

NONPROFIT LAW IN THE PHILIPPINES



Current as of October 2019

This report describes the legal framework governing nonprofit organizations (also known as non-governmental organizations or NGOs) in the Philippines, and includes 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

In the Philippines, not-for-profit organizations (NPOs) are typically organized as "**non-stock corporations**" registered under the Corporation Code. Non-stock corporations may 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 (Revised Corporation Code Section 87). The Securities and Exchange Commission (SEC) of the Philippines serves as the registration authority for non-stock corporations. Some non-stock corporations register as **foundations**.

In turn, the tax laws provide additional benefits to two types 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)).

Microfinance NGOs are SEC-registered NGOs that must be organized for the primary purpose of implementing a microenterprise development strategy and providing microfinance programs, products, and services, such as microcredit and microsavings for poor and low-income clients (Microfinance NGOs Act RA 10693 Sections 3(h), 6).

Some foreign NPOs do business in the Philippines by establishing branch or representative offices, however these fall outside the scope of this Note. 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" (RA 10607, The 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 percent of taxable income for corporate donors and 10 percent 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, to qualify to receive fully deductible donations, an accredited NGO cannot devote more than 30 percent 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
- [Revised Corporation Code of the Philippines \(RA 11232\)](#), 2019 (repealing 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), Chapter IV (Relations with Peoples and NGOs)
- National Internal Revenue Code Republic Act No. 8424 ("Tax Code"), as amended by Republic Act No. 10963 (July 24, 2017)
- [Revenue Regulations No. 13-98, December 8, 1998](#) ("Revenue Regulation No. 13-98") (Deductible contributions to accredited donee institutions); Revenue Memorandum Order No. 20-2013, July 2013 (BIR tax exempt rulings); Revenue Regulation 13-2018 (VAT); BIR Revenue Memorandum Order 44-2016, July 26, 2016 (Specific to educational institutions)
- Republic 10863 "Customs Modernization and Tariff Act" (CMTA) ("CMTA")
- SEC Memorandum Circular No. 8, series of 2006 (Foundations); SEC Memorandum Circular No. 10, series of 2016 (Nationality of Corporations); SEC Memorandum Circular No. 15, series of 2018 (Guidelines for the Protection of SEC-registered NPOs from Money Laundering and Terrorist Financial Abuse); Revised Securities Regulation Code (SRC) Rule 68, 2019 (Annual SEC filings)
- [Microfinance NGOs Act \(Republic Act 10693\)](#), [November 2015](#) and its Implementing Rules and Regulation, August 2016; BIR Revenue Regulation 3-2017 Implementing the Tax Provision of RA 10693; SEC Memorandum Circular No. 2, series of 2006 (Microfinancing)

III. RELEVANT LEGAL FORMS

A. GENERAL LEGAL FORMS

Under the Revised 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 (Revised Corporation Code Section 87). 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, whenever necessary or proper, be used in furtherance of their purpose or purposes (Revised Corporation Code Section 86).

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 \$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 SEC a written statement of its willingness to allow the Commission to conduct an audit of its corporate books and records.

For SEC-registration purposes, “foundation” means 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).

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

- General Information Sheet;
- Audited Financial Statements, supported by specific fund schedules and with sworn statements by the NPO’s President and Treasurer (Revised Securities Regulation Code Rule 68, Part I, Section 5A and Annex 68-C) [\[3\]](#)

All SEC-registered NPOs must disclose information to the SEC about their operations that will be used by the SEC for risk assessment and monitoring to protect registered NPOs from money laundering and terrorist financing abuse (SEC Memorandum Circular No. 15, series of 2018).

A **microfinance NGO**, which is a special type of SEC-registered NGO, is created primarily to engage in microfinancing activities and is under the regulatory supervision of the Microfinance NGO Regulatory Council. For the purposes of these rules, a microfinance 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” (Microfinance NGOs Act Section 3(h) and (j)).

B. PUBLIC BENEFIT STATUS

For additional tax benefits, 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 kinds of 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 kinds of purposes:

- Scientific;
- Research;
- Educational;
- Character-building and youth and sports development;
- Health;
- Social welfare;
- Cultural; or
- Charitable (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 percent of total

expenses) and limitations on the distribution of assets upon the organization's dissolution ([Revenue Regulation No. 13-98 Section 1\(b\)](#)). [4]

A microfinance NGO obtains its mandate from the Microfinance NGOs Act and must undergo accreditation by the Microfinance NGO Regulatory Council in order to enjoy the legal and tax benefits set forth by the enabling law (Microfinance NGOs Act Section 10). [5]

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 (Revised Corporation Code Section 86).

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 (Revised Corporation Code Section 29). 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 percent 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 (Revised Corporation Code Section 86). 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 (Revised Corporation Code Section 93 (b)).
- 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 (Revised Corporation Code Section 93 (c)).
- 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 (Revised Corporation Code Section 93 (d)).

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" (Revised Corporation Code Sections 35 and 86).

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 (Revised Corporation Code Section 87). 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 (Revised Corporation Code Section 86). 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. Foreign NPOs may not directly expend funds on "any political party or candidate or for purposes of partisan political activity" (Revised Corporation Code Section 35 (i)). 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(d-f) and (h)).

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 (Philippine Omnibus Election Code Section 81). Similarly, 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](#) Section 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](#)). It also provides that no person shall be denied “equal protection of the laws” (Constitution Article III Section 1). There are no provisions in the Constitution or Corporation Code, however, which 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).

A foreigner can sit as a trustee in a non-stock corporation. Note, however, that if fewer than 60 percent of the NPO’s membership or board are Philippine citizens, the organization may not qualify as a Philippine national, which may affect the organization’s ability to engage in activities or those reserved to Philippine citizens (SEC Memorandum Circular No. 10, series of 2016). [\[6\]](#)

Further, 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). [\[7\]](#)

A duly-registered and accredited microfinance NGO shall pay a 2 percent preferential tax on its gross receipts from microfinance operations in lieu of all national taxes. This preferential tax treatment is only accorded to NGOs whose primary purpose is microfinance and is only applicable to their microfinance operations aimed at alleviating poverty and catering to low-income individuals. The non-microfinance activities of microfinance NGOs shall be subject to all applicable regular taxes (Microfinance NGOs Act Section 20).

NPOs must secure from the tax authority a confirmatory ruling of their tax-exempt status, which is valid for three years unless sooner revoked (Revenue Memorandum Order No. 20-2013 Sections 1, 2, and 9). A renewal application must be filed to extend the three-year exemption ruling (Revenue Memorandum Order No. 20-2013 and Revenue Memorandum Order No. 28-2013 Section 10). [\[8\]](#) However, the absence of a valid, current, and subsisting tax exemption ruling will not necessarily operate to divest qualified entities of the tax exemption they are entitled to under Section 30 of the Tax Code. Educational institutions are not required to renew or revalidate their exemption certifications every three years (BIR Revenue Memorandum Order 44-2016).

Applications for tax exemption rulings may be filed by umbrella organizations or confederations duly recognized by the Bureau of Internal Revenue (BIR), the Philippine Taxing Authority, on behalf of any of its non-stock, non-profit members (BIR Revenue Memorandum Order No. 34-2014).

The 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 a 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, and contributions to accredited non-stock, non-profit corporations up to 5 percent of taxable income for corporate donors and 10 percent 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 a) not more than 30 percent 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\(c\)](#)); b) it does not pay dividends or compensation to trustees; and c) all income, whether fees, gifts, donations, subsidies, or other forms of philanthropy, are utilized towards the accomplishment and promotion of the purposes enumerated in the company's incorporation papers (Tax Code Section 101).

C. VALUE ADDED TAXES AND TAX ON GROSS RECEIPTS

An organization regularly engaged in commercial or economic activities with annual gross sales (for sale of goods) or receipts (for sale of services) in excess of PHP 3 million is subject to the standard VAT rate of 12 percent (Tax Code Section 109).

An organization that is not a VAT registered entity and that is engaged in trade or business whose annual gross sales or receipts fall below PHP 3 million shall pay a tax equivalent of 3 percent of its quarterly sales or receipts (Tax Code Section 116).

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(g) and (h), VAT-Exempt Transactions).

D. IMPORT DUTIES

Certain goods relevant to NPOs may be exempted from customs duties, including but not limited to:

- Imported goods donated to or for the account of the Philippine government or any duly registered relief organization, not operated for profit, for free distribution among the needy, upon certification by the Department of Social Works and Development (DSWD) or the Department of Education (DepED), or the Department of Health (DOH), as the case may be (CMTA Section 800(m));
- Economic, technical, vocational, scientific, philosophical, historical, and cultural books or publications, or those educational, scientific, or cultural materials covered by international agreements or commitments binding upon the Philippine government so certified by the DepED (CMTA Section 800(t)); and

- Religious books such as Bibles, Korans, missals, prayer books, and other religious books of similar nature and extracts therefrom, including hymnals for religious uses (CMTA Section 800(t)).

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.

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 87 of the Revised Corporation Code. Rather, nongovernmental educational institutions are governed in the first instance by special laws, then by special provisions of the Revised Corporation Code, and then by general provisions of the Revised 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 private 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).

[3] These sworn statements embodied in SEC Forms include the following: (a) a willingness to be audited by the SEC, and (b) a schedule of receipts/income/sources of funds apart from contributions and donations.

A non-stock corporation or foundation with annual contributions or donations of PHP 500,000 or more is also required to file (i) a schedule of Contributions and Donations, (ii) a schedule of application of funds and (iii) a Certificate of Existence of Program/Activity (COEP) (Revised Securities Regulation Code, Rule 68, Part I, Section 5A) issued by the government agency that exercises jurisdiction over the activity of the organization. COEPs issued by the heads or officers of private institutions or actual beneficiaries or recipients of the program or activity may be submitted in lieu of a COEP issued by a government office or entity (Revised Securities Regulation Code Rule 68, Annex 68-C).

[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] The implementing rules and regulations for the Microfinance NGOs Act were passed on August 16, 2016 and the related BIR Revenue Regulation 30-2017 implementing the tax provision of the Act was released in March 2017.

[6] 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.

[7] 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 Code imposes taxes 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 Code, imposes on proprietary educational institutions and hospitals, which are not-for-profit, a 10 percent 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 percent 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.

[8] The Bureau of Internal Revenue 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. In September 2014, the BIR issued Memorandum

Circular 34-2014, to clarify the tax implications of Revenue Memorandum Circular Nos. 20-2013 and 28-2013. BIR Memorandum Order 44-2016 clarifies the applicability of the earlier circular to educational institutions.