR) resources; b) provide an annual report and annual plan of activities for the coming year; c) demonstrate compliance with any recommendations made by the APCI; as well as d) confirm that they have a current *Registro Unico de Contribuyente* (RUC). More information on these requirements is available from the APCI website: www.apci.gob.pe.

On December 2016, APCI issued *Resolución Directoral Ejecutiva N° 130-2016/APCI-DE*, which modifies the requirements regarding the renewal in the registries of NGO's (local) and ENIEX (Foreign Institutions of International Cooperation), eliminating the requirements of having been supervised by APCI and complying with the recommendations made as a result of the supervisory actions of APCI.

As mentioned in resolution N° 130-2016, APCI has had to modify those requirements (established in Resolution N° 085-2015 of May 2015 and which was subject to criticism by NGOs) because they created additional administrative burdens on the procedures for renewal of NGOs and ENIEX registries. The difficulties revealed the challenges APCI faced in fulfilling its role in supervision.

[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, NPOs that engage in economic activities in Peru are typically 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, and committees).

[5] Committees are not eligible for exemption benefits.

[6] Before *Decreto Legislativo No. 1120*, if the SUNAT verified the non-fulfillment of the income tax requisites, then the SUNAT presumed, without proof of the contrary, that all the income received by the NPO was subject to the income tax for the taxable years not prescribed. From the enforcement of *Decreto Legislativo No. 1120*, if the SUNAT verified the non-fulfillment of the requisites, then the income tax would be applied only related to the taxable year.

[7] The SUNAT has opined, however, that when an organization includes the execution of economic activities in its governing documents (bylaws) (e.g., the provision of consultancy services or technical assistance which is not free), the organization does not meet the income tax exemption objectives defined in the law. In this regard, there are several decisions of the Tax Court (at the second instance) that establish that, in order to be exempt from income tax established in Article 19(b) of the Income Tax Law, the "social assistance" activities of a non-profit entity must be directed towards the most needy sectors of the population and must be provided for free.

[8] Only NPOs that are registered in the SUNAT's registry of tax exempt organizations under the Income Tax Law are eligible to receive tax deductible donations.

[9] Modified by *Decreto Legislativo No. 1112* (June 29, 2012) and Resolution SUNAT No. 300-2017.

[10] 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.

[11] Law 28905's regulations establish the procedure for acceding to this exemption. These regulations are complemented by the general regulations of customs provided by *Decreto Legislativo No. 1053: Ley General de Aduanas*. In addition, there is an administrative procedure for the approval of these donations, in order to accede to the exemption, regulated by *Decreto Supremo 096-2007-EF: Aprueban Reglamento para la Inafectación del IGV, ISC y derechos arancelarios a las Donaciones* (modified by Decreto Supremo N° 54-2017-EF). Modifications to the law were made by Law N° 30498.