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Venezuela

Country Reporters

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Venezuela

I. RECIPIENTS OF CHARITABLE GIFTS

A. Establishment of the recipient entity

1. Creation of the organization

Charitable organizations in Venezuela are allowed to conduct their activities without restrictions beyond those underlying their existence. These basic requirements include: (a) their income is used only in pursuit of charitable purposes; (b) no income or profits may be distributed to their founders, associates or members; and (c) no dividends may be distributed (LISR, Article 12 No. 3 and 10; Ley de Impuesto a los Activos Empresariales (LIAE), Article 3 No. 2 and 4; Gaceta Oficial de la Republica de Venezuela No. Extraordinario 4654, 1 December 1993). These requirements were included in the first Venezuelan income tax law enacted in 1942 and incorporated into the revisions of 18 December 1995.

A natural or juridical person may donate funds for charitable purposes conducted by overseas organizations. Donations towards the nonprofit objectives of welfare and social assistance organizations for the delivery of medical services, food, clothing, housing, or other necessary provisions, however, must be used within Venezuela in order to attract a deduction. (Reglamento de la Ley de Impuesto Sobre la Renta (RLISR), Article 31(a) and (b); Gaceta Oficial de la Republica de Venezuela No. 35217, 24 May 1993.)

Venezuelan charitable organizations take the legal form of either nonprofit associations or foundations. Both entities require incorporation. Legal personality is obtained upon the filing of the organization's governing instruments with the Secondary Civil Registry of the district in which the entity is created (Article 19, Ordinal 3, of the Venezuelan Civil Code).

Form of organization

A nonprofit association can be created for artistic, scientific, or literary purposes. Establishment for these purposes does not imply that the services will be rendered to the public. Any services rendered may be solely for the benefit of the members.

A foundation can be created only for general welfare purposes, and because of this, it is subject to strict government oversight.

Content of organizational documents

Both nonprofit associations and foundations attain legal personality upon the filing of incorporation documents, including certified bylaws. Included in the incorporation documents are the name of the organization, domicile, purpose, and method of internal governance. Any amendments to the bylaws must be registered within fifteen days following the meeting at which the amendments were ratified. These instruments, drafted by the founders and members, then serve as the legislation by which the organization will be administered and directed. (The Civil Code of the Republic of Venezuela at Article 19(3).) The organization will continue in existence for whatever period is stated in the governing instruments.

Venezuelan law does not dictate any minimum or maximum number of directors of boards for nonprofit organizations. A provision for this number, together with those regarding term of office, qualification, and rights and duties of directors, are contained in the bylaws.

Venezuela is extremely lenient as to supervision of nonprofit organizations. But for the ultimate authority of the Ministry of Finance, which reviews whether an organization is applying its resources to charitable purposes at the behest of the respective judges of first instance, there is virtually no official guidance as to internal management of these bodies.

Liquidation of a nonprofit association is conducted according to provisions within the governing instruments. Notification of dissolution must be submitted to the Secondary Registry Office of the department or district where the association was established and is registered.

Foundations, too, are governed by the provisions contained in their incorporation documents. Typically, these instruments confer authority over the institution to a governing board. Nonprofit foundations may only be created to serve purposes of general welfare. These purposes include artistic, scientific, literary, charitable or social purposes. Foundations are subject to the oversight of the state in that they are required to submit records and accounts to the judges of first instance.

Prior to liquidation due to impossibility or incapability of achievement of purpose, a foundation must provide notice of this intention to the judge of first instance in its jurisdiction. If the dissolution is approved, the judge will transfer the remaining assets of the foundation to another foundation or association.

Should it become impossible to administer a foundation according to its bylaws, and in the absence or disability of the founder, the judge of first instance may reform the bylaws to permit the survival of the foundation (Civil Code, Article 22).

2. Obtaining exemption from taxation for the organization

There is no formal application procedure by which a Venezuelan nonprofit organization obtains exemption from national income taxation. Tax exempt status, however, is not automatic. To achieve tax exempt status, an organization must present its organizing documents to the Tax Authority to justify its qualification as

tax exempt. Exempt status is granted on a case-by-case basis and registered with the Tax Authority (LISR, Article 12, Single Paragraph; RLISR, Article 31, Paragraphs 1, 2 and 3 and Reglamento de la Ley de Activos Empresariales, Article 5, Gaceta Oficial des la Republica de Venezuela No. Extraordinario 4834, 30 December 1994).

For relief from municipal tax, an organization must apply to the local General Office of Public Treasury for official exemption.

Municipalities are responsible for the levy of the real property tax known as the tax on urban property rights. Thus, they have the authority to exempt nonprofit organizations from payment of this tax on properties situated in their jurisdiction. In many cases the social benefits delivered by a charitable organization are persuasive in eliminating this tax.

A nonprofit organization may also apply to the Municipal Public Treasury Office for exemption from another municipal tax, the industrial and commercial patent tax. This application requires a written request on stamped paper or on white paper with 54-Bolivar revenue stamps attached to each page.

3. Obtaining status as an organization to which tax deductible gifts can be made

Venezuelan nonprofit organizations are not required to obtain any official recognition as entities to which tax deductible gifts can be made.

4. Obtaining permission to solicit charitable gifts

Charitable institutions or foundations are not required to register with any government agency in order to obtain permission to solicit individual or corporate donations.

5. Cost involved in the organizational steps

The costs involved in establishing a nonprofit organization are principally those for registration of the documents and discretionary publication of the bylaws. The actual cost is largely dependent upon the length of the documents, although Venezuelan fees of this sort frequently increase.

6. Difficulty of obtaining official approval

There are few restrictions governing the establishment of charitable organizations in Venezuela, and there is relatively little oversight of their activities after initial establishment. For these reasons, there is virtually no difficulty in obtaining official approval to function as an exempt organization, but for the normal challenges inherent in dealing with a bureaucracy.

B. Permissible activities by the entity

There are no limitations on the activities of charitable associations. They must, of course, pursue their stated social or charitable purposes. They must not enrich individuals associated with them.

Foundations, which can only be created for general welfare, artistic, scientific,

literary, charitable or social purposes, may engage in profit making activities to finance their programmes. Any income they derive from their commercial endeavours that is not directly related to their charitable purposes is taxable at the following rates, as stated in Article 51 of the Income Tax Law: unrelated income amounting to less than 1,000 Taxable Units (TU) is taxed at the rate of 6 per cent. Amounts from 1,000 to 1,500 TU are taxed at a rate of 9 per cent. Amounts from 1,500 to 2,000 TU are taxed at the rate of 12 per cent. Amounts from 2,000 to 2,500 TU are taxed at the rate of 16 per cent. Amounts from 2,500 to 3,000 TU are taxed at the rate of 20 per cent. Amounts from 3,000 to 4,000 TU are taxed at the rate of 24 per cent. Amounts from 4,000 to 6,000 TU are taxed at the rate of 29 per cent; and amounts above 6,000 TU are taxed at the rate of 34 per cent. Each Taxable Unit is currently equivalent to 7,400 Bolivars, but remains subject to adjustment for inflation. Thus an entity is able to conduct commercial activities that either support its charitable activities or do not. Income from unrelated income is simply taxed. This allows charitable organizations in Venezuela great latitude in the conduct of their operations and in their selection of means to finance their endeavours.

Expenditure of exempt finances for lobbying is permitted so long as the lobbying activities are legal and in some way conducive to the purposes of the organization.

According to the authority of Article 96 of the national constitution of Venezuela, an individual who is a director of a nonprofit organization may receive compensation for his services. Should an organization provide compensation to its employees to an extent that is determined by the Ministry of Finance to constitute profit sharing, the organization may lose its exempt status.

C. Governmental regulation after initial registration

The Ministry of Finance possesses the right to oversee the operations of charitable organizations by virtue of its power to recognize them as exempt from national taxation. Pursuant to this authority, the Ministry may order an audit of an organization at any time it sees fit. An organization that is determined to be operating outside its stated purposes risks losing its tax exempt status.

According to Article 21 of the Civil Code, foundations are subject to oversight by the state through the judges of first instance to whom foundations must account.

D. Taxation of charitable organizations

Charitable organizations are not required to pay national income tax on any income to them that is directly related to their exempt purposes. Unrelated income is taxed according to rates (see above) set forth in Article 51 of the Income Tax Law. Organizations with undeclared unrelated income risk fraud actions and fines based upon the nature of the nondisclosure involved (Organic Taxation Code at Article 95).

Nonprofit private establishments with more than 75 per cent of their annual income engaged in scientific, educational, artistic, cultural, recreational, social assistance, charitable or similar activities, or in the promotion of new entities for the same purposes, or of the religious cult, are now exempted by Decree No. 2001, of

20 August 1997, and for an indetermined term, of the gift tax levied in accordance to the Law upon the value of each of the properties donated to them. Donee should file information with the tax authorities not later than 30 days after transmittal. In the case of establishments for the religious cult, they should be previously docked at the Justice Department.

Although the country contains many municipalities, each with local government policies, most localities permit exemptions from the local tax of industrial and commercial patent for charitable organizations. Generally the local mayor has the ultimate authority in this matter.

E. Differences at different levels of government

Municipal councils may exempt charitable institutions from the payment of municipal taxes, such as the industrial and commercial patent taxes and real property taxes, depending on provisions in the code of the municipal council.

II. DONORS OF CHARITABLE GIFTS

A. Nature of the donor

Under Venezuelan income tax law, either a natural or juridical person,¹ such as an association, corporation, partnership, fund, estate, trust or foundation, can receive a deduction for a charitable contribution.

B. Form and proof of tax benefit

Individual donors are permitted to deduct the value of a charitable gift from their annual net income. Contributions made towards the donor's discharge of social responsibility, as well as those made on behalf of Venezuela, its states, municipalities or public autonomous institutes, are also deductible.

Corporations are also allowed to deduct the value of charitable gifts from their net annual income. When net income is up to 10,000.00 Taxable Units, a corporate taxpayer is allowed to deduct, as a gift, 10 per cent of that income. When net income surpasses 10,000.00 Taxable Units, 8 per cent of amounts exceeding 10,000.00 Taxable Units may be claimed as deductible charitable contributions.² Donors in the extractive hydrocarbons or mineral industries, including refining and delivery, receive a deduction limited to 1 per cent of net income, which is not graduated according to the amount of the gift.

These limits may be exceeded if approval of the National Executive is granted. Such approval would require that the contribution be applied to educational, cultural,

¹ Codigo Civil (C. civ.), Articles 16 and 19 (National Pr ess, 1982; Official ed.). Personality is granted to individuals *per se* and, by way of a fiction of law, to duly established legal entities known as juridical persons.

² Ley de Impuesto Sobre la Renta (LISR), Article 27 paragraph 13 (a) (Gaceta Oficial de la Republica de Venezuela No. Extraordinario 5.023, 18 December 1995).

scientific, religious, sporting and public assistance ends³ and that the recipient organization be formally organized and registered with the Treasury Ministry.⁴

To be valid, a gift must be conveyed in authentic form unless it consists of movable goods not exceeding Bolivars 2,000 in value.⁵ In this sense, authentic form consists of a written instrument executed before a notary or other public officer thereby rendering it legally admissible as evidence.⁶

Valuation appraisals are commonly used by tax officers and taxpayers for certain gifts including works of art, private libraries or other collections.

C. Amount of tax benefit to the donor

A donor receives a tax benefit regardless of the form of the donation. Gifts of fixed assets are adjusted according to a formula that adjusts the amount of the deduction to equal the purchase price less any depreciation taken prior to the date of the gift.⁷

Accordingly, the gifts most effective for tax purposes are those made by juridical persons in the form of cash, bonds or provision of services, or similarly, property that has not yet been depreciated.

Venezuelan income tax rates are not affected by the value of any specific gift. Tax benefits of charitable gifts derive from their application to total net taxable income.

A municipal authority has the discretion to allow charitable contributions in lieu of local tax payment.

As there are no legal restrictions as to the form of donations under Venezuelan law, split interest gifts may be made. A gift of marital property bound by community property law might be claimed by joint or separate tax returns.⁸

A gift of appreciated property brings no tax consequences as the deduction is equivalent to the difference between the purchase price and depreciation accrued to the date of the gift.⁹ Valuation of gifts made after 31 December 1992 may be adjusted in accordance with a consumer price index issued by the Central Bank.¹⁰

The amount of tax benefit to the donor is not affected by the recipient organization's use of the gift as long as the donation is applied to charitable purposes.

Under Venezuelan law, if the terms of a charitable contribution agreement ultimately result in a benefit to the donor, the donor's tax benefits would not be adversely affected. Additionally, a gift would not fail simply because the donor, his or her family or employees, receives some benefit in return for the gift. The overarching requirement is that the gift be used for a public welfare or social

³ LISR, Article 27, paragraph 12(b).

⁴ Reglamento de la Ley de Impuesto Sobre la Renta (RLISR), Article 21, paragraphs 1, 2 and 3 (Gaceta Oficial de la Republica de Venezuela No. 35217, 24 May 1993).

⁵ C. civ., Article 1439.

⁶ C. civ., Article 1357.

⁷ RLISR, Article 87.

⁸ C. civ., Article 148. Between husband and wife, unless otherwise previously agreed, profits or benefits acquired during the marriage are equally shared.

⁹ RLISR, Article 73.

¹⁰ LISR, Articles 91 to 97.

responsibility purpose and that educational, cultural, scientific, religious, sporting or public assistance objectives be pursued.¹¹

Different tax benefits accrue depending upon whether the donor is a juridical person or an individual. Juridical persons are permitted to deduct gifts of up to 10 per cent of their annual taxable income to a level of 10,000.00 Taxable Units and up to 8 per cent of income exceeding that amount.¹² Note the restriction that donors engaged in mining, hydrocarbons or related industries, such as refinery and delivery, may only deduct gifts of up to 1 per cent of their net income.

Individual donors may deduct gifts to charitable organizations of up to 50,000 Bolivars from their net income. Higher amounts require Treasury authorization.

There is no fiscal advantage for donors under the inheritance and gift laws as the beneficiary is taxed on the value of the gift.¹³

Juridical persons are limited to a deduction from net income for charitable gifts made during the fiscal year. Individuals receive a deduction from their taxable income. Where gifts made during the fiscal year exceed either limit, there is no carry-over to a later year.

D. Transborder charitable giving

There is no tax benefit for gifts to charitable organizations operating outside Venezuela.¹⁴ The inheritance and donations law, however, provides that bequests to Non Territorial Public Entities engaged in beneficial, assistance or social protection activities are tax deductible if the gifts are applied to charitable goals.¹⁵ Although there is no precise definition for Non Territorial Public Entities, they are generally understood to be international organizations founded with public resources and not limited to territorial boundaries. Examples include the Red Cross International and the Mother Teresa Foundation. The Non Territorial Public Entity is the only exception to the territorial use legal requirement.

If a charitable contribution goes to either a Non Territorial Public Entity or to a legally established Venezuelan branch of a foreign charity organization to be used outside the country, the donor would receive a tax benefit.

A foreign donor would receive a deduction for a charitable contribution made in Venezuela if the donor has Venezuelan income.

¹¹ LISR, Article 27 paragraph 12; Ley de Impuesto Sobre Sucesiones, Donaciones y Demas Ramos Conexos (LISD), Article 9 No. 1 and No. 2; Article 67 (Gaceta Oficial de la Republica de Venezuela No. Extraordinario 3007, 31 August 1982).

¹² LISR, Article 27 paragraph 13(a).

¹³ LISD, Article 9 No. 1 and No. 2; Article 67.

¹⁴ RLISR, Article 31(a) and (b).

¹⁵ LISD, Article 66 No. 2; Article 8 No. 3.