

Nonprofit Law in Brazil

Current as of December 2023

This section describes the legal framework of nonprofit organizations (also known as non-governmental organizations or NGOs) in Brazil, 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 Brazilian Constitution provides expansive protection for the right to freedom of association, including a guarantee against state interference, although it prohibits paramilitary groups (Brazilian Federal Constitution Article 5, XVII-XXI). Since Brazil is a civil law country, having legal personality is essential for entering into relationships with third parties or possessing assets. Organizations do not need to obtain prior authorization from a government body to acquire legal personality and have rights under the Brazilian legal system.

An **association** is a traditional form of not-for-profit organization created by at least two individuals and/or legal entities seeking to achieve a particular goal with not-for-profit aims. Associations may have all kinds of purposes.

The Brazilian Civil Code also recognizes **foundations** as private legal entities. A foundation is an organization established through an endowment dedicated to a public interest cause, with not-for-profit aims. It can be either public or private. Public foundations are composed by the public administration and must be created by law. Private foundations can be established by legal entities (including foundations) and/or individuals, either living or through the disposition of a will.

Foundations must serve public benefit or public interest purposes. According to the Civil Code, those purposes must be within one of the following areas: social assistance; culture, defense and preservation of historical and artistic heritage; education; health; food and nutrition security; environment defense, preservation and conservation and promotion of sustainable development; scientific research, development of alternative technologies, modernization of management systems, production and dissemination of information and technical and scientific knowledge; promotion of ethics, citizenship, democracy and human rights; and religious activities (Law 13.151/2015 Article 1). The activities of foundations are restricted to those set forth in their constitutive documents.

Brazil adopted a new regulatory framework for civil society organizations (CSOs) in 2014 under Law 13.019/2014 after extensive dialogue and consultation between civil society and the government.^[1] CSOs are organizations that can enter into partnerships with public entities; they encompass certain subsets of associations, foundations, cooperative societies, and religious organizations. While CSOs are not a separate form of non-profit organization, having status as a CSO can indicate that an organization is closer to a §501(c)(3) organization under American law.

B. Tax Laws

The Constitution exempts educational and social assistance CSOs from taxes on their revenues, assets, and services. To be eligible, the CSO cannot distribute profits and must demonstrate, through valid accounting records, that all its expenditures were related to its statutory aims. These requirements mean that such organizations are closer in status to §501(c)(3) organizations in the US.

Organizations that do not qualify for constitutional tax exemptions may still be eligible for tax exemptions granted by law at the federal, state, and municipal levels.

Further, CSOs may receive tax deductible grants from corporate donors. Individuals cannot make tax-deductible donations directly to CSOs, but they can make such donations to projects developed by CSOs for specific beneficiary populations, such as children and adolescents, the elderly, cancer patients, persons with disabilities, or in specific fields, such as culture and sports.

There is no double taxation treaty between Brazil and the United States.

II. Applicable Laws

- Brazilian Federal Constitution (Articles 5(XVII-XXI), 150(VI)(c) and para. 4)
- Law on Partnerships between the Public Administration and Civil Society Organizations: Law 13.019 of July 31, 2014; Provisional Measure 658 of October 29, 2014; Law 13.204 of December 14, 2015; Decree 8.726, of April, 27, 2016
- Tax Code: Law 5.172 of October 25, 1966 (Articles 9, 14, and 111)
- Civil Code: Law 10.406 of January 10, 2002 (Title II, Chapter II-III), as amended by Law 13.151 of July 28, 2015
- Legislation on Public Interest Civil Society Organizations: Law 9.790 of March 23, 1999; Decree 3.100 of June 30, 1999

- Legislation on Social Organizations: Law 9.637 of May 15, 1998; Decree 5.396 of March 21, 1995
- Legislation on Certified Social Assistance Entities: Complementary Law 187 of December 16, 2021; Decree 11.791 of November 21, 2023
- Law on Public Registries: Law 6.015 of December 31, 1973 (Title III, Chapter II, Articles 114-126)
- Law on Volunteerism: Law 9.608 of February 18, 1998
- Law on Crimes Resulting from Racial Prejudice: Law 9.459 of May 13, 1997, modifying Law 7.716 of January 5, 1989
- Law on Supporting People with Disabilities and their Social Integration: Law 7.853 of October 24, 1989
- Legislation on Tax Incentives for Cultural Projects: Law 8.313 of December 23, 1991; Decree 11.453 of March 23, 2023
- Legislation on Tax Incentives for Sports Projects: Law 11.438 of December 29, 2006; Decree 6.180 of August 3, 2007
- Legislation on Tax Incentives for Child Protection Projects: Law 8.069 of July 13, 1990
- Legislation on Tax Incentives for Elderly Protection Projects: Law 12.213 of January 20, 2010
- Legislation on Tax Incentives for Oncology and People with Disabilities Health Care Projects: Law 12.715 of September 17, 2012; Decree 7.988 of April 17, 2013
- Legislation on Conditions for Tax Exemptions: Law 9.532 of December 10, 1997, as amended by Law 13.151 of July 28, 2015
- Legislation on Tax Deduction: Law 9.249 of December 26, 1995
- Provisional Measure ("*Medida Provisória*") 2.158-35 of August 24, 2001 (Article 59); Law 9.249 of December 26, 1995 (Article 13, §2, III)
- Decree 11.531 of May 16, 2023; Ministerial Ordinance No. 424 of December 30, 2016
- Law on the Remuneration of Civil Society Organization Officers: Law 12.868 of October 15, 2013

- Brazilian Anti-corruption Law: Law No. 12,846 of August 1, 2013
- Law providing amendments to the Civil Code regarding the purposes of foundations, and amendments to the tax law allowing for charitable associations and foundations to remunerate officers: Law 13.151 of July 28, 2015
- Brazilian General Data Protection Law: Law No. 13.709 of August 14, 2018
- Law 13,800 of 2019 providing for the creation of endowment funds to raise, manage and allocate donations from private individuals and legal entities to finance activities in the public interest

III. Relevant Legal Forms

A. General Legal Forms

1) *Association*: An association is a self-governed and voluntary organization formed by at least two persons for one or more non-profit purposes set forth in its founding documents and charter. An association acquires legal personality by registering its articles of incorporation and statutes with a notary in charge of the legal entity public register office, and paying a small fee (Civil Code Law 10.406/2002, Article 45; Law 6.015/1973 Article 120). Following the acquisition of legal personality, associations must register before the Federal Revenue.

2) *Private Foundation*: Often referred to simply as a “foundation,” a private foundation is a not-for-profit private legal entity with an endowment. According to Brazilian legal doctrine, a foundation is defined as a collection of assets to which legal personality is granted by an operative law and that is devoted to public interest purposes (though, as discussed below, only certain public interest purposes qualify). The foundation’s goals are recorded in a written declaration, which must be registered with a public notary.

The Civil Code requires a foundation to have sufficient assets to achieve its purposes (Civil Code Article 63). To be established, the founder (*Instituidor*) must submit to the Attorney General's Office (*Ministério Público*) the draft deed of incorporation (*escritura pública de constituição*), statutes, and information about the assets that will form the endowment. Upon receiving the Attorney General's approval, the founders must register their founding documents in the proper public register office (Civil Code Articles 62-69; Law 6.015/73 Article 120). The Attorney General's Office has oversight authority over the administration of registered foundations (Civil Code Article 66).

3) *Public Foundation*: A public foundation is a not-for-profit private legal entity created by the government upon legislative authorization to undertake public activities not necessarily assigned to the government. They can be established and operated under either a public law or a private law regime. Public foundations have independent administrators and boards, and their own assets, which may come from the state or other sources (Law 7.596/87 Article 5(IV)). Public foundations acquire legal personality through the law that creates them, while foundations under the private law regime become legal entities by registering their constitutive acts in the public register office. Public foundations are not subject to oversight by the Attorney General's Office, unlike private foundations (Law 7.596/87 Article 5(IV)(3)).

4) *Endowment funds*: An endowment fund is a legal entity structured as a private association or foundation, with the purpose of managing donations from individuals and legal entities to support public interest activities, including those in the fields of education, science, technology, research and innovation, culture, health, the environment, social assistance, and sport.

Endowment funds are governed by Law 13.800, which was approved on January 4, 2019. As the law is still relatively new, it remains to be seen how it will affect the specific questions outlined below. The author of

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B. Special Designations

NPOs may obtain one or more government designations that grant specific tax benefits to the organization or to funders and donors. These designations exist at the federal, state, and local level of government, though for the purpose of this Note, the most relevant designations are at the federal level. These are as follows:

1. Public Interest Civil Society Organization (OSCIP);
2. Civil Society Organization (CSO)
3. Social Organization (OS);
4. Certified Beneficent Social Assistance Entity (CEBAS).

None of the above special designations are mandatory for a private entity to qualify as a not-for-profit, but they may indicate that it is more closely equivalent to an IRS §501(c)(3) organization. Accordingly, a grant-maker should inquire whether a not-for-profit entity has one of these designations.

Public Interest Civil Society Organization (OSCIP)

The **OSCIP** designation is granted by the Ministry of Justice pursuant to Law 9.790/1999. To be eligible, the organization must not have public employees and/or officials in its governing bodies, and it must abide by certain rules regarding transparency, accountability, and conflict of interest. [\[2\]](#)

The law also established a special form of contract called "*Termo de Parceria*," that allows partnerships between OSCIPs and the government. Through this legal instrument, an OSCIP may receive public funds or other governmental support to execute public interest projects. Such contracts aim at improving cooperation between government and these organizations, which must always undertake public interest activities according to the terms set forth in the law.

Civil Society Organizations (CSOs)

The Law 13.019/2014 (Regulatory Framework for Civil Society Organizations - MROSC) grants CSOs the ability to enter into partnerships with public entities to implement activities in the public interest. Donors can also deduct up to 2% of their operating profit from their income tax for donations to CSOs.

An organization can qualify as a CSO if it is:

- a) an association or foundation which does not distribute surpluses, dividends, or other profits among its partners or associates, advisors, directors, employees, donors or third parties. Rather, the entity must apply profits to its corporate purpose, immediately or through contribution to an equity or reserve fund.
- b) a cooperative society under Law No. 9.867/1999 that support individuals in situations of risk or personal or social vulnerability; engage in programs and actions to combat poverty and generate employment and income; train and educate rural workers; or carry out activities or projects of public interest and social nature.
- c) religious organizations dedicated to activities or projects of public interest and social nature, other than those exclusively intended for religious purposes.

Social Organization (OS)

The **OS** designation is granted on a discretionary basis by the federal government on the advice of the Ministry in charge of the NPO's field of activity, pursuant to Law 9.637/1998. To be eligible, the organization must have public officials in its governing bodies.

The **OS** designation can be granted to any not-for-profit private legal entity created to privatize the administration of public assets (e.g., laboratories, monuments, museums, transportation, public companies, and public universities). Indeed, the purpose of the OS designation is to facilitate the privatization of public services by not-for-profit organizations. Accordingly, the activities of these organizations are regulated strictly and always depend on a specific concession from the government. The concession of the right to manage a public company or asset is formalized through a legal instrument called a management agreement ("*contrato de gestão*") (Law 9.637/98 Article 5).

The control of an OS by its founding members is limited by the management agreement, as well as by the structure of the board of directors, which is called the administration council and includes, in addition to the founding members, representatives from the government and the community. An OS that does not comply with the requirements of its management agreement may be disqualified or terminated after the respective administrative procedures are followed (Law 9.637/98 Article 16). [\[3\]](#)

Social Assistance Beneficent Certification (CEBAS)

NPOs must obtain the **CEBAS** designation to enjoy special tax benefits, such as an exemption from paying social security taxes and certain fringe benefits. The **CEBAS** designation is granted to NPOs with activities in the fields of health, education, social assistance, and reducing the use of drugs by the Ministry in charge of the corresponding field.

To obtain the **CEBAS**, a not-for-profit legal entity must be considered a charitable, social assistance, educational, or health organization that carries on free activities or contributes to programs for:

- Families, mothers, children, youth, and aid to the elderly;
- Education and rehabilitation of persons with disabilities;
- Assistance to children and youth from troubled homes;
- Promotion of education and health assistance without charge; or
- Reducing the demand for and use of drugs, including providing care or rehabilitation, prevention, or support to individuals dependent on drugs and their families.

Complementary Law 187 provides further rules for organizations with CEBAS status, such as guidance on accounting practices and prohibitions of inurement.

Under Article 34 of Complementary Law 187/21, the Ministries of Health, Education, and Social Development oversee **CEBAS** concessions and renewals. The requests are presented by not-for-profits to one of the three Ministries according to their primary performance area. [\[4\]](#) For organizations developing activities in more than one of the areas specified above, the concessions and renewals of certificates require the approval of the respective Ministries, except if the costs and expenses with the non-preponderant area do not exceed 30% of the organization's expenses and do not exceed the annual value of R\$ 300,000.00. This means that, in addition to complying with the general rules set forth by the law and decrees, an organization must also meet additional requirements specified by each of the relevant Ministries. If a Ministry determines that an organization has not complied with a requirement, it may cancel the organization's CEBAS certificate.

IV. Specific Questions Regarding Local Law

A. Inurement

Organizations with tax-exempt status conferred by the Brazilian Constitution (discussed further below) should not distribute any assets or profits among their members (National Tax Code Article 14). Such organizations must devote all their funds to the pursuit of their social purposes (Law No. 9.532/97 Article 12).

In addition, laws granting special designations—such as the Law on Civil Society Organizations and the Law on Social Organizations, discussed above—prohibit private inurement. In general, the organization’s bylaws must state that organizations receiving special designations shall not, under any circumstances, distribute any surplus or revenue (both general and liquid), dividends, bonuses, assets, or equity to any of their members or participants, directors, advisors, employees, or donors (Law 9.790/99 Article 1(1)). Fringe benefits are also prohibited. The remuneration of board members and administrators, on the other hand, is not prohibited by the Federal Constitution or by the Brazilian Tax Code (which regulates tax-exempt status conferred by the Brazilian Constitution).

OSCIPs may remunerate directors who effectively work in the executive management of the entity or who provide specific services (Law 9.970/99 Article 4(IV)). In both cases, directors must be paid the market average rates in the region where the organizations operate. Under Article 34 of Law 10.637/02, the governing staff’s remuneration is also no longer an obstacle for the fruition of tax benefits if: (i) they are hired as employees; and (ii) their salaries do not exceed the limit established for the remuneration of members of the Federal Executive Power.

Under Law 13.204/2015 to Article 12(a) of Law 9.532/97, charitable non-profit associations or foundations may remunerate their leaders and directors if they meet the requirements set forth in Articles 3 and 16 of Law 9.790 of March 23, 1999: Remuneration must be a) in adherence with the maximum values practiced by the market in the corresponding region where the organization develops its activities; b) approved in a

decision of the higher decision-making body of the entity, and c) registered in the correspondent minutes. A not-for-profit entity without tax-exempt status and without any special designation is not subject to limitations regarding inurement.

Finally, Complementary Law no. 187/21 allowed for the remuneration of non-statutory directors and concerning statutory directors, also stated recognized that remuneration is possible as long as the limits and rules of conflict of interests pointed out in the previous sections are respected.

B. Proprietary Interest

1) *Associations*: Founders, members, and donors lose all property rights over assets granted to an association once they are registered under the association's name, except for the possibility to recover the donated assets in case of the association's dissolution.

2) *Foundations*: No founder, member, or donor can retain a proprietary interest on assets granted to foundations.

3) *Special Designations*: Founders, members of entities holding special designations, and donors cannot retain a proprietary interest in assets they contribute to such organizations.

C. Dissolution

1) *Associations*: An association may be dissolved (i) by decision of its members; (ii) according to provisions set forth in its constitutive acts; or (iii) involuntarily, by judicial order, according to due process of law (Brazilian Federal Constitution Article 5(XIX)). The association's bylaws may establish that in case of dissolution, all members can be reimbursed with the funds given to the organization. According to Article 61 of the Civil Code, any additional assets remaining upon dissolution must be transferred to a not-for-profit organization named in

its bylaws or, in case of omission, transferred by resolution to a municipal, state, or federal institution with similar objectives.

2) *Foundations*: A foundation may be terminated if its purposes become illicit or impossible to achieve or if it reaches the end of its term, if stipulated in its constitutive acts. Any assets remaining upon dissolution must be transferred to a not-for-profit organization with similar objectives or to a government entity (Civil Code Article 69).

3) *Special Designations*: If any organization with a special designation is dissolved or has its designation revoked, all assets acquired from the government must be transferred to another organization with the same designation and similar aims. These provisions must be included in the organization's bylaws. (See Law 9.790/99 Article 4(IV); Law 9.637/98 Article 2(I)(j); and Resolution No. 31/99 Article 3(IV) of the National Council of Social Assistance.)

Civil society organizations shall provide in their bylaws that in case of their dissolution, any remaining assets should be transferred to another legal entity of a similar nature which meets the requirements of Law 13.019/2014 and whose purpose is preferably similar to its own (Law 13.019/2014).

In addition, the assets managed by Social Organizations under the Management Agreement are public property and must revert to public administration at the time of the organization's dissolution.

D. Activities

1. General Activities

Associations: Associations are generally permitted to engage in any lawful activities according to Brazil's constitutional freedoms of assembly and of association (Brazilian Constitution Article 5(XVII)).

Associations are constitutionally prohibited only from pursuing paramilitary purposes.

Foundations: By definition, foundations must serve public benefit or public interest purposes. Their activities are restricted to those set forth in their constitutive documents. According to the Civil Code, they may have religious, moral, cultural and assistance purposes.

Endowment funds: Endowment funds support activities in the public interest, including in the fields of education, science, technology, research and innovation, culture, health, the environment, social assistance, and sport.

Special Designations: Organizations granted special designations are limited to the development of a host of prescribed activities:

Civil Society Organizations for the Public Interest (**OSCIPs**) may engage in:

- Social assistance;
- Promotion of culture;
- Historical preservation and cultural heritage;
- Charitable free education;
- Charitable free health care;
- Nutrition and food security;
- Environmental protection;
- Promotion of voluntary work;
- Promotion of economic and social development;
- Experimentation with alternative employment and credit systems;
- Protection of rights;
- Promotion of citizenship and democracy;
- Development of alternative technology, production and dissemination of technical and scientific information and knowledge; and

- Studies and research for development and implementation of technologies concerning the mobility of persons by any means of transport.

As noted above, the Social Organization (**OS**) designation is aimed to facilitate the privatization of public services by not-for-profit organizations and can be granted to any not-for-profit private legal entity created to privatize the administration of public assets (e.g., laboratories, monuments, museums, transportation, public companies, and public universities). The activities of OS depend on a specific concession from the government.

Certified Social Assistance Beneficent Entities (**CEBAS**) are permitted to carry out the same activities as OSCIPs, as well as activities related to education, social assistance, and health care.

2. Economic Activities

In general, not-for-profit organizations in Brazil may pursue economic activities. They can invest in the stock market, participate in mergers and acquisitions, and acquire control of companies. However, there are relevant restrictions. First, economic activities cannot constitute the primary purpose of the organization. Second, no profits or income of any kind may be distributed to employees, directors, managers, collaborators or members under any circumstances. Instead, any surplus must be used to carry out the social purposes of the organization. Further, the revenues resulting from such activities must be fully applied in Brazil to fulfill the organization's purposes (Brazil Tax Code Article 14(II)). The organization's bylaws may impose additional restrictions on its economic activities.

The Civil Code defines associations as entities organized for non-economic purposes, which means that these organizations may pursue economic activities, but not have economic goals.

3. Political Activities

Brazilian law generally does not impose restrictions on the ability of foundations and associations to engage in legislative or political activities. These entities may freely support candidates for public office, for instance, as well as advocate for or against legislation. Any restriction on political activities would be contained in the organization's governing documents.

Public foundations and social organizations are not expressly prohibited from engaging in political or legislative activities. However, the nature of their structure, their purposes, and activities they undertake may implicitly keep them from engaging in political issues.

Organizations may be prevented from certain political activities based on certifications they want to obtain or benefits they intend to offer. For example, organizations intending to qualify as OSCIP may not take part in political campaigns under any circumstances or support political parties or politicians in any way (Law 9.790/1999 Article 16). This is also a condition for CSOs. These restrictions cover political party activities and the nomination of candidates for parliamentary and local government elections at the county level.

Law 13.260/2016, known as the Antiterrorism Law, broadly defines "terrorism" and a "terrorist organization," and provides harsh penalties for terrorist offenses. Critics of the law fear that its overly broad definitions may enable the state to use the law against associations for legitimate, peaceful activities, including ones that are politically sensitive. [\[5\]](#)

G. Discrimination

Brazilian law imposes criminal penalties on anyone who denies or restricts a student's admission to a public or a private educational institution on the basis of race or disability (Federal Law 7.716/89 Article

6, amended by Law 9.459/97 and Law 7.853/89 Article 8). In addition, an organization holding the CEBAS designation may not discriminate against any person under any circumstances.

In July 2008, Brazil ratified the United Nations Convention on the Rights of Persons with Disabilities with a qualified quorum, thus affording the Convention constitutional status according to Constitutional Amendment No. 45/04. As a result, all laws in Brazil must be revised to respect, fulfill and implement the rights, principles, and guidelines established by the Convention with regard to persons with disabilities.

The Brazilian Inclusion Law (Law 13.146/2015) entered into force in January 2016. The law compiles a series of rights concerning persons with disabilities, including the right to work, the right to an inclusive education, and the enjoyment of legal capacity. It also recognizes as a criminal offense the discrimination of persons with disabilities.

H. Control of Organization

In general, no restriction exists on the control of not-for-profit organizations by other organizations or persons. The Federal Constitution guarantees the freedom of self-organization of associations (Federal Constitution Article 5(XVIII)). It is possible that a Brazilian not-for-profit organization may be controlled by a foreign entity or by an American grantor charity (which requires the charity to specifically provide so in the affidavit). In such cases, at least one of the persons responsible for the organization's activities must be Brazilian or a Brazilian proxy must be nominated.

V. Tax Laws

In order to understand the tax benefits available to not-for-profit organizations, it is necessary to have an overview of the Brazilian tax system. The power to create and collect taxes ("*tributos*") is shared among the federal government, states, the Federal District, and

municipalities, and is defined and regulated by the Federal Constitution, the Brazilian Tax Code, and several other statutes. The expression "*tributos*" includes duties ("*impostos*"), public service fees ("*taxas*"), social contributions ("*contribuição social*"), improvement charges ("*contribuições de melhoria*") and economic domain intervention contributions ("*contribuição de intervenção no domínio econômico*").

A. Tax Benefits for Not-for-Profit Private Legal Entities

1. Constitutional Tax Exemption

In Brazil, tax benefits depend on the nature of the not-for-profit organization's activities rather than the nature of the organization itself. This means that the legal form of a not-for-profit is irrelevant in determining its tax benefits.

Article 150(VI)(c) of the Brazilian Constitution stipulates that the federal government, states, Federal District and cities are not allowed to tax not-for-profit private legal entities engaged in education and social assistance. This tax exemption applies only to those assets, income, and services related to the essential activities of the entity. In addition, the Article provides that statutes may specify criteria that educational and social assistance organizations must satisfy to obtain the tax benefit.

Article 14 of the National Tax Code stipulates that to obtain the tax exemption, an educational or social assistance entity must:

1. Not distribute its assets or profits among its members;
2. Keep accounting books in order to promote transparency of its activities and accounts; and
3. Limit the use of its resources to the Brazilian territory and to maintaining and developing its aims.

Other laws impose additional conditions. To be eligible for a tax exemption, an educational or social assistance organization must also:

1. Not remunerate in any way its board members or governors (managers and staff can be remunerated) for the functions or activities assigned to them by its bylaws (See Section IV(A) for additional details);
2. Invest all its funds in the maintenance and development of its objectives;
3. Keep full records of income and expenses using proper accounting procedures;
4. Keep records for at least five years to demonstrate the origin of revenues, the nature of expenses, and any other acts and transactions that may change its net worth;
5. Submit income tax statements to the Federal Revenue Office annually;
6. Make sure that in case of merger, acquisition, liquidation, or dissolution, its assets are transferred to another similar organization that is also eligible for exemption; and
7. Comply with additional requirements set out in statutes related to the operation of tax-exempt organizations (Law No. 9532/97 Article 12).

Provided that the foregoing requirements are met, the educational or social assistance entity needs merely to declare that it is eligible for the exemption before the Revenue Service Authorities ("*Receita Federal*").

2. Federal Tax Exemptions

To be granted other tax benefits not stipulated in the Federal Constitution, a not-for-profit organization must fulfill several requirements. The following taxes and duties ("*impostos*"), governed by federal laws, are applicable to all forms of not-for-profit organizations, unless otherwise specified:

1) Revenue Tax ("*Imposto de Renda*" – IRPJ): Full exemption from payment of the revenue tax. Entities awarded this benefit must fully complete the income tax form every year and must comply with the requirements of Article 12, items (i) to (v) of Law 9.532/97 (Law 9.532/97 Article 15; Federal Constitution Article 150(VI)(c); Tax Code Law 3.470/58 Article 113; Law 5.172/66 Articles 9(IV)(c) and 14(I-III); 2018 Income Tax Law (RIR/18)).

2) Social Contribution on Profit ("*Contribuição Social Sobre o Lucro*"): Full exemption from payment of this contribution. To qualify for this exemption, entities must complete the income tax form every year and comply with the requirements of Article 12, items (i) to (v), of Law 9.532/97 (Law 9.532/97 Article 15).

3) Social Integration Program Contribution ("*Programa de Integração Social*" – PIS): Entities qualified with CEBAS are immune to collection. Other NPOs must pay PIS at the rate of 1% of all employees' salaries. (Federal Constitution Article 195(I)(7); Law 10.637/02).

4) Social Security Financial Contribution ("*Contribuição para o Financiamento da Seguridade Social*" – COFINS): Entities with CEBAS are immune from collection. Other NPOs are exempt from payment on their own revenues while paying a 7% contribution on all other income. (Federal Constitution Article 195(I)(7); Law 10.833/03).

5) Social Welfare Contribution ("*Contribuição Previdenciária*" – INSS): Full exemption is given to social assistance organizations that are granted the Certification of Social Assistance Beneficent Entity. Other non-profit entities must pay the tax at a rate of 20% (Federal Constitution Article 195(I)(7); Law 12.101/09).

6) Work Accident Fund Contribution ("*Contribuição para Acidente do Trabalho*"): Full exemption is given to social assistance organizations that are granted both federal Public Utility Status (a status abolished as

of 2015) and the Certification of Social Assistance Beneficent Entity (Federal Constitution Article 195(I)(7); Law 12.101/09).

7) Importation Tax ("*Imposto de Importação*" - II): According to Article 2(I)(a) of Law 8.032/90, social assistance and educational private legal entities are given special treatment on payment of the Import Tax on products imported for their activities.

8) Industrialized Products Tax ("*Imposto de Produtos Industrializados*" - IPI): Social assistance and educational entities' products are fully exempted from IPI since they are for their own use or are freely distributed to their students.

9) Credit, Exchange and Insurance Operations Tax ("*Imposto sobre operações de crédito, câmbio e seguro*" - IOC e "*Imposto sobre Operações Financeiras*" - IOF): There are no exemptions from payment of Credit, Exchange and Insurance Operations Tax or the Financial Operations (capital gains) Tax (Law 5.143/66).

10) Rural Real Estate Tax ("*Imposto Territorial Rural*" - ITR): Full exemption from payment of the Rural Real Estate Tax if the amount exempted is used to pursue the entity's goals (Federal Constitution Article 150(VI)(c); Decree 4.382/02 Article 3).

B. State and Municipal Tax Exemptions

Donations to CSOs in Brazil are subject to the state tax that levies on the transmission of inheritance and private donations, the ITCMD. The rules concerning the ITCMD are locally established by each Brazilian state.

As long as the Federal Constitutional principles are observed, state and municipal governments have the right to grant not-for-profit private legal entities exemptions from state and municipal taxes, such as the ITCMD.

Currently, nine states in Brazil provide for exemptions of ITCMD levying on donations to CSOs: Acre, Ceará, Minas Gerais, Paraná, Pernambuco, Santa Catarina, São Paulo, Tocantins and Rio de Janeiro. In Rio, the exemption of ITCMD is generally granted to CSOs regardless of their activities.

Following a decision from the Federal Supreme Court in February 2021, states may no longer collect a tax on the transmission of inheritance and private donations (ITCMD) on donations received from a donor who is domiciled abroad (Topic 825, Judgment of Extraordinary Appeal 851.108). In its decision, the Supreme Court explained that states cannot create laws to tax donations and inheritances of assets coming from abroad unless a federal supplementary law is enacted to regulate it.

C. Incentives for Philanthropy

Brazil offers several incentives for philanthropic support to certain institutions or for certain causes. These include deductions from revenue or income tax liability of a contribution amount to:

- a not-for-profit private legal entity, such as an association or private foundation (Law 9.249/95 Article 13(2));
- a not-for-profit private legal entity engaged in projects for children and youth (Law 12.594/12);
- A cultural project including but not limited to theater, books on art, literature and the humanities, music, art exhibitions, and libraries and museums (Law 8.313/91). Many states and municipal governments also have laws that provide tax deductions for contributions to cultural activities.
- A sports project that has been approved by the Technical Commission from the Ministry of Sport (Law 11.438/06 and Decree 6.180/07);

- The National Fund for the Elderly (Law 12.213/10 and Normative Instruction of the Federal Revenue Service No. 1.131)
- The National Support Program to Oncology Care and the National Support Program to Health Care of Persons with Disabilities (Law 12.571); and
- Actions aimed at recycling which have been pre-approved by the Ministry of Environment (Law No. 14.260/21).

D. Double Tax Treaty

There is no double tax treaty between Brazil and the United States.

VI. Knowledgeable Contacts

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Footnotes

[1] See *EU Country Roadmap For Engagement With Civil Society*, https://eeas.europa.eu/archives/delegations/brazil/documents/press_corner/news/resumoroteiro_en.pdf Last accessed on May 30, 2018.

[2] The Law provides a number of other important measures for organizations' institutional development and to increase legal certainty in the implementation of partnerships. Through Provisional Measure

658, of October 29, 2014, the beginning of the Law's enforcement was postponed to July 2015, on the request of representatives of civil society organizations and public entities, to allow them to better prepare for the implementation of the new law.

[3] The law that creates the special OS designation has been the subject of litigation before the Supreme Court since 1998, and it is expected that it will undergo some changes in the future.

[4] The certificate's request and renewal procedures are regulated by Decree 11.791 of November 21, 2023. According to this regulation, the first request presented by a not-for-profit organization shall be evaluated in chronological order, except when additional information is required by the Ministry responsible for granting the certificate. The certificates will be valid for three years and renewals will be granted for the same period of time or for five years, depending on the organization's income.

[5] After Law 13.260/2016, other proposed bills included similarly broad definitions of "terrorism" that, if adopted, could limit the activities of associations. For example, PL 9.604/2-18, considers as terrorism the "abuse of the right of articulation of social movements." The broad and vague scope of this provision may limit the ability of CSOs to freely express their opinion and organize protests in Brazil. PL 10.431/2018, which provides for sanctions imposed by the United Nations Security Council when individuals and legal entities are investigated or accused of terrorism, terrorism funding or related acts, is also a concern.