

NONPROFIT LAW IN GUATEMALA



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This section describes the legal framework of nonprofit organizations (also known as non-governmental organizations or NGOs) in Guatemala, along with translations of legislative provisions relevant for a foundation or advisor undertaking an equivalency determination of a foreign grantee under IRS Revenue Procedure 92-94.

These reports have been prepared by the [International Center for Not-for-Profit Law](#) (ICNL). Please direct corrections and comments to [Lily Liu](#).

We include hyperlinks to the following information, to the extent available:

- Longer country reports analyzing various aspects of local legislation; and
- Texts of local laws that affect the decision whether or not to qualify a grantee (generally in translation, although ICNL and the Council cannot warrant the accuracy of any translation; in addition, legislative excerpts were selected by in-country contacts, and ICNL and the Council cannot warrant that all relevant provisions have been translated).

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I. SUMMARY

A. TYPES OF ORGANIZATIONS

The Republic of Guatemala recognizes three basic types of not-for-profit organizations (NPOs):

- Civil Associations;
- Foundations; and
- Non-Governmental Organizations for Development (NGOs).

Under the Law of Non-Governmental Organizations for Development (NGO Law) of 2003, an organization can be established from the outset as an NGO, or an existing civil association or foundation can attain the status of an NGO. [\[1\]](#)

B. TAX LAWS

Under Guatemala's Income Tax Law, an NPO is eligible for an income tax exemption if it meets the following requirements:

- The organization's aims are related to charity, assistance, aid or social service, culture, scientific research, education or instruction, arts, literature, sports, politics, religion, or activities typical of trade unions or professional associations;
- It is registered as an exempt organization with the tax authority (*Superintendencia de Administración Tributaria* (SAT));
- Its earned income and assets are derived from donations or fees, and the income and assets are utilized exclusively for the organization's primary aims; and
- The organization does not distribute profits or assets among its members, either directly or indirectly (Income Tax Law Article 6).

The Income Tax Law allows individual or corporate donors to deduct up to 5 percent of net income, or 500,000 Guatemalan Quetzales (GTQ) (approximately \$63,000), for contributions

to entities such as not-for-profit associations and foundations undertaking charity (*asistencia*), social services, scientific and cultural activities, as well as to universities, churches, religious organizations, and political parties (Income Tax Law Articles 37(d) and 38(s)). To receive tax-deductible donations, an association or foundation must be duly constituted, and be registered as a tax-exempt organization with the tax authority (SAT).

Guatemala has a value added tax (VAT) of 12 percent (VAT Law Article 10). Exemptions include contributions and donations to non-profit associations, foundations, and institutions that serve educational, cultural, social assistance or service, or religious objectives (VAT Law Article 7). Services provided by these organizations are also exempt from VAT if the organization (a) is authorized by law, (b) pursues not-for-profit objectives, and (c) does not distribute profits or assets to its associates or members (VAT Law Article 7). Membership fees to social, cultural, scientific, educational, sports, and professional associations are exempt from VAT, as are fees to trade unions and political parties (VAT Law Article 7).

II. APPLICABLE LAWS

- *Constitución Política de la República de Guatemala* (Political Constitution of the Republic of Guatemala) ("Constitution") (1985) [[Spanish](#)]
- *Código Civil* (Civil Code) (1963) [[Spanish](#)]
- *Ley de Organizaciones no Gubernamentales para el Desarrollo* (Law of Non-Governmental Organizations for Development) ("NGO Law") (2003) [[Spanish](#)]
- *Código Municipal* (Municipal Code) (2002) [[Spanish](#)]
- *Acuerdo Gubernativo 443-2013 del Ministerio de Gobernación, Reforma el Acuerdo Gubernativo 118-2002 de fecha 17 de abril de 2002, Reglamento de la Ley contra Lavado de Dinero u otros activos, publicado en el Diario de Centro América el 25 de noviembre de 2013* (Agreement No. 443-2013 of the Ministry of the Interior, Reform Government Decree 118-2002 dated April 17, 2002, Regulations of the Law Against the Laundering of Money or Other Assets, published in the Central American Journal on November 25, 2013)
- *Ley Electoral y de Partidos Políticos* (Electoral and Political Party Law) (1985) [[Spanish](#)]
- *Ley del Impuesto Sobre la Renta* (Income Tax Law) (1992) [[Spanish](#)]
- *Reglamento de la Ley del Impuesto Sobre la Renta* (Regulation of the Income Tax Law) (2004) [[Spanish](#)]
- *Ley del Impuesto al Valor Agregado* (Value Added Tax Law) (1992) [[Spanish](#)]
- *Reglamento de la Ley del Impuesto al Valor Agregado* (Regulation of the Value Added Tax Law) (1997) [[Spanish](#)]
- *Ley para la Protección del Patrimonio Cultural de la Nación* (Law for the Protection of the National Cultural Heritage) (1997) [[Spanish](#)]

- *Ley de los Consejos de Desarrollo Urbano y Rural* (Law of the Urban and Rural Development Councils) (2002) [\[Spanish\]](#)
- *Ley del Registro Nacional de las Personas y sus reformas, Decreto número 90-2005* (Law of National Registry of Persons and its Reforms, Decree Number 90-2005) ("Registry Law") (2005) [\[Spanish\]](#)
- *Código de Notariado* (Notary Code) (1946)
- *Reglamento de Inscripción de Asociaciones Civiles* (Regulation of Registration of Civil Associations) (1998)
- *Acuerdo COM-020-08: El Registro de Asociaciones de Vecinos y Otras Formas de Organización Comunitaria*(Decree Creating the Registry of Neighborhood Associations and Other Forms of Community Associations) (2008)
- *Acuerdo Ministerial* (Ministerial Agreement) Number 84-2009 containing the Procedural Manual for Budgetary Implementation of Agreements with *Non-Governmental Organizations* and International Organizations (December 29, 2009)
- Decree Number 9-2015 of the Congress of the Republic of Guatemala, which enacts reforms to the Law of Contracts of State, Decree Number 57-92 of the Congress of the Republic of Guatemala, published in the Central American Journal on December 8, 2015, which entered into force on December 16, 2015
- Decree Number 9-2015 of the Congress of the Republic of Guatemala that enacts reforms to the recruitment of the State Decree Number 57-92 of the Congress of the Republic of Guatemala
- Decree Number 25-2018 of the Congress of the Republic of Guatemala (Law of the General Budget of Income and Expenses of the State for the Fiscal Year 2019), published on November 27, 2018, which entered into force on January 1, 2019
- Article 71 of Decree Number 9-2015 of the Congress of the Republic of Guatemala, on General State Acquisitions
- Government Agreement Number 55-2016 dated March 28, 2016, published in the Central American Journal on March 29, 2016, about the Subsidies and Grants Management Regulation which entered into force on March 30, 2016
- Resolution Number 04-25-2016 of the National Protected Areas Council approving the Registration of Non-Governmental Organizations Related to Natural Resources and the Environment dated October 6, 2016 and published in the Central American Journal on October 25, 2016.
- Governmental Agreement number 20-2019 dated January 25, 2019, of the Presidency of the Republic (Internal Organic Regulation of the Secretariat of Planning and Programming of the Presidency), published in the Central America Journal on January 31, 2019, Organ Official of the Republic of Guatemala, CA [2]

III. RELEVANT LEGAL FORMS

A. GENERAL LEGAL FORMS

A not-for-profit organization may be registered as a:

- Civil Association;
- Foundation; or
- Non-Governmental Organization for Development (NGO).

The Civil Code recognizes two kinds of not-for-profit organizations: civil associations and foundations. The NGO Law recognizes and governs NGOs.

CIVIL ASSOCIATIONS

A civil association is a not-for-profit organization that promotes or protects trade unions, political, economic, religious, social, cultural, professional, or other interests. A civil association is constituted through the approval and registration of its notarized governing documents in the Legal Entities Registry of the *Ministerio de Gobernación* (Ministry of Government) (Registry Law Article 102).

Certain organizations, including neighborhood associations and community development organizations, fall outside the scope of the Registry Law, and must register with the municipality where their governing documents were notarized, rather than with the Legal Entities Registry (Acuerdo COM-020-08: El Registro de Asociaciones de Vecinos y Otras Formas de Organización Comunitaria).

Foundations

A foundation is a legal entity formed by public instrument or will with a minimum capital requirement of GTQ 50,000 (approximately \$6,300). A foundation may be set up by at least two natural or legal persons. The foundation's articles of incorporation must describe the foundation's assets, the purposes for which the assets are intended, and how the assets are to be administered (Civil Code Article 20). A foundation is constituted by registering its notarized governing documents in the Legal Entities Registry in the Ministry of Government (Registry Law Article 102).

NON-GOVERNMENTAL ORGANIZATIONS

An NGO is a third form of not-for-profit entity with cultural, educational, or sports objectives. It provides social services, assistance, or charity, and engages in economic and social development (NGO Law Article 2). The NGO's goals must include, among others, the promotion or development of policies that are social, economic, cultural, and environmental in nature (NGO Law Article 3). Any civil association or foundation may register as an NGO as

long as it complies with the NGO Law's requirements. An NGO is constituted through registration of its notarized governing documents in the Legal Entities Registry of the Ministry of Government (Registry Law Article 102). Organizations registered under the NGO Law may access the government fund created under Article 242 of the Constitution. [3]

B. PUBLIC BENEFIT STATUS

Guatemalan law provides tax exemptions to organizations that pursue public and social objectives as listed in Section V(A). A sub-class of these organizations is also entitled to receive tax-deductible donations.

IV. SPECIFIC QUESTIONS REGARDING LOCAL LAW

A. INUREMENT

CIVIL ASSOCIATIONS

Guatemala's Civil Code does not explicitly prohibit civil associations from distributing profits or assets to their founders or board members. Similarly, the Civil Code does not prohibit self-dealing, or limit income that civil associations may pay to their employees or board members. However, to qualify for tax exemption, the Income Tax Law prohibits associations from distributing, directly or indirectly, profits and assets among their members (Income Tax Law Article 6(c)). Thus, these prohibitions are usually included in the governing documents of civil associations.

FOUNDATIONS

As with civil associations, Guatemala's Civil Code does not explicitly prohibit foundations from distributing profits and assets to their founders or board members, or prohibit self-dealing, or limit income that foundations may pay to their employees or board members. Nevertheless, these prohibitions are usually included in the organizational documents of foundations to qualify for tax exemptions under the Income Tax Law (Income Tax Law Article 6(c)).

NON-GOVERNMENTAL ORGANIZATIONS

NGOs are expressly prohibited from distributing dividends, utilities, profits, benefits or privileges to their members (NGO Law Article 18).

B. PROPRIETARY INTEREST

CIVIL ASSOCIATIONS

The Civil Code does not prohibit donors from retaining a proprietary interest in a donation they make to a civil association, revoking their donation or contribution, or placing conditions on their donations.

FOUNDATIONS

As with civil associations, the Civil Code does not prohibit donors from retaining a proprietary interest in a donation they make to a foundation, revoking their donation or contribution, or placing conditions on their donations.

NON-GOVERNMENTAL ORGANIZATIONS

The NGO Law does not expressly prohibit donors from retaining a proprietary interest in a donation they make to an NGO, revoking their donation or contribution, or placing conditions on their donations.

C. DISSOLUTION

CIVIL ASSOCIATIONS

A civil association can be dissolved by the majority vote of its members according to the grounds established in its governing documents (Civil Code Article 25). In addition, a competent court may dissolve an association at the request of the *Ministerio Público* (Public Prosecution Office) if evidence shows that the association is perpetrating illegal activities (Civil Code Article 25).

Upon dissolution, the association's assets must be transferred to an organization with similar objectives, though not necessarily with the same tax status (i.e. a civil association with tax exemption could distribute its assets upon distribution to a civil association that does not possess the benefits—or obligations—of tax exempt status). If the association's governing documents do not name an organization to whom its assets will be transferred upon dissolution, then its assets are to be transferred to the State (Civil Code Article 26).

FOUNDATIONS

A foundation can be dissolved voluntarily according to the procedure established in its governing documents. A foundation may also be dissolved by a competent court if evidence shows that its funds are inadequate to achieve the stated objectives, its objectives are unattainable, or if its goals are excessively onerous. Upon dissolution, the founding members may choose for the foundation's resources to be transferred to a foundation or other institution pursuing a similar objective, but not necessarily with the same tax status (Civil Code Article 21). If the founding members have not named another institution to receive the foundation's funds, the State will name a receiving institution.

NON-GOVERNMENTAL ORGANIZATIONS

Once an NGO decides to dissolve or is ordered to do so by a competent court, one or two liquidators are chosen to pay off the organization's debts and dispose of the remaining assets (NGO Law Article 20). Assets remaining after the payment of the organization's debts are either turned over to the State or transferred to a social assistance entity with similar goals, as determined by the NGO's members at the extraordinary general meeting where the members voted to dissolve the organization (NGO Law Article 21).

D. ACTIVITIES

1. GENERAL

Guatemala's Civil Code provides that a civil association must promote or protect trade unions, or promote, exercise, or protect political, economic, religious, social, cultural, professional, or other objectives stated in its governing documents.

A foundation's organizational documents must specify the purpose for which it is intended, as well as its form of management (Civil Code Article 20).

NGOs must have cultural, educational, or sports objectives; provide social services, assistance, or charity; and engage in economic and social development (NGO Law Article 2). The NGO's goals must include promoting development policies that are social, economic, cultural, and environmental in nature (NGO Law Article 3).

NGOs that have objectives related to natural resources and the environment must obtain authorization from the CONAP Executive Secretariat before carrying out activities in protected areas; they must also register with the CONAP Registry Office (Articles 1, 2, 3 5, of the Resolution Number 04-25-2016 of the National Council of the Protected Areas). [\[4\]](#)

2. PUBLIC BENEFIT ACTIVITIES

All three types of NPOs (associations, foundations, and NGOs) may engage in public benefit activities.

3. ECONOMIC ACTIVITIES

An NPO should not pursue economic activities as its primary purpose. An NPO may, however, conduct economic activities to obtain funds to further its goals. However, if an NPO engages in unfair competition to commercial enterprises, the Superintendent of the Tax Administration will cancel the NPO's fiscal benefits.

4. POLITICAL ACTIVITIES

The Civil Code allows civil associations to engage in political activities, though it does not specifically reference lobbying or influencing legislation (Civil Code Article 15). The Civil Code does not explicitly place limits on the ability of foundations to engage in political or lobbying activities. The Civil Code is also silent as to whether civil associations and

foundations may use mass media to encourage the public to contact their legislators about proposed legislation. The NGO Law is silent on these issues as well.

E. DISCRIMINATION

Article 4 of the Guatemalan Constitution provides that all human beings are free and equal in dignity and rights, and prohibits slavery, servitude, or other acts that may degrade human dignity.

F. CONTROL OF ORGANIZATION

An association or foundation may be controlled, directly or indirectly, by a for-profit entity or by an American grantor charity. Up to 25 percent of an organization's members or founders may be foreign, provided that they are residents of Guatemala (NGO Law Article 7(c)).

V. TAX LAWS

A. TAX EXEMPTION

Income obtained by an NPO is exempt from income tax if:

- The organization's objectives are related to charity, assistance, aid or social service, culture, scientific research, education or instruction, art, literature, sports, trade unions, politics, professional associations, or religion;
- The organization is registered as an exempt organization with the tax authority (SAT);
- The organization's earned income and assets are derived from donations or from fees, and they are applied exclusively to the organization's primary objectives; and
- The organization's profits and assets are not distributed among members, either directly or indirectly (Income Tax Law Article 6).

B. DEDUCTIBILITY OF CHARITABLE CONTRIBUTIONS

The Income Tax Law allows individual or corporate donors to take a deduction of up to 5 percent of their net income, or GTQ 500,000 (approximately \$63,000) for contributions to, *inter alia*, not-for-profit associations and foundations undertaking charity, social services, and scientific and cultural activities; as well as to universities, churches, religious organizations, and political parties (Income Tax Law Articles 37(d) and 38(s)). To receive tax-deductible donations, an association or foundation must be duly constituted and registered as a tax-exempt organization with the SAT.

C. VALUE ADDED TAX

In Guatemala, the base rate for VAT is 12 percent (VAT Law Article 10). Exemptions include contributions and donations to not-for-profit associations, foundations, and institutions that serve educational, cultural, social assistance or service, or religious objectives (VAT Law Article 7). Services provided by these organizations are also exempt from VAT, provided that the organization is authorized by law, pursues not-for-profit objectives, and does not distribute profits or assets to its associates or members (VAT Law Article 7). Membership dues and fees paid to social, cultural, scientific, educational, and sports associations, as well as to political parties and professional associations, are also exempt from VAT (VAT Law Article 7).

D. DOUBLE TAX TREATIES

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

VI. KNOWLEDGEABLE CONTACTS

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FOOTNOTES

[1] Entities that are beyond the scope of this Note include: cooperatives; *patroness* and committees for recreational, public or social works; religious organizations; neighborhood and indigenous associations regulated by the Municipal Code; and associations regulated by the Protection of the Cultural National Heritage Law.

[2] Article 30(d) of the Governmental Agreement 20-2019 states that the Directorate of Partnerships for Development is responsible for engaging with government actors, civil society, and the private sector, within the framework of national development priorities, for the purpose of promoting integrated and sustainable development in Guatemala.

[3] When an NGO undertakes activities financed with public funds, it is required to follow "The Procedural Manual for Budgetary Implementation of Agreements with Non-Governmental Organizations and International Organizations." The Manual details various guidelines and restrictions regarding the use and management of public funds, including the submission of updates at least once a month on the progress of work or activities undertaken and related expenditures. Agreements covered by this decree should also comply with the General Budgetary Law on State Income and Discharges.

See Decree Number 14-2015 of the Congress of the Republic of Guatemala, Law on the General Budget of Revenue and Expenditure of the State for the fiscal year 2016. Decree

Number 9-2015 of the Congress of the Republic of Guatemala that enacts Reforms to the Procurement of the State, Decree Number 57-92 of the Congress of the Republic of Guatemala.

[4] Resolution Number 04-25-2016 of the National Protected Areas Council approving the Registration of Non-Governmental Organizations Related to Natural Resources and the Environment, dated October 6, 2016 and published in the Central American Journal on October 25, 2016.