

Resources for Development

A Practical Guide
for US – Mexico Donations

Editor
Jacqueline Butcher, Ph.D.

Senior Research Associate
Oscar E. Laguna, Ph.D.



CIESC

CENTRO DE INVESTIGACIÓN Y
ESTUDIOS SOBRE SOCIEDAD CIVIL A.C.



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**TECNOLÓGICO
DE MONTERREY®**

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FOREWORD

I. One of the greatest concerns for Mexican civil society organizations (CSOs) that provide direct services to local communities is the lack of resources to continue their work. These organizations have little visibility outside the country, which makes it difficult for them to receive external resources that would increase their ability to address the various areas of need they cater to. Nevertheless, many foundations in the United States of America (U.S.) have a strong interest in donating resources to Mexico. This is problematic because the guidelines related to the corresponding processes are not always clear. In addition, the requirements continue to change over time, thereby making it important to update such information in order to be effectively aware of the latest details concerning these cross-border donations. Even though donations to Mexico from the U.S. in 2009 were about \$175 million dollars,¹ greater economic aid is still required, especially for impoverished regions.

With all of this in mind, The W. K. Kellogg Foundation has sponsored this study. Its mission is to support children, families and communities by means of creating a “wave of healthy, self-reliant communities where children can have better opportunities now and in the future”. After more than 70 years of supporting health, education and rural development projects in Latin America, in 2009 this American foundation decided to aid micro-regions in this region of the world. Essentially, the Kellogg Foundation helps establish self-sustaining communities. This process consists of a comprehensive approach to development as well as one which contemplates a long-term relationship with multi-sectorial partners. Its collaboration with *Centro de Investigación y Estudios sobre Sociedad Civil*² (CIESC) is characteristic of this new strategy in Mexico. Both institutions are interested in creating useful knowledge to help strengthen CSOs and therefore benefit the aforementioned communities. In turn, CIESC provides its own resources to fulfill its mission in this project by “generating knowledge on civil society to contribute to the social and democratic development of Mexico and Latin America.” In addition, the CIESC

1 Seema, Shah; Mukai, R. y McAllister, G. **Aportes filantrópicos de fundaciones destinados a hispanos/latinos en los Estados Unidos y a América Latina.** EUA: Foundation Center/ Hispanics in Philanthropy, 2011.

2 Center for Research and Civil Society Studies

contributes to the research and development of this manual that will hopefully serve as a bridge between those who are looking for resources to support the advancement of these groups and those who are interested in working with them.

This manual is a compilation of information for institutions and foundations that donate resources from the U.S. to Mexico and for CSOs and Mexican groups that seek access to these resources. The inspiration for this manual came from the detection of a great need, namely, that the donation procedures are far more complicated than they need to be but could become relatively simple and accessible. Our goal is to expedite and facilitate the process for those who give as well as for those who receive resources of any kind. This work should serve as a guidebook to help eliminate procedural barriers in aid for Mexico.

Mexican CSOs must demonstrate a certain degree of professionalization and maturity in order to access the resources that come from other countries, mainly the U.S. If one follows the required procedures, this is attainable. One of the most important requirements is for Mexican CSOs to have their financial records and other administrative paperwork in order. However, often times what is missing to obtain external resources is a clear understanding of the orderly and appropriate steps required to access relevant and timely information to obtain them.

Much of the information contained in the guide comes from research that has collected data from both sides of the border. Our work has been to gather this information and present it adequately. As research for this project progressed, we found out that no previous effort had been made to outline all the steps required for making and obtaining donations from the U.S. to Mexico in two languages. To facilitate work on both sides, this guide has been prepared in both, English and Spanish. By doing this, the foundations in the U.S., interested in donating to Mexico, will be able to identify the mechanisms that legitimate Mexican CSOs. Therefore, a U.S. organization will be able to determine the recipient of their donations and verify that it meets the suitable and proper requirements of both countries. On the other hand, Mexican CSOs that are seeking help beyond their borders and in the U.S. can use this guide to become aware of the fiscal and legal requirements that are relevant to receive donations. The CSOs will also

have access to the list of groups and foundations that are interested in providing aid to their various areas of need.

For donations to be successful, we emphasize that a mutual effort be made on both sides of the border. On the part of Mexican CSOs, it is important that they professionalize their activities and services so as to be suitable candidates for these donations. This aid is essential for achieving continuity and sustainability. As for the U.S. foundations looking to share their resources and provide donations, they should become aware of the correct procedures for donating across the border as well as of the particularities of the causes for their choice.

With this work we hope to offer thorough, useful guide for the successful transfer of philanthropic resources from the U.S. into Mexico. This process is crucial for both the US foundations that have an interest in particular causes in Mexico and for the groups that need these resources.

II. For practical use, the manual presents an overview of the U.S. and Mexican regulations to perform and receive donations from the U.S. It refers to the bi-national agreement that the two countries signed to avoid double taxation and to expedite the legal channels to donate from the U.S. to Mexico. The manual provides 18 annexes in their original languages that are necessary or useful throughout the donation process. These are available in electronic format at:

Centro de Investigación y Estudios sobre Sociedad Civil, A.C. (CIESC)

www.ciesc.org.mx

W. K. Kellogg Foundation

www.wkkf.org

III. Finally, the title of this manual, “*Resources for Development*” addresses the word “development”, in its most ample interpretation. Voluntary and philanthropic activities play an essential part to achieve a just and equitable development throughout the world. The fact that some people work so that others may grow and prosper is a commendable attitude, and it is true to the meaning of philanthropy, broadly understood as a “love of humanity”. Development is a process in which we work towards achieving the welfare of people within an en-

vironment where they may be free to choose from the options they have and embrace their own idea of happiness.

The State of the World’s Volunteerism Report prepared by United Nations Volunteers³ (UNV) addresses the development achieved in this direction. When it comes to development, we are referring to holistic human growth. This concept involves solidarity, social inclusion, empowerment, satisfaction, as well as the well-being of individuals and their society wherever the welfare of people is intrinsically linked to the contribution that these people make to the lives of others.⁴

Monetary resources are not enough to aid the development of a community. In-kind resources, volunteer work, consulting, as well as expertise and support services are also required. All of them are offered to the great variety of nonprofit organizations that currently exist in Mexico. There are many ways to give. However, in order to bring about significant changes, volunteer work needs to be accompanied by the corresponding material resources. The paid work of experts and specialists is also required to complete the task. Philanthropy allows for these efforts to achieve truly significant advances in the common welfare.

We are extremely grateful for the trust that the W. K. Kellogg Foundation has expressed in supporting this initiative and for the invaluable support they have given to the Center. We are also thankful for the input and advice from the Technical Committee of the CIESC especially Dr. Enrique Tamés Muñoz, Dean of the School of Humanities and Social Sciences, and Dr. Alberto Hernandez Baqueiro, Director of the Humanities Department at *Tecnológico de Monterrey, Campus Ciudad de México*. We also thank the lead researcher, Dr. Oscar Laguna Maqueda, who was ever diligent throughout the multiple changes required for the completion of this process. We also want to thank Dr. William Clark Murray who carefully led the team of translators to produce its English version. A very special mention must go to Santiago Sordo Ruz, Research Assistant at the CIESC. Santiago carefully devoted many hours of his time to help provide meaning and clarity to this manual.

Personally, I am deeply grateful to all those involved in the project for their patience and dedication: the publishers, designers, translators, writers, the Board of trustees of the CIESC, readers, assistants

³ United Nations Volunteers. *State of the World’s Volunteerism Report*. Denmark: UNV, 2011.

⁴ *Ibid*, p. 11.

and CIESC staff. Without their help, this outcome would not have been possible. We sincerely hope that this work is useful for the Mexican CSOs that are working for the improvement of their communities in every sense of the word. We also hope it supports the U.S. foundations that, through their efforts and generosity, provide the means to carry out philanthropic endeavors in Mexico.

Sincerely
Jacqueline Butcher, Ph.D.
Editor and Director, CIESC

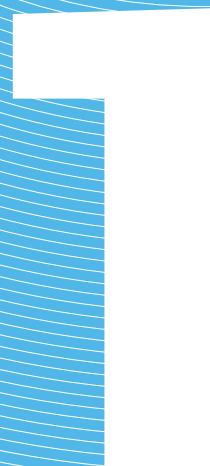
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Introduction



CONTEXT AND OBJECTIVES

The world is much smaller today than it was 20 years ago, thanks to advances in telecommunications, transportation and media technologies. These have facilitated the swifter mobility of capital, merchandise, and individuals.¹ The time needed to carry out such transfers has also greatly diminished. These technological advances have benefited philanthropic organizations because they facilitate the work of promoting public welfare, solidarity and the development and professionalization of CSOs² and communities. This is done through individual acts of kindness or through philanthropic organizations that donate to other public organizations or CSOs that perform such activities.

The US has a culture of philanthropy, initially born of the desire to help those in need, which has grown and evolved. The core values carved from these forms of philanthropy are solidarity and altruism. These values are being challenged in contemporary society with problems such as the growing distance between rich and poor.

American philanthropy flourished at the end of the XIX century³ with the effort of affluent individuals who wished to donate part of their wealth to aid vulnerable groups by bolstering their development and well-being. This tradition continued and was strengthened by the presence of new organizations of all sizes and capacities that were expressly dedicated to philanthropy. The material, financial, human and governmental resources destined to the same ends further helped the tradition. Alexis de Tocqueville had already considered this in his work *Democracy in America*, where he identifies the formation of several types of associations that contributed to the American philanthropic movement.

Today, resources linked to donations by U.S. philanthropic organizations represent an enormous potential for Mexico, given that they help further the efforts of many Mexican organizations dedicated to promoting all sorts of causes. In fact, the potential to help through

1 Cf. M. Castells. **End of Millennium: The Information Age: Economy, society and culture.** EUA: Wiley-Blackwell.

2 Throughout this document the term CSO refers solely to legally constituted entities.

3 Cf. www.ushistory.org y Oliver Zunz, **Philanthropy in America: A history.** EUA: Princeton University Press. 2011.

donations is immense. This is especially true considering the fact that Mexico is a country where many live at the threshold of extreme poverty.

Therefore, it is imperative to aid the labor done by altruistic organizations, as well as by CSOs both in Mexico and in the U.S. The CIESC and The W.K. Kellogg Foundation have taken into account the needs and challenges faced by grantmakers and grantseekers alike. These organizations have joined efforts to create this guide. Its objective is not to do work that has already been done but to bring together resources and experience to aid those who seek to give or receive donations from the U.S. to Mexico. Hitherto, available resources focus on particular aspects of the process, describing and specifying the legal, administrative and cultural details of either Mexico or the U.S. This guide seeks to constitute an integral reference that tackles and clarifies the donation and tax-deduction processes thoroughly. To achieve this, we have included information from various sources. Likewise, we seek to save time and resources to achieve better results in the donating party's objectives through a better understanding of the mechanisms and regulations linked to transnational donations, especially ones from the U.S. to Mexico.

Even though there have been multiple tools and support mechanisms for funding organizations and charities in foreign countries,⁴ the purpose of the CIESC is to assist organizations in becoming aware of the existing administrative and legal processes required for a donation. This is because the processes and regulations tend to be unclear, repetitive and difficult in both the U.S. and Mexico.

Objectives

This document's general objective is to assist the efforts of CSOs in Mexico and the U.S. in terms of getting to know the processes and requirements for giving or receiving donations, whether these are monetary or otherwise coming from the U.S.

The specific objectives for this guide are the following:

1. To provide visibility to the mechanisms and obstacles involved in the transfer of resources from the U.S. donating to Mexico.

⁴ Examples of these are the work of the *Foundation Center*, *GuideStar*, *Hispanics in Philanthropy*, etc.

2. To provide American grantmakers with information on the mechanisms, requirements and fiscal benefits of donating to Mexican organizations.
3. To help Mexican organizations to identify the rules and specifics required to access resources coming from philanthropic organizations in the U.S.
4. To encourage philanthropic aid from the U.S. to Mexico.
5. To compile the most recent and useful information that facilitates and diminishes the uncertainties around resource donation from the U.S. to Mexico.

Resources for Development is a document that facilitates access to information, for both donating entities in the U.S. and grant seekers in Mexico. The purpose is to ease decision-making processes and expedite access to resources for actors such as:

- Civil society organizations
- Government agencies
- Socially responsible enterprises
- Grantmakers
- Social organizations and groups
- Research centers
- Higher education institutions
- Researchers and scholars
- The media
- Opinion leaders and specialists
- Citizens interested in the sector

1.1 BACKGROUND

Resources for development have been scarce in the past, and the needs of marginalized individuals require attention. This has happened because the current economic structure favors an ill distribution of wealth in zones that have yet to adapt to the logic of a globalized market. Such social and economic conditions cannot be tackled by using only assistance-based practices and policies. These practices are not geared towards satisfying strategic needs⁵ either for people or popula-

5 Strategic needs are the components related to improvements in gender equality. A funda-

tions. They are palliatives for basic necessities (clothing, food and shelter). Such activities imply a resource allocation and vulnerability to political interventions that are not conducive to individual agency,⁶ people's economic development, or the diminution and eradication of poverty-related ailments such as malnutrition, illiteracy, infant mortality and teen pregnancy, among others.

Despite the international economic crisis, the work of philanthropic and civil society organizations is increasing.⁷ This work has focused on providing resources and promoting equality through the establishment and support of sustainable and replicable social projects that endow populations with strategies and knowledge that encourage human welfare and development.

As economic and cultural globalization proceeds apace, charitable giving also increasingly takes on an international complexion because more and more families are establishing personal and financial ties with countries and even continents beyond the borders of their ancestry and original heritage.⁸

Unequal economic development in emerging countries has affected the growth of philanthropy throughout the world. With the increase of wealth in private organizations and individuals⁹ in countries such as Brazil, India, China and Russia, there has been a corresponding increase in philanthropic organizations that support population groups within and beyond their borders. In fact, "the shift of resources into private hands has generated new wealth for philanthropy and has brought many additional players and perspectives to the creation of social benefit".¹⁰

Additionally, philanthropy has an extensive tradition in the world.¹¹ Its contributions in knowledge, resources and donations have

mental element to understand strategic needs is the concept of "power", understood as the main axis from which strategic needs are articulated. This is why gender demands are associated with increased control on the benefits resources and opportunities by women and other groups in condition of vulnerability so as to improve their position.

6 Agency refers to the individual capacity human beings have of acting independently and of choosing their own options freely.

7 Cf. Katherine Fulton y Andrew Blau. *The new ecology of social benefit*. Sf.

8 Michael Galligan. "International charitable giving and planning under U. S. Tax law", p. 1

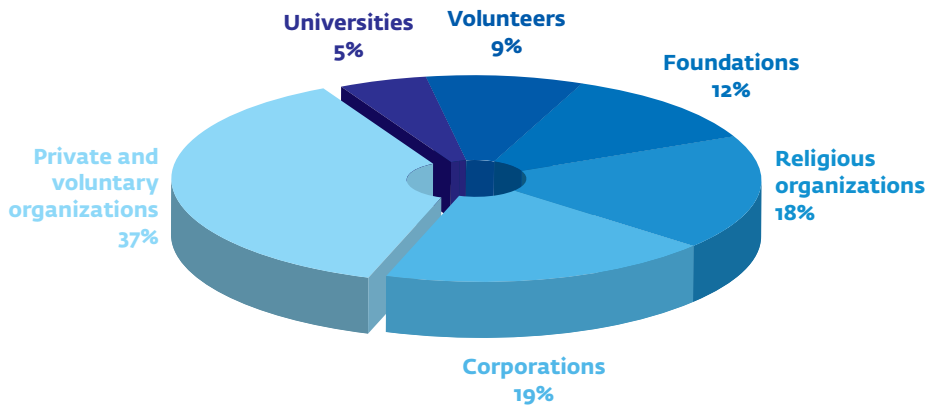
9 Even if philanthropy is not only linked to the transfer of resources monetary or in kind, the surge of the BRIC (Brazil, Rusia, India, and China) block has increased the monetary resources destined to donations.

10 Katherine Fulton y Andrew Blau. **The new ecology of social benefit**, p. 2.

11 Cf. Oliver Zunz, **Philanthropy in America: A history**. EUA: Princeton University Press. 2011; Joel Fleishman. *The Foundation: A great American Secret, how private wealth is changing the world*. EUA. Public Affairs.

facilitated social transformation. Philanthropy has a long tradition in the U.S., a country that, given its political and social history, has a heightened awareness of the needs of populations beyond its borders. For example, throughout 2010, the resources of private philanthropy based in the U.S. reached 39 billion dollars, a number that surpasses the 30.4 billion dollars in resources from official aid from the U.S. governmental agencies. Of the resources donated by philanthropy, 36 percent came from private and voluntary organizations; 19 percent were corporation resources; 18 percent resources from religious organizations; foundations contributed 12 percent; volunteers donated 9 percent while university donations accounted for 5 percent.¹²

Distribution of resources per donating entities



Source: *The Index of Global Philanthropy and Remittances, 2012.*

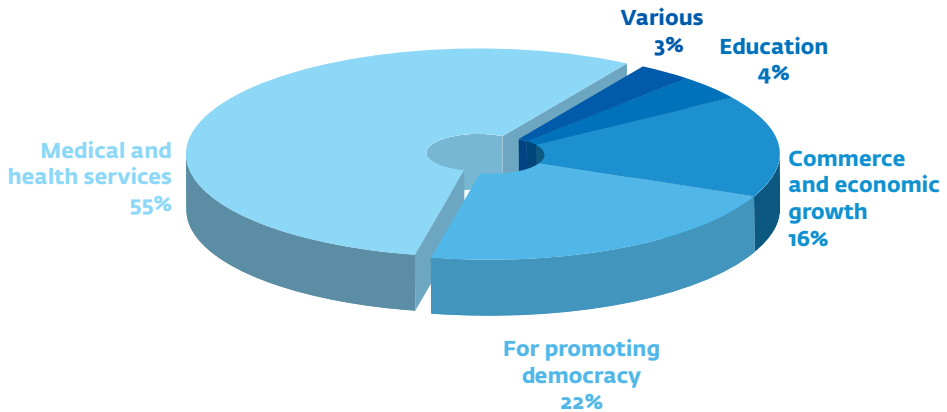
As shown, resources coming from philanthropic organizations are even greater than the aid from the U.S. government. This fact allows us to appreciate the role that philanthropy plays in the U.S. and around the world.

According to *The Index of Global Philanthropy and Remittances, 2011*, in 2009 donated resources were distributed the following way: medical and health services, 55 percent; donations to promote democracy, 22 per-

¹² The Center for global prosperity. *The Index of Global Philanthropy and Remittances, 2012*, p. 8.

cent; media to promote economic growth and commerce, 16 percent; resources for education, 4 percent; aid in disaster relief and aid to refugees, 1 percent; and for other areas of need, 3 percent.¹³ This split was similar in 2010.

Percent breakdown of donations by United States Foundations



to developing countries, 2009

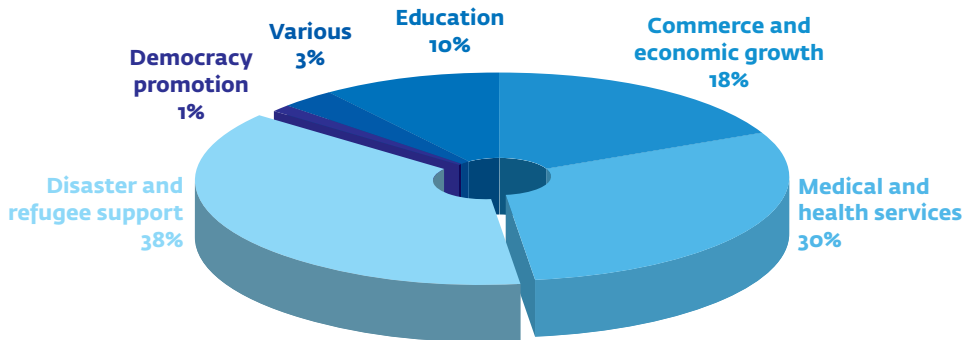
Source: *The Index of Global Philanthropy and Remittances*, 2011.

Given that worldwide philanthropy is a versatile movement capable of dynamically responding to needs, there are significant differences with what is reported by *The Index of Global Philanthropy and Remittances*, 2012. In 2010, the resources donated by voluntary and private organizations were distributed differently from the way they were distributed the previous year. The distribution was as follows: health and medical services, 28 percent; donations for the promotion of democracy, 1 percent; media in support of economic growth and commerce, 17 percent; resources for education, 9 percent; aid in disaster relief and aid to refugees, 35 percent; and other areas of need, 3 percent.¹⁴

¹³ The Center for global prosperity. **The Index of Global Philanthropy and Remittances, 2011**, p. 7

¹⁴ The Center for global prosperity. **The Index of Global Philanthropy and Remittances, 2012**, p. 12 (*The same fields were used for 2010 as in the previous year so as to make comparisons easier*).

Percent breakdown of private United States donations to developing countries, 2010



Source: *The Index of Global Philanthropy and Remittances, 2012.*

Consistent with an increase of donations from grantmakers, the formulas for transferring resources and the ways to promote social development have become more efficient by targeting projects that favor individual agency and self development, scientific or social advances and population development. Unfortunately, in spite of the growing philanthropic work and of the efforts to aid human development, there are still problems linked to the mechanisms for the transfer and follow-up of resources donated by way of international philanthropy.

For example, the following limitations have been identified on both sides of the process:

Donor country or “outflow” constraints

- Significant limitations on foreign grant making by tax-exempt entities;
- Lack of advance in governmental approval for cross-border giving;
- Limited, or no tax incentives for international philanthropy;
- Burdensome procedural requirements for foreign grants;
- Counter terrorism measures; and
- Restrictions on financial transactions with sanctioned countries.

Recipient country or “inflow” constraints

- Lack of advance in government approval to receive foreign funding;

- Restrictions on the types of activities that can be supported with foreign funding;
- Mandatory routing of foreign funding through government channels;
- Post- receipt procedural burdens, such as burdensome notification and reporting requirements;
- The taxation of global philanthropy; and
- Foreign exchange requirements¹⁵

Considering these constraints and their corresponding social consequences, charities and nonprofit organizations in the U.S. have sought to remove barriers to philanthropic work and to promote social and economic progress by funding projects, either through resource donation to aid strategic and productive development of specific organizations or by implementing projects on their own. While these donations reach their organizational objectives, they also enhance the work of CSOs by making them more professional. To this end, the aim is to promote continuous learning by means of planning, development, execution and evaluation of the projects. In general terms, philanthropic organizations are promoting knowledge and the recognition of best practices by favoring the sciences, arts and environmental awareness, thereby benefitting the common wellbeing and diminishing all brands of inequality.

1.2 PHILANTHROPIC RESOURCES FOCUSED ON MEXICO

There is a great tradition of CSOs in the United States. Among these organizations are numerous charities that contribute resources to Mexico. This tradition could be better oriented towards promoting projects that foster a common wellbeing. Said task could support economic development and the amelioration of the human development index as well as favor the constitution of new social capital, which “refers to the characteristics of social organizations, such as trust, norms, and networks that may assist efficiency in society in terms of making coordinated action easier”.¹⁶ In fact, organizations and foun-

¹⁵ D. Moore and D. Routzen. “Legal framework for global philanthropy: barriers and opportunities”, in *International Journal of Not-for-profit law*, pp. 2-3.

¹⁶ Portocarrero and Loveday quoting Putman, “*Capital social: genealogía de un concepto*”, p. 221.

dations in the U.S. that are both capable of and interested in donating can buttress the work promoted by CSOs in Mexico.

These transfers are practically a bi-national tradition in the sense that they reinforce the important relationship between the two countries. According to *Philanthropic Contributions by Foundations targeting Hispanics and Latinos in the U.S. and Latin America*, a document prepared by *The Foundation Center* (2011), between 2007 and 2009 there were 4,649 donations to Hispanic and Latin-American organizations in the U.S. for more than a billion dollars.¹⁷ Ten U.S. organizations contributed 76.7 percent of the total donations to Latin America, while other foundations donated the remaining 23.3 percent. Of these resources, approximately 16.62 percent (\$174,553,264.00 USD) were donations to Mexico.

The 10 most generous foundations in Latin America	Amount of the donations in dollars	Percentage
1. Bill & Melinda Gates Foundations	\$228,911,153	21.8
2. Gordon and Betty Moore Foundation	\$187,174,710	15.9
3. Ford Foundation	\$151,640,578	14.4
4. W. K. Kellogg Foundation	\$70,398,417	6.7
5. David and Lucile Packard Foundation	\$45,539,931	4.3
6. Howard G. Buffet Foundation	\$35,494,134	3.4
7. William and Flora Hewlett Foundation	\$36,626,035	3.1
8. John D. And Catherine T. MacArthur Foundation	\$30,047,937	2.9
9. Susan Thompson Buffet Foundation	\$24,810,195	2.4
10. Blue Moon Fund	\$18,788,250	1.8
Subtotal	\$805,431,340	76.7
Other foundations	\$244,862,714	23.3
TOTAL	\$1,050,294,054	100

Source: Shah, S. *Aportes filantrópicos de fundaciones destinados a hispanos/ latinos en los Estados Unidos y a América Latina* EUA: Foundation Center & Hispanics in Philanthropy, 2011.

¹⁷ The amount donated to Hispanic organizations in the U.S. was USD\$ 510, 608, 432.00, while resources donated to countries or organizations in Latin America amounted to USD\$ 539, 685, 622.00.

**U.S. Regulation
and relevant information**

2

As previously stated, philanthropic resources are an invaluable means of support for CSOs. Through philanthropic donations, numerous organizations finance or promote scientific, ecologic, or social transformations that favor social development. These organizations also promote the implementation of practices that respond to the needs of specific groups in vulnerable conditions and many other issues. Granting resources for development should be a clear and efficient means of support. They may promote scientific endeavors, fight poverty and diminish the gap between the rich and poor. Regardless of the cause, it is necessary to be aware of the fact that the U.S. Government has defined specific criteria to recognize which donations are eligible for tax deduction.

For this reason, the donors objectives must be clear at the moment in which the donation is made. A decision has to be made as to whether there is sufficient motivation to perform the donation, despite the possibility of not receiving a tax exemption. The complexity of the legal mechanisms often reduces the possibility of performing donations and receiving a tax exemption.

Unfortunately, philanthropic aid has also been a channel for illicit activity. In fact, some groups have used the mechanisms of philanthropic donations to finance activities that do not have human development aims, rather, they were using resources to support criminal and terrorist activities. In response, the U.S. government took measures to counter terrorism:

Antiterrorism and Effective Death Penalty Act, which criminalizes 'material support' to designated entities; the International Emergency Economic Power Act, which prohibits transactions with designated entities; the Executive Order 13224 which allows for the freezing of assets and other measures; and, the Patriot Act which expanded the 'material support' prohibition to further bar 'expert advice or assistance' to terrorist organizations, a provision that has been extended to charities and was the subject of a recent Supreme Court Case.¹

The following section describes the procedures to be followed for performing donations and determining if they are eligible for a tax-deduction. It will also describe the ways in which organizations may receive donations, whether these are monetary or in-kind.

¹ D. Moore y D. Rutzen, art. cit., pp. 15-16.

2.1 ON WHO MAY PERFORM TAX-DEDUCTIBLE DONATIONS

The Internal Revenue Service (IRS) is the U.S. agency charged with tax collection. It acts according to the Internal Revenue Code (IRC), which is emitted by the U.S. Congress. The IRC has defined the criteria and requirements that either individuals or organizations must comply with in order for their donations to be tax-deductible.

An individual's obligation to pay taxes or receive a tax deduction depends on their immigration and resident status in the U.S. Different entities such as individuals, foundations and corporations bestow donations in the U.S.. Michael Galligan and Nizer Phillips describe the most frequent ones listed here:²

Citizens:

...have the obligation to pay income taxes, as well as world-wide transference taxes (gifts, real estate, *generation skipping transfers*³), and have the possibility of making donations for up to 50 percent of their adjusted net income.

Persons who qualify as permanent residents and reside in the U.S.:

...have an obligation to pay taxes on their earnings. Depending on certain guidelines applicable to specific cases, they do not necessarily have to pay worldwide taxes for transferences. In the former case they can make donations of similar amounts to the citizen category: up to 50 percent of their adjusted net income.

Persons who are permanent residents in the U.S., but with foreign addresses:

...have limited possibilities for tax-deductible donations to other countries. This is due to the fact that property taxes in the U.S. are related to properties or goods within the country, and are therefore, subject to state tax. Only gifts and tangible properties in the state are subject to taxation.

2 M. Galligan and N. Phillips, "International charitable giving and planning under U.S. Tax law", passim.

3 Generation skipping transfers are federal taxes on property transfers, regardless of whether these are done after death or while the donor is still alive, to an individual who is more than 37.5 years or more than a generation younger than the donor. See: "**Generation-Skipping Transfer Tax (General Discussion)**", <http://www.heritagewealthmgrs.com/wp/Generationporciento2oSkippingporciento2oTransferporciento2oTax.pdf> [Retrieved: August 31, 2012].

Persons who are residents, pay taxes, and have an address in the U.S.:

...are legally in the U.S., but have stayed beyond the allotted time to remain in the country under the non-immigrant visa with which they entered the country. These persons could therefore be subject to paying worldwide taxes on monetary transfers.

Persons who have a U.S. address but are not permanent residents, or are tax-paying residents:

...will be treated as nonresident aliens or nonresident visitors.

Nonresident foreigners considered as “nonresident aliens”:

...cannot apply for income tax exemption or make any tax-exempt donations.

Domestic non-charitable corporations:

...have a right to apply for tax exemption on donations to charity organizations or non-profit organizations for an amount no greater than 10 percent of their income. This is stated in section 170(b)(2) of the IRC and some conditions must be met.

Domestic for-profit trust:

...are usually not permitted by their legal departments to make donations because of the Trust law. Nevertheless, under section 642(c) of the IRC a tax exemption for a donation for public welfare is allowed or required for charitable purposes. If the donation is for charity, the tax exemption is limited to the net income effectively paid. If the donation is to a foreign entity, the tax exemption is applied towards income.

Private foundations:

According to section 501(c) (3),⁴ all non-profit organizations may fall under the definition of a private foundation and are thus eligible for tax exemption. These foundations receive their income from a small group of persons, organizations or family groups. There is also the legal figure of public charity that is defined in section 509 of the IRC.

⁴ It is a type of non-profit organization that is eligible for tax exemption. <http://www.query-cat.com/search?q=501+%28c%29%283%29+IRC> [Retrieved on: July 20, 2012].

Public charities:

According to provisions in section 509, corporations and trusts are divided into public charities and private foundations. These are allowed to obtain and distribute resources in the U.S. and abroad. They may even award them to individuals or organizations not considered public charities under U.S. law. Churches, schools, medical institutions and governmental units are examples of public charities regulated by section 509(a)(1).

Income for organizations under section 509(a)(2) depend on the planning and organization of events or other activities, scholarships, gifts or services offered that are tax exempt. Some examples of these activities are: the elaboration and sale of educational material, charity galas, among others. Organizations under section 509(a)(3) are those that help public charities through financing or by providing assistance for the activities or events of public organisms.

A public charity is a legal entity that must comply with certain criteria and obligations to be able to receive donations and support from a wide variety of contributors. Furthermore, a public charity is allowed to distribute resources to national and international entities, and it is even allowed to distribute resources to individuals and organizations that are not focused on charity, either in the U.S. or other countries. For this to happen, the sole requirement is that these donations are consistent with the purposes for which the public charity was created.

The *Charitable contributions* document prepared by the IRS contains more details on what may or may not be donated. It also contains the definitions for tax deductible contributions and the limits for such contributions, times and manner by which these donations must be reported. Access to the aforementioned information is through the following link:

<http://www.irs.gov/pub/irs-pdf/p526.pdf>

2.2 ORGANIZATION TYPES THAT MAY RECEIVE DONATIONS

The U.S. IRC has determined several types of organizations that may obtain (in fact they are required to do so) a letter of determination by the

IRS in which the IRS states that these organizations are tax-exempt.⁵ On the one hand, public charities are recognized in sections 509(a)(1), 509(a)(2) and 509(a)(3) of the IRC. On the other, organizations typified by section 501(c)(3) are the ones that most often reach the authorized donor status when international donations are concerned. This section of the IRS recognizes:

Corporations organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports, or prevention of cruelty for children or animals.⁶

The requirements established by the IRS for tax exemption are the following:

To be tax-exempt under section 501(c)(3) of the IRC, an organization must be **organized** and **operated** exclusively for **exempt purposes** set forth in section 501(c)(3), and none of its earnings may **inure** to any private shareholder or individual. In addition, it may not be an *action organization*, i.e., it may not attempt to influence legislation as a substantial part of its activities and it may not participate in any political campaign activity.

The organization must not be organized or operated for the benefit of **private interests**, and no part of a section 501(c)(3) organization's net earnings may inure to the benefit of any private shareholder or individual. If the organization engages in an **excess benefit transaction** with a person having substantial influence over the organization, an **excise tax** may be imposed on the person and any organization managers agreeing to the transaction.

Section 501(c)(3) organizations are restricted in how much political and legislative (*lobbying*) activities they may conduct.⁷

5 Several organizations that can aspire to the status of tax-exemption are recognized in section 501 of the IRC. Examples of these are: social and recreational clubs 501(c)(7), veteran organizations 501(c)(19); business links 501(c)(6), amongst others. To facilitate the reading of this manual, the term authorized donating organization will be synonymous to the status of *tax exempt organization*.

6 IRS. Tax exempt status for your organization. <http://www.irs.gov/pub/irs-pdf/p557.pdf> [Retrieved on: August 1, 2012].

7 <http://www.irs.gov/charities/charitable/article/0,,id=96099,00.html> [Retrieved on: July 24, 2012]

The charitable ends that the IRS and U.S. Treasury rules recognize as warranting tax exemption are:

- Religious, educational, scientific, literary, testing for public safety;
- Fostering national or international amateur sports competition;
- Preventing cruelty to children or animals.
- Relief of the poor, the distressed, or the underprivileged;
- Advancement of religion;
- Advancement of education or science;
- Erecting or maintaining public buildings, monuments, or works;
- Lessening the burdens of government;
- Lessening neighborhood tensions;
- Eliminating prejudice and discrimination;
- Defending human and civil rights secured by law;
- And combating community deterioration and juvenile delinquency.⁸

Furthermore, the organization must have negligible or no participation at all in political lobbying. If this is the case, said activity must be within the guidelines set for this purpose.⁹ Section 170(c) of the IRC establishes the parameters and limits through which a donating entity (individual or corporate) can request a tax exemption.

Additionally said code states that for a donation to be used for tax deduction the donating entity must donate to an organization created in the U.S. or any of its territories. However, it does not mention that the donation must be used within the U.S. This opens the door to donations to be used in other parts of the world with the requirement that the organization claim origins in the U.S. It is noteworthy that a treaty signed by the U.S. and Mexico¹⁰ allows Mexican charity organizations to be recognized as grantees or beneficiaries by the IRS.

⁸ [http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exempt-Purposes---Internal-Revenue-Code-Section-501\(c\)\(3\)](http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exempt-Purposes---Internal-Revenue-Code-Section-501(c)(3)) [Retrieved on: July 12, 2012]

⁹ Cf. <http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Political-and-Lobbying-Activities>

¹⁰ Agreement between the Mexican government and the government of the U.S. so as to avoid double taxation and the fiscal avoidance of income tax

2.3 TO WHICH ORGANIZATION SHOULD DONATIONS BE ASSIGNED?

The needs of populations and the work done by CSOs are of a great variety. This allows multiple targets (spaces) for donations. Unfortunately, there are no studies in Mexico as to which areas are better or which areas should be prioritized so as to achieve a greater impact.

However, *Hispanics in Philanthropy* has done research about the way in which donations are made towards public charities in the U.S. This organization is also concerned with the problems that Latino organizations in the U.S. face when trying to gain access to those resources. In spite of the different situations these organizations face in the U.S., the problems they encounter are occasionally similar in Mexico as well. For example:

Many organizations are small and have reduced budgets. This factor forces the organizations to provide various services and support for diverse areas in the same community. “Because of their small budgets and the wide breadth of services they provide, Latino organizations do not always fit within foundation program objectives and grantmaking strategies.”¹¹

Despite their small size, these organizations may perform tasks that have a positive impact on a given community, an impact similar to the one a larger and better-funded organization could achieve. Occasionally, these organizations help small organizations in terms of development and social change. They fund pro environment research projects, social aid targeting local or regional needs, etc. That “institutions could consider supporting program officers in ways that allow them to take on leadership and invest in programs that may carry some risk”¹² is convenient in terms of promoting social transformation as well as the development of organizations.

¹¹ Aida Rodríguez, et. al. *Foundations funding and Latino community priorities: gaps and opportunities*, p. 13.

¹² *Ibidem*, p. 12.

2.4 WAYS TO GIVE DONATIONS TO ORGANIZATIONS IN MEXICO WITH THE POSSIBILITY OF TAX EXEMPTIONS

There are various ways by which donations to Mexican organizations may be granted. The variations depend on the way these organizations are or are not recognized as a tax-exempt organization by the IRS.

Some ways in which these donations may be granted are described as follows:

2.4.1 Donation to IRS recognized organizations

The most direct way in which donations may be granted when the organization is included in the list of tax-exempt organizations. The process through which organizations may obtain this inclusive status is described in Annex 1.

When the IRS recognizes an organization as a tax-exempt organization, it is included in the exempt organizations select check, previously known as list 78. This is the official instrument to find out if any Mexican philanthropic organization is a tax exempt organization.

In practice, the process and paperwork for an organization to be included in this list is very expensive and demanding for organizations because it implies they must abide by the mechanisms and legislation determined by the U.S. This is due to the fact that the existing agreement between the U.S. and Mexico has not been fully implemented. Complying with the requirements to remain on the list is problematic because it requires document translation and the completion of questionnaires in English. In turn, this means having to hire specialized personnel in the U.S. who are experts in legal and accounting matters so they can fulfill the requirements set by the IRS. This is the most probable reason for which only large philanthropic organizations or bi-national ones are capable of satisfying the legal and fiscal requirements.

Regardless, organizations in the U.S. have used Mexican requirements –such as the ones established by the *Servicios de Administración Tributaria (SAT)*¹³ to identify the organizations that could be potential recipients of donations from the U.S., given their characteristics. One

of these characteristics is that they have a similar status in Mexico to the one denoted by the U.S. IRC section 501(c)(3).

Even if an entity is not recognized by the IRS as a tax exempt organization, it could still receive donations through other means. There are other ways to judge the seriousness and stability of the work done by the beneficiary organization. There are several mechanisms that allow for the recognition of the legal standing and possibility of making and receiving donations to philanthropic organizations.

Following are the ways in which it is possible for organizations, not included in the list by the IRS, to make donations:

2.4.2 How to Make Donations to Mexican Organizations that Do Not Have Tax Exemption Status from the IRS

When an organization is not tax-exempt because it does not meet the necessary requirements for tax exemption status as defined by the IRS, there are four other means by which a tax exempt donation may be made:

- Donations via U.S. Charity Organizations
- Donations via “Friends of” Organizations
- Donations via Equivalency Determination
- Donations via Expenditure Responsibility

2.4.2.1 DONATIONS VIA U.S. CHARITY ORGANIZATIONS

The first way to donate resources to a non-tax-exempt organization is via U.S. donating entities that have active programs in Mexico. This is a viable means because charity organizations in the U.S. owe their status to the type of activity they perform, and not to the location in which they perform it.

2.4.2.2 DONATIONS VIA “FRIENDS OF” ORGANIZATIONS

Donations may also be made through an organization founded and registered in the U.S. that fulfills the legal and administrative requirements, as defined by the IRS and the IRC, to serve as an intermediary for the allocation of funds that will be re-awarded as donations to a Mexican organization. In this type of donation, the organization acting as intermediary should maintain complete control over the supervision of the donated resources, and, at the same time, it should

establish a balance between its supervisory control and the freedom it gives to the Mexican CSO regarding the use of the resources. Such a balance will ensure that the people, or groups for whom the resources are intended, are positively affected; plus, it ensures that the donating entity will have no difficulties with IRS authorities.

Furthermore, as mentioned in *Beyond Our Borders*, organizations designated by the IRS as “Friends of” must comply with the following restrictions and conditions:

- The respective Boards of the U.S. and the non-U.S. organizations should not be identical, nor should they substantially overlap.
- The U.S. organization must serve a purpose independent of that of simply distributing funds to the non-U.S. organization.
- The organization must perform other charity-related or non-profit activities in the U.S.
- The fund-solicitation materials must mention to the potential contributors that the distribution of the funds is subject to the exclusive control of the U.S. Organization.¹⁴

2.4.2.3 DONATION VIA EQUIVALENCY DETERMINATION

In the U.S., donating entities may claim the status of equivalency determination, which allows for tax exemption. In other words, the IRS may consider the recipient entity to be an organization equivalent to a public charity organization or a private U.S. foundation. Some of the characteristics and conditions that must be considered with regards to the use of donations are as follows.

A determination of “good faith” must be made. This means that the party receiving the donation is considered to be equivalent to a public charity organization or a private non-profit foundation. The determination of good faith can be achieved via a sworn declaration from the organization receiving the donation or with an advisor’s statement. For both types of document, sufficient information and evidence¹⁵ must be provided for the IRS to determine if the organization is, in fact, one of public charity.

Via this procedure, it is not the organization receiving the donation, but rather, the donating entity that engages directly in the process of the former’s recognition by the IRS as a public charity

¹⁴ Council on Foundations. *Beyond Our Borders. A Guide to Making Grants Outside the U.S.*, p. 10.

¹⁵ The IRS has not explicitly defined what is meant by “sufficient evidence”; therefore, this is left up to the criteria of the donating organization and, ultimately, to the fiscal authority.

organization. Nevertheless, the beneficiary organization must submit all of the financial, legal and administrative information that the donating entity may need in order to determine if that organization can be considered a public charity organization or a private non-profit foundation. This information must also be provided in case the IRS requires it from the donating entity.¹⁶

Requirements for Equivalency Determination

1. The documentation offered by the beneficiary organization must be translated into English.
2. The documentation provided must be comprehensible and sufficiently detailed so that, if reviewed by the IRS, the necessary information may be promptly identified.
3. All of the organization's legal, administrative and financial documentation must be gathered together. The basic documents that must be included (with a simple translation to English of each), in accordance with Revenue Procedure 92- 94, are as follows:
 - Charter
 - Statutes and notarization of statutes¹⁷
 - An organization chart and its internal structure, as well as a description of positions held within the organization and its activities.
 - A description of the Mission, Vision, Organizational Objectives, Code of Ethics and Action Guidelines of the organization, which is to say the documents and guidelines around which the organizational daily work is structured.
 - Documents that accredit the organization's non-profit status should prove that it does not conduct activities for the private benefit of its members. (To this end, the documents required and issued by the Mexican Government for the organization's accreditation as an authorized donee are required.)
 - Moreover, when the beneficiary organization is not a religious, educational or medical institution, several years worth of financial information, with the appropriate internationally-recognized accounting and banking authentication, will be required.

¹⁶ The IRS does not explicitly define the process of auditing such organizations, nor the time frame during which an audit may occur.

¹⁷ This refers to the procedure in Mexico involving the authentication of the organization's constitutive documents by a Notary Public, a procedure by which it is proven that the organization was created legally and has legal existence.

- Likewise, it is suggested that a legal advisor be hired to contribute documentation that may be used by the beneficiary organization. Nevertheless, due to the onerous nature of this procedure, the IRS has suggested another mechanism: that of a sworn statement (see Annex No. 2).
- The sworn statement is a document provided by the organization receiving the donation. This document must contain sufficient information (legal, administrative, financial, and organizational) to allow the board of the donating entity to recognize the beneficiary organization as being equivalent to a public charity organization. This statement must mention that the organization focuses exclusively on the objectives identified in its incorporation paperwork, and it must describe the organization's activities and the work it will perform. The statement must also be accompanied by copies of the organization's legal and governing documents. Likewise, it should stipulate that there will be no private benefit by any member of the organization, and it must mention what will occur with the organization's assets if the organization is dissolved (clause for dissolution).

In addition to the previously mentioned requirements, the original of the sworn statement, or a copy thereof (if the statement was made by various organizations), must be stored in the grantee's organization files so that it is available in case the IRS requires it.

The documentation must include information indicating that the organization is not involved in any political lobbying and or political campaign. It should be clarified here that this procedure is costly and complicated. This is due to the need for hiring specialized personnel who are experts in U.S. fiscal laws. It is also possible that a grant seeking organization may obtain multiple letters of equivalency for different donating entities.

In November 1992, the IRS addressed all above issues by creating the Revenue Procedure 92-94 (See Attached Document #2), which describes how to draft a sworn statement that will be used as part of the procedure enabling one to be recognized by the IRS as the equivalent of a tax-exempt organization. Furthermore, this procedure allows for the sworn statement to be used for more than one grant seeking organization.

To utilize this model, as in other cases, it is advisable to be legally informed about how to follow fiscal norms in order to avoid difficulties with the U.S. treasury authorities.

2.4.2.4 DONATIONS VIA EXPENDITURE RESPONSIBILITY

Another option is via Expenditure Responsibility, which is for making donations to organizations not recognized as tax-exempt by the IRS.¹⁸ This option may be pursued in the following cases:

- When an organization can be equivalent to the type of organization described in Section 501(c)(3), but does not comply with the requirements of a public charity organization (Section 509(a)(1), 509(a)(2) and 509(a)(3) of the IRC)
- When the organization's financial information is incomplete, or when it does not comply with the requirements of the IRS
- When a large percentage of the organization's income comes from a private source
- When the grant seeking organization is a public charity organization but is unable to provide information or data to prove the veracity of its statements
- When the organization does not focus exclusively on charity activities, as is the case of unions, guilds, or professional associations, among others
- When the organization is a for-profit business
- When the organization conducts activities to influence legislative procedure.

In these scenarios, the organization must be considered as a private foundation and not a public charity organization. The donations from one private foundation to another must be made on the premise of expenditure responsibility.

For donations made via expenditure responsibility, five steps should be followed:

Step 1. The donating entity should conduct research that will allow it to make sure that the beneficiary organization sign an agreement ex-

¹⁸ See IRS. *Grants by Private Foundations: Expenditure Responsibility* <http://www.irs.gov/Charities-&-Non-Profits/Private-Foundations/Grants-by-Private-Foundations:-Expenditure-Responsibility> [Accessed July 13, 2012]

pressing full compliance with the charity objectives of the donating entity and to strictly follow the guidelines defined by this entity.

Step 2. In accordance with the IRS guidelines, a binding written agreement must be signed together with the donating entity. In this agreement, a member of the beneficiary organization’s board must specify the charity cause for which the donation will be used. In this agreement, the following points must also be specifically addressed:

- The ways in which resources may be returned or repaid if they are not used for the cause(s) for which they were intended
- The donating entity’s specifications regarding the periodic reports that will be submitted, including the characteristics and information that these reports must contain
- The follow-up procedures based on accounting ledgers and administrative records, which must be made available in the case that the donating entity requests them
- The definition of specific restrictions in the ways in which the resources may be used; for example:
 - a) restrictions on the use of the donated resources for political propaganda or lobbying activities
 - b) restrictions regarding the use of funds to influence voting processes, public elections or to access voter registration information
 - c) restrictions regarding the use of the resources for any other cause that is not strictly charity-related

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Step 3. When a donation is received, a detailed report on the status of the donation must be written. This report must include the following information: how the donation was used; what population was benefited; the impact of the donation on the population that was benefited; and the way in which the resources were allocated. An annual report of this type must be submitted before the beneficiary organization’s fiscal year is over. This step is to continue for as long as the resources are being allocated.

Step 4. The donating entity must inform the IRS, via Format 990PF¹⁹, that a donation has been made via expenditure responsibility. This report must include:

¹⁹ See: *Instructions for form 990 PF* <http://www.irs.gov/pub/irs-pdf/i990pf.pdf>.

- a) The name and address of the beneficiary
- b) The date, amount and purpose of the donation
- c) The amounts allocated by the beneficiary in accordance with its most recent report
- d) Specifications regarding any amount of the donation used for any purpose other than those specified in the agreement
- e) The dates of the reports received from the beneficiary of the donation
- f) The date and results of all verifications performed by the donating entities, or by a third party upon the request of the donating entity

Step 5. The resources obtained by the beneficiary via the donation must be set aside in a specific fund for charity purposes; therefore, a special bank account must be opened for these resources.²⁰

²⁰ See: Council on Foundations. *Beyond Our Borders. A Guide to Making Grants Outside the U.S.*, 2011.

2.4.2.5 ADVANTAGES AND DISADVANTAGES OF MAKING DONATIONS VIA EXPENDITURE RESPONSIBILITY AND VIA EQUIVALENCY DETERMINATION

Expenditure Responsibility	Equivalency Determination
<p>Advantages</p> <ul style="list-style-type: none"> a. An English translation of the beneficiary organization’s documents is not required. b. The beneficiary may be either a for-profit or non-profit organization (as long as the donation is to be used only for charity purposes). c. Several years’ worth of information recognizing the organization as a public charity organization is not required. d. The “Out-of-Corpus” requirement disappears. <p>Disadvantages</p> <ul style="list-style-type: none"> a. Resources may not be used for general purposes (administrative expenses), and the objectives regarding the use of the donated resources must be clearly specified. b. It is not permissible to use the resources for investment expenses nor to generate wealth or capital assets. c. If the beneficiary organization wishes for the resources to be allocated to other organizations, and if this is stipulated in the donation agreement, the same guidelines and practices accepted by the beneficiary organization must be followed in the re-allocation of those resources. d. At times it is difficult to receive periodic reports from the beneficiary organization. e. It is possible that the donated resources may be subject to taxation, and that these taxes may be retained by the donating organization. 	<p>Advantages</p> <ul style="list-style-type: none"> a. Reports from the beneficiary are not required at the end of each accounting period. b. A special bank account designated for charity purposes is not required. c. A report via Form 990 PF is not required. <p>Disadvantages</p> <ul style="list-style-type: none"> a. The beneficiary organization’s documentation must be translated. b. The beneficiary organization must provide information that allows it to be recognized as a public charity organization or a private foundation in accordance with the IRC guidelines. c. It is necessary to provide at least five years’ worth of information on the organization’s working status.

Source: Council on Foundations. *Beyond our borders. A guide to making grants outside the U.S.*, 2011.

2.5 GUIDE FOR DONATING RESOURCES TO ORGANIZATIONS IN MEXICO

Though there are no established guidelines for donating resources to public charity organizations, private foundations or civil society or-

ganizations in Mexico, in this document we have defined some of the steps that may facilitate this process.

Before initiating the process of looking for an organization to which to donate:

Before beginning the process of looking for a beneficiary organization in Mexico, the following questions should be answered in order to expedite this process:

1. Will it be possible for the donating organization to offer legal and or accounting advice to the beneficiary organization?

If the answer is Yes:

If the donating organization is equipped with experts in legal and accounting matters, it is possible for that organization to make donations to small and medium-sized Mexican organizations that do not have the means to request tax-exempt status from the IRS. In fact, if the U.S. donating entity has legal and accounting departments with knowledge of the process for making donations to foreign organizations, this entity will be able to conduct the necessary procedures in order to make a donation via Equivalency Determination or via Expenditure Responsibility.

If the answer is No:

If the donating entity does not have such capabilities, it would be more convenient that this entity donate to organizations recognized by the IRS and look for a mechanism such as “Friends Of” organizations or look to public charity organizations in the U.S. that already conduct philanthropic work in Mexico.

2. How much involvement does the donating entity wish to have with the beneficiary organization?

If little involvement is desired:

If the donating entity wishes to minimize its involvement with the beneficiary organization, it would be preferable for this entity to use the *Exempt Organization Select Check* (formerly, IRS Publication 78) to find a beneficiary organization. Likewise, donations may be made via U.S. public charity organizations or via “Friends-Of” organizations. Such organizations may accommodate donations without the expectation of follow-up procedures.

If greater involvement and follow-up is desired:

The mechanisms of Equivalency Determination and of Expenditure Responsibility imply a greater level of involvement with the beneficiary organization. The donating entity must follow multiple procedures to comply with IRS regulations. Such procedures imply the need for a close relationship between the donating entity and the beneficiary organization.

3. What types of resources are being donated? (This will determine the type of organization to which the resources may be donated.)

For monetary donations:

For monetary donations it is important to check how money transfers work in both countries, including the daily tariff for such transactions. Identify the easiest way that a beneficiary organization can legally receive the money transfer. For practical purposes it is suggested to discuss all money transfers with the beneficiary organization.

For donations in-kind:

If in-kind resources will be donated, the necessary importation rights for these articles must be obtained by the time these articles reach the Mexican Customs Office. Likewise, it must be defined which party will pay the transportation costs, the insurance on the goods being donated, etc. These additional costs must be considered and settled upon when making this type of donation. Furthermore, the limitations placed by the U.S. and Mexican Governments on the types of goods that may be donated and imported must also be taken into consideration. (See attached documents 10-15 for monetary donations.)

4. Does the donating entity wish to make a tax-exempt donation?

If the answer is No:

Identify the organization to which the donation will be made. Point 2.5.1. of this guide outlines ways to find Mexican CSOs and international organizations established in Mexico. It also outlines profiles and organizational objectives of such organizations. When a non-tax-exempt donation is to be made, it is advisable to verify the legitimacy of the organizational objectives of the beneficiary organization and to confirm that such objec-

tives do not contravene U.S. legislations. (See Section 2 of this document.)

If the answer is Yes:

If a tax-exempt donation is to be made, there are three ways in which to find a beneficiary organization: 1) by selecting an organization from the *Exempt Organization Select Check* (formerly, IRS Publication 78); 2) by communicating with organizations to inquire if they are authorized by the Mexican Government to be beneficiary organizations (this connotes greater reliability on the part of the organization and, thus, will facilitate the recognition thereof as a public charity organization), or if they carry out activities that fit the guidelines defined in Section 501(c)(3) of the IRC; and 3) by utilizing the aforementioned alternative methods via which donations to non-tax-exempt organizations in Mexico may be made (See Section 2.4 of this document).

2.5.1 How to Find a Beneficiary Organization: Contacting Beneficiary Organizations in Mexico

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In Mexico there are numerous non-profit organizations. These vary in size, scope, and social, environmental and economic impact, etc. They conduct a broad range of non-profit activities that are intended to benefit public welfare. Here the reader will find ways to access information on civil society organizations.

2.5.1.1 FINDING A BENEFICIARY ORGANIZATION IN MEXICO

There are diverse ways of identifying organizations that have the capacity to act in favor of public welfare, the environment, education or social development. It is generally advisable to have a clear idea of the profile of the potential beneficiary organization and or the community assisted by that organization. It must also be determined whether or not the organization is accredited by the Mexican SAT as an authorized beneficiary organization. These are some databases that contain pertinent information.

1. Via the *Charity Vault* website: <http://www.charity-charities.org/Mexico-charities/Mexico.html>. This entity has created a list of organizations categorized according to their range of activities and geographical locations in Mexico.

2. Via the *Centro Mexicano para la Filantropía* (CEMEFI)²¹ website:
<http://directorio.cemefi.org//Busquedas/frmBusquedaAvanzada.aspx>. On this site, one can search for all kinds of social organizations and foundations in Mexico, whether they have the authorized donee status or not. The option allows for searches by organization name, legal name, location, field of activity, etc.
3. Furthermore, each year *Cemefi* creates a directory of its members. This publication gives the name of the organization and the contact information (address and phone numbers) for the chairperson or any other individual member. This information may be found through the following link:
http://www.cemefi.org/archivos/cemefi_web.pdf
 In this same publication, there is a diagram indicating if the organizations have been recognized by *Cemefi* as a “Transparent and Institutionalized Organization”. This is a distinction *Cemefi* gives to organizations that have fulfilled certain requirements. There are three levels of this recognition: Basic, Intermediate, and Optimal. “Basic” recognition is based on indicators such as: the organization’s legal charter; the authorization of the organization’s beneficiary status as an authorized donee from the *Ministry of Finance and Public Credit* (*Secretaría de Hacienda y Crédito Público*); the mission, vision and objectives of the organization; verifiable address and phone number; and a yearly report on the organization’s outcomes including resource allocation. The second level, “Intermediate,” is granted to those entities that have complied with indicators such as: a board or sponsorship different from the professional group; contracted professional personnel on the payroll; and volunteer collaborators in their programs. Finally, “optimal” recognition is granted on the basis of having compiled three years of indicators and more than three different sources of income for the organization.
4. *Cemefi* also provides a list of the Mexican organizations that are currently an authorized donee. This information may be found on the following website:
<http://cemefi.org/Donatarias-Autorizadas/lista-de-donatarias-autorizadas-publicada-en-diciembre-2010.html>
5. The Mexican SAT also provides a list of authorized beneficiary organizations, which can be found at the following address:

²¹ *Mexican Center for Philanthropy*

http://www.sat.gob.mx/sitio_internet/servicios/donatarias/autorizadas/30_1635.html

6. Likewise, the Council on Foundations offers an excellent review of the legislation that applies to non-profit organizations in Mexico, which can be accessed by the following link:

<http://www.usig.org/ICNL/countryinfo/PDF/Mexico.pdf>

2.5.1.2 CONTACT WITH THE BENEFICIARY ORGANIZATION

Once the donating entity has identified one or multiple beneficiary organizations, one should request information about the objectives of the organization(s), the scope of its/their projects and what may be required in order to facilitate the donation process. It is also worthwhile to determine if the organization has obtained national or international financing, in addition to identifying the project's impact on the target population and the mechanisms used for the efficient and effective utilization of available resources. Also during this part of the process, the objectives of the donation must be specified, and any requirements needing to be complied with must be stipulated. Specifications must also be made regarding mechanisms for communication and the way in which documentation and reports will be submitted. If necessary this information should include the possibility for members of the donating entity to visit the beneficiary organization in order to meet its members, learn about its methods of record-keeping, etc.

2.5.1.3 THE FORMALIZATION OF THE DONOR-BENEFICIARY RELATIONSHIP AND OF THE TERMS OF THE DONATION

At this stage, the agreements defining the guidelines for the use of the donation and resulting accomplishments should be exchanged and endorsed. These documents will frame the relationship between the donor and the beneficiary. These agreements must include specifications regarding mechanisms for supervision (if the donor so desires), reports (if required) and the way(s) in which communication will be formalized between the parties.

The agreement must specify the method(s) as to how the resources will be transferred, as well as the information that the beneficiary organization must provide in order to meet the requirements of the IRS (when applicable).

2.5.1.4 FOLLOW-UP

During this part of the process, the donating entity may have a close relationship with the beneficiary organization. This is for examining the ways in which the resources are being used as well as for reviewing the requirements and submission procedures for the reports (if and when these have been requested).

2.5.2 Tax-Exempt Mexican Civil Society Organizations (Formerly Included in Publication 78)

To identify the Mexican organizations able to receive tax exempt donations that are deductible in the U.S., the Exempt Organization Select Check should be used:

<http://www.IRS.gov/charities/article/0,,id=249767,oo.html>

This online search tool offers an up-to-date list of Mexican organizations recognized by the U.S. Government as tax-exempt organizations.

Formerly, this information could be found in Publication 78; however, with the modernization of the IRS, it is now possible to attain the most up-to-date information on tax-exempt organizations online, using the Exempt Organization Select Check. At the time of this guide's creation (June, 2013), the following Mexican or Mexico-focused organizations, recognized by the IRS as authorized beneficiary organizations, could be found through the Exempt Organizations Select Check:

EIN	Legal Name	City	State	Country	Deductible Status
31-1799914	Michael Paul Wein Charitable Foundation Inc.	Col. Centro	--	Mexico	FORGN
33-0958137	Baja Animal Sanctuary	San Diego	--	Mexico	FORGN
52-1945379	Fondo Mexicano para la Conservación de la Naturaleza, A.C.	Mexico, city	--	Mexico	FORGN
52-2138580	Pro-Hermanos Del Anciano Inc.	Acapulco	--	Mexico	FORGN
94-3075704	American School of Puerto Vallarta Foundation	Pto, Vallarta, Jal.	--	Mexico	FORGN
98-0098988	Jesus Final Command Inc.	Zacatecas, Zacatecas	--	Mexico	FORGN
98-0431830	Care For Kids La Paz	La Paz, Bcs	--	Mexico	FORGN
98-0529373	Friends of Don Antonio Rivera Venegas Foundation Inc.	Mexico	--	Mexico	FORGN

Source: IRS [Accessed June 24, 2013].²²

²² This list must be consulted periodically since the names of organizations change.

Bi-National Regulation

3

In essence, U.S. and Mexican regulations and procedures are framed around similar objectives. These procedures include the facilitation of the transfer of philanthropic resources, the supporting of transparency and social responsibility and crime prevention when using such resources. However, the differences between the regulations and practices of the two countries may be quite significant since they were born of different historical circumstances. Plus, each nation has responded to different problems, and they have even been molded by the idiosyncrasies of the citizens and governments of each country.

In 1992, the U.S. and Mexican governments signed an agreement titled: *Convention Between the Government of the United States of America and the Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income*.¹ The objective of this agreement is to avoid income tax evasion and a double fiscal imposition. It also contains provisions concerning the maximum tariffs on dividends, interests and royalty payments. These provisions are generally favorable for U.S. investors in Mexico and vice-versa.

The agreement was designed to reduce barriers on investment and trade between the two countries. In order for organizations to access its benefits, they must comply with a series of standards designed to prevent the abuse of those benefits and to avoid conflicts such as double taxation. Such standards include the express definition of the individuals and or legal entities that may be benefitted, the classification of the income that may be included and the specification of all applicable taxes.

This agreement also stipulates that the U.S. and Mexican governments shall recognize charity and philanthropic organizations on a reciprocal basis. The agreement exempts such organizations from paying taxes and allows them tax deductions on contributions. Furthermore, it defines the limitations on the benefits of the treaty (Article 17), and it includes guidelines for the recognition of the organizations that may receive tax-exempt donations (and from the flat rate business tax, in the case of Mexico), as well as from tax exemptions on foreign trade, in the case of in-kind donations.²

1 <http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/mexico.pdf>

2 Smith, Eric J. *Perspectiva de política del tratado fiscal entre los Estados Unidos y México*, pp. passim

This agreement has been the legal mechanism used to avoid double taxation³. It has also been employed to favor the donation of monetary resources from the U.S. to Mexico and vice versa, via the inclusion, in Article 22 thereof, of the provisions for this type of transfer.

**Agreement between the Government
of the United States of America
and the Government of the United Mexican States
for the Avoidance of Double Taxation and the Prevention
of Fiscal Evasion with Respect to Taxes on Income**

**Article 22
EXEMPT ORGANIZATIONS**

1. An organization resident in a Contracting State which is operated exclusively for religious, scientific, literary, educational or other charitable purposes shall be exempt from tax in the other Contracting State in respect of items of income, if and to the extent that:
 - a) such organization is exempt from tax in the first-mentioned Contracting State, and
 - b) the items of income of such organization would be exempt from tax in the other Contracting State if received by an organization recognized in such other Contracting State as exempt from tax as an organization with religious, scientific, literary, educational, or other charitable purposes.
2. If the Contracting States agree that a provision of Mexican law provides standards for organizations authorized to receive deductible contributions that are essentially equivalent to the standards of U.S. law for public charities:
 - a) an organization determined by Mexican authorities to meet such standards shall be treated, for purposes of grants by U.S. private foundations and public charities, as a public charity under U.S. law, and

3 It is the "phenomenon that occurs when two or more States claim the right to impose taxes on the same taxable source. The combined fiscal responsibility often caused by double taxation typically represents a serious obstacle to both active and passive foreign investment, as well as to the development of service trade, technology exchanges, and labor mobility." (*Es el "fenómeno que consiste en que en dos o más Estados concurren poderes tributarios sobre los mismos hechos generadores de un impuesto. La carga tributaria combinada a que puede dar lugar la doble tributación representa normalmente un obstáculo serio a la inversión extranjera tanto activa como pasiva, así como al desarrollo del comercio de servicios, transferencias de tecnología y la movilidad del trabajo"*.) L. Cabrera González. "Doble tributación en México". <http://www.gonzalez-lazarini.com.mx/boletines/DOBLE%20TRIBUTACION%20EN%20MEXICO.pdf>

b) contributions by a citizen or resident of the U.S. to such an organization shall be treated as charitable contributions to a public charity under U.S. law.

However, contributions described in subparagraph (b) shall not be considered tax-deductible in any taxable year to the extent that they exceed an amount determined by applying the limitations of the laws of the U.S. in respect to the deductibility of charitable contributions to public charities (as they may be amended from time to time without changing the general principle hereof) to the income of such citizen or resident arising in Mexico. The preceding sentence shall not be interpreted to allow, in any taxable year, deductions for charitable contributions in excess of the amount allowed under the limitations of the laws of the U.S. in respect to the deductibility of charitable contributions.

3. If the Contracting States agree that U.S. law provides standards for public charities that are essentially equivalent to the standards of Mexican law for organizations authorized to receive deductible contributions, contributions by a resident of Mexico to an organization determined by the U.S. authorities to meet the standards for public charities shall be treated as deductible contributions under Mexican law. However, such contributions shall not be deductible in any taxable year to the extent that they exceed an amount determined by applying the limitations of the laws of Mexico in respect to the deductibility of contributions to organizations authorized to receive deductible contributions (as they may be amended from time to time without changing the general principle hereof) to the income of such resident arising in the U.S. The preceding sentence shall not be interpreted to allow in any taxable year deductions for contributions in excess of the amount allowed under the limitations of the laws of Mexico in respect to the deductibility of contributions.

4. A religious, scientific, literary, educational or other charitable organization which is a resident in Mexico and which has substantially received all of its support from persons other than U.S. citizens or residents shall be exempt in the U.S. from the U.S. excise taxes imposed with respect to private foundations.

Source: US- Mexico Double Taxation Agreement⁴

This agreement has resulted in benefits for the donating and beneficiary entities. A principal benefit has been that, on the basis of certain guidelines and requirements, both the U.S. and Mexican governments can identify donating and beneficiary CSOs

4 <http://www.irs.gov/pub/irs-trty/mexico.pdf>

on both sides of the border, thereby facilitating trans-border donations. In fact, this agreement saves organizations –donating or beneficiary– from having to gather sufficient information to determine if a Mexican organization has charity status. and or conducts activities that may be recognized as charity activities in the U.S..

However, while the agreement represents a significant step towards the reduction of problems and fiscal complications associated with the flow of capital between the two countries, there have been difficulties involved with its implementation. According to Michael Durham, the agreement is not being used to its full potential due to changes made to the *Ley del Impuesto Sobre la Renta (LISR)*⁵ when it was reformed in 2002. The author identified four obstacles undermining the fulfillment of the Convention's objectives:⁶

1) *Article 70-B (now Article 97) has been renumbered and substantively modified* changes in Mexican law since the Treaty was signed have made it harder for U.S. grantors to rely with confidence on the Treaty. The most noticeable change occurred in 2002, when Mexico enacted a new version of its Income Tax Law that renumbered many of its provisions (including Article 70-B, which became Article 97). Furthermore, both before and after the renumbering, various substantive changes have been made to the text of Mexican Article 70-B/Article 97. For instance, provisions allowing schools, universities, hospitals, and medical research organizations to qualify for public charity status without meeting a public support test were deleted, and more detail has been added to the definition of scientific and cultural organizations that can qualify under Article 97. [. . .]

2) *Relatively few Mexican charities have obtained the required status.*

Article 70-B and the regulations interpreting it were drafted specifically to match U.S. legal requirements, and Mexican charities need not meet their requirements unless they wish to obtain Treaty benefits. This, coupled with lack of familiarity with the new tax status, has meant that relatively few Mexican charities have even requested Article 70-B or Article 97 status. [...]

⁵ *Mexican Income Tax Law*

⁶ The following quote is taken from Michael W. Durham, "Grant making under the U. S.- Mexico Treaty: old frustrations, new promise", passim. The complete document may be found at <http://www.cof.org/templates/content.cfm?ItemNumber=10633&navItemNumber=5262> .

3) *No mechanism exists for a qualifying Mexican charity to appear on Publication 78.*

Despite Mexico's initial enthusiasm for the Treaty's reciprocal recognition of exemption, the IRS has found it difficult to reach a competent authority agreement on the Treaty's implementation with its Mexican counterparts. Thus, while a Canadian organization seeking benefits under the U.S.-Canada Treaty can follow a clear procedure to be included on Publication 78 (the official IRS list of charities) no analogous procedure exists for Mexican organizations. As a result, each individual grantmaker bears the burden of obtaining and translating Mexican tax documents and determining eligibility for Treaty benefits. [...]

4) *Foundations must meet general requirements for relying on a tax treaty.*

While the Treaty was clearly meant to simplify cross-border grant making, reliance on the Treaty imposes some additional requirements on a private foundation. First, in addition to obtaining documentation of the grantee's Mexican tax status, a private foundation must also verify that the grantee qualifies for the Treaty's benefits under its limitation of benefits provisions. Under Article 17(1)(e) of the Treaty, a majority of the "beneficiaries, members or participants" of the organization must be Mexican residents or other entities eligible for Treaty benefits. Furthermore, a foundation relying on the Treaty must submit a Form 8833 (Disclosure of Treaty-Based Return Position)⁷ explaining why the grantee qualifies for Treaty benefits. Given the legal questions surrounding the Treaty's application to the current Article 97 charities, many U.S. private foundations are reluctant to take that position, at least without consulting competent counsel first.

Despite such problems, the agreement has represented an improvement. According to Smith (1995) and Cavalieri (1998), for the first time the agreement included a means to allow mutual recognition of tax-exempt organizations without the need for an additional procedure. In order to be recognized as an authorized beneficiary, all that is required is for the established and recognized organization from either country to accept the terms of the agreement.

Although this stipulation is taken into account in the treaty, Mexican institutions have not found the process of gaining recognition as authorized beneficiary organizations to be entirely straightforward. On the one hand, this is due to the changes in Mexican fiscal legisla-

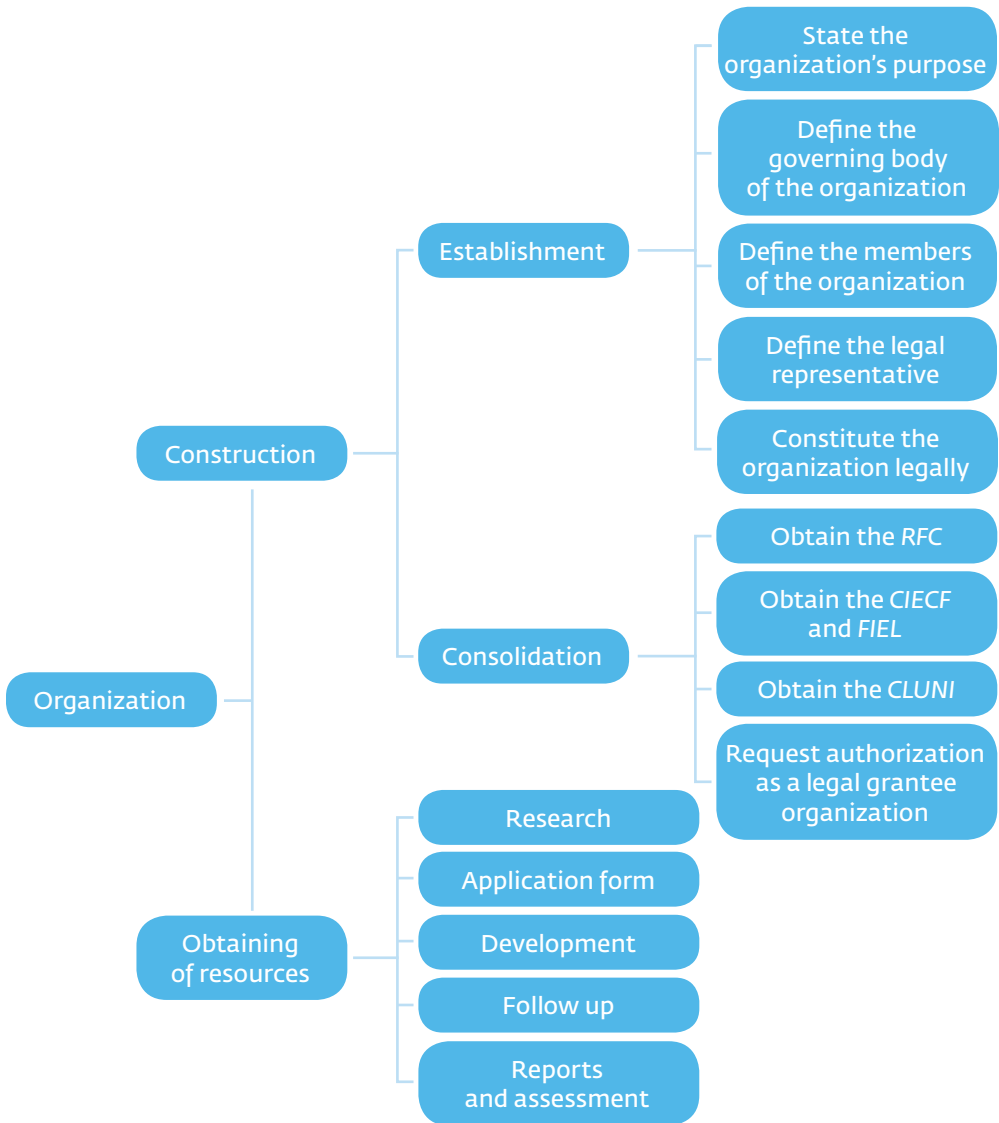
⁷ Please see Annex 3 for a copy of this Form.

tion (the LISR). On the other, the complications are related to the discrepancies between the requirements by the U.S. and Mexican governments regarding the recognition of civil society organizations as tax-exempt. Making such requirements equivalent would give both the U.S. authorities and the donating entities greater assurance of the philanthropic nature of the Mexican institutions.

**Mexican regulations
and relevant information**

4

Like the U.S. government, its Mexican counterpart has established a legal framework that provides legal certainty to individuals and organizations that perform philanthropic or non-profit activities, both directly and through grants. To have access to resources from abroad it is advised to do so in two phases: first by building infrastructure (which includes the development and consolidation) and then obtaining resources, which are useful for building the organization and enabling access to donated resources, either financial or in-kind.



4.1 (STAGE 1) CONSTRUCTION OF THE ORGANIZATION

For an organization to be in a position to solicit funds from grantors abroad, it must have been incorporated as a nonprofit organization, and it must obtain the documents listed below.

4.1.1 Establishment and legal and administrative recognition

This section includes the processes and preliminary steps that are necessary for the legalization and public recognition of a group of people who focus on performing non-profit activities or activities which have a social impact by means of a civil society organization.

In this initial stage, it is necessary to:

- a. Identify the members of the organization.
- b. Determine the social aim/ social objective¹ or the institutional purposes.

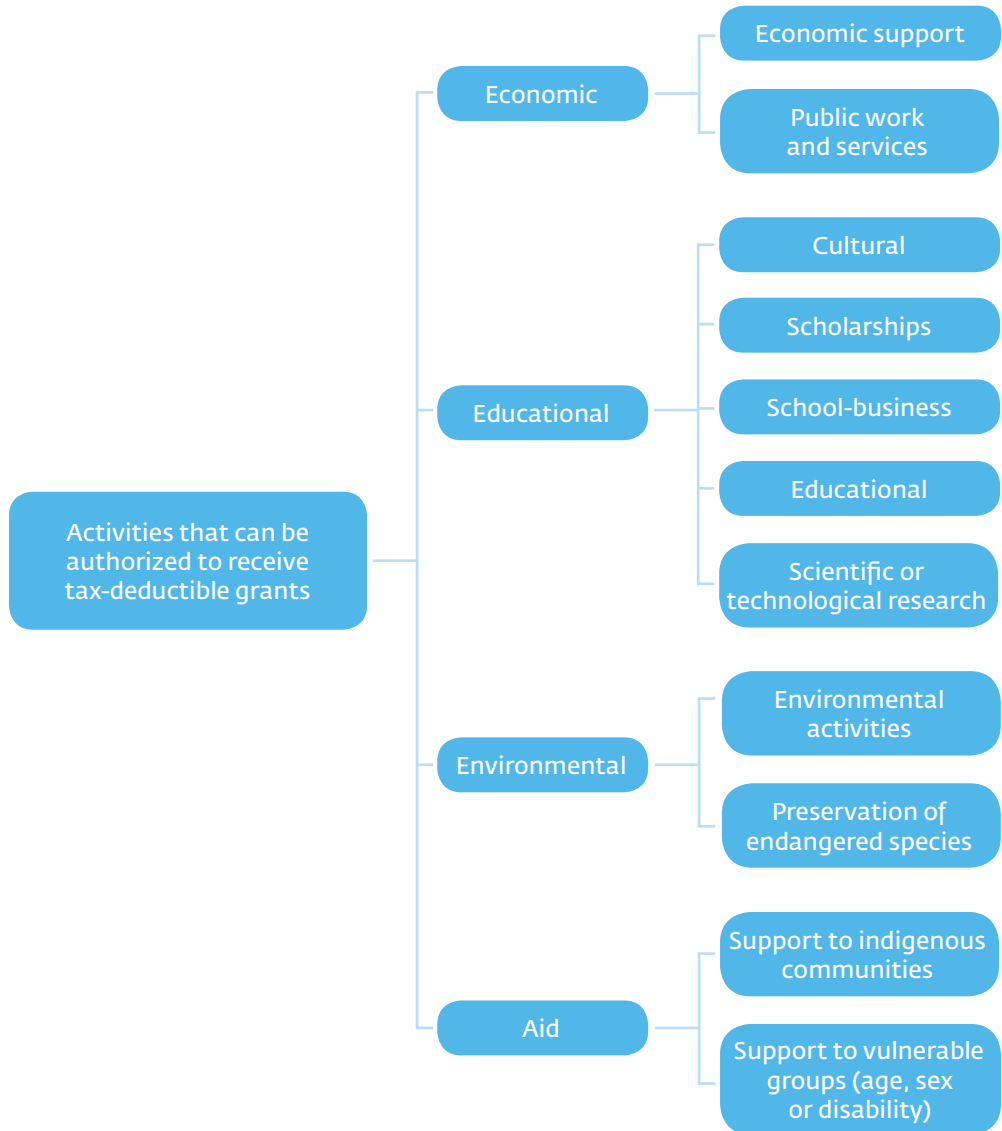
To do this, it must be kept in mind what the mission of the organization is; namely:

1. The purpose of the organization
2. The actions carried out by the entity
3. The identification of primary themes and interest groups.

Note: For guidance on the definition of the social aim/ social objective, it is possible to consult the activities described by the 5th Article of the Federal Law on the Promotion of the Activities Developed by Civil Society Organizations (see Annex 4) or those described in the Income Tax Act. Even though the former provides a more complete list, it is worth mentioning that if the aim is to be recognized as an authorized donee or grantee by the Tax Administration Service (SAT) under the Ministry of Finance and Public Credit (SHCP), its institutional activities must be linked to those identified by the SAT—as activities that are in a position to receive grants.

¹ *Social aim:* The social aim or social objective is the organization's purpose or the explanation of its main activity. The social aim or objective will be stated in the bylaws.

Activities that may be authorized to receive grants



Also, if the idea is to seek grants from the U.S., it is desirable to take into account the activities that the IRS recognizes for public charities under the U.S. Code (see section 2.2).

c. Define a name for the organization

Tip: Make sure the name of the organization is clear, concise and linked to the goals and aims of the organization.

Since it is necessary for the name to be original, you can browse the Internet to verify that the name has not been used by another organization. Furthermore, it is suggested to have at least three options, as they are requested by the *Secretaría de Relaciones Exteriores (SRE)*.² This unit is in charge of registering organizational names for avoiding their repetition.

d. Define the bylaws of the organization. It is suggested to include clauses that give certainty to the tax authorities that the organization will focus on non-profit activities. Check the optional statutes' model, suggested by the SAT (Annex 5) which can be found in the following link:

ftp://ftp2.sat.gob.mx/asistencia_servicio_ftp/publicaciones/donatorias/Modelo_Estatutos2.pdf

Tip: if you are interested in receiving tax-deductible grants, you must verify that the purpose or the objectives and institutional purposes are within the activities identified by the *Secretaría de Hacienda y Crédito Público*³ as authorized to receive grants deductible from the income tax (ISR) and the business Flat Tax (IETU).

1. Define the parts of the organization. It is necessary to identify the areas that constitute the organization: who directs it, plans its activities and performs the duties that enable it to achieve the institutional aims and objectives.

Note: it is necessary that the organization have at least two internal bodies. One is the assembly of Associates which acts as the supreme body, while the other is the administrative body or Board in charge of developing the activities defined by the social aim for which it was constituted.

² Ministry of Foreign Affairs

³ Ministry of Finance and Public Credit

2. Define the type of members that are part of the organization. These members can be partners who have voting privileges, or they may be honorary members with a moral backing but who contribute voluntarily to the organization. They could also be supporters who contribute through their work or resources to perform the activities of the organization; and finally they may be collaborators who perform the organization's operational tasks.

e. Define the legal representative of the organization.

The legal representative must be an individual who is not the legal representative or one who has no authority to be president of other non-profit organizations or individuals.

f. Constitute the organization legally. This procedure may be done before a notary who is responsible for registering the name in the SRE, developing and formalizing the statutes in the Public Registry of Property of the area where the procedure is performed. The notary will provide details about procedures that need to be performed.

Tip: Since prices and notaries' fees vary considerably, it is advised to ask for quotes and total fees before making any procedures. Note that some notaries even offer the service to include the organization in the Federal Taxpayers Registry (RFC) of the Tax Administration Service (SAT).

Remember: The notary can give advice regarding the requirements that must be met by the organizations. The notary can also advise on how to draft the incorporation documents of the company, as well as how to manage its registration in the Public Registry of Property.

g. Profile practices, strategies, mechanisms and guidelines related to planning, budgeting, implementation, evaluation and monitoring of actions.

- Define profiles, duties and responsibilities of members of the organization.

- h. Register the organization in the Federal Taxpayers Registry (RFC).
 - a. After registering the organization, there are 30 days to register the RFC with the local SAT office. For information and requirements about the RFC, sign in at the SAT web page at www.sat.gob.mx
 - b. When requesting the RFC, verify that it has been registered with all the activities previously defined by the statutes. This is because any mistakes made by the SAT can affect the performance of the organization.

4.1.1.1 BILLING AND DELIVERY OF TAX RECEIPTS

In the same way that individuals and corporations may perform profitable activities, nonprofit associations included in the scheme of tax-exempt status must submit tax receipts that are tax deductible.

Due to the ongoing modernization process of the SAT and for purposes of avoiding illicit activity (forgery, double billing, etc.) electronic invoicing has been implemented, which includes all data that previously were in printed formats:

- a. Name of the organization
- b. *Federal Taxpayers Registry* (RFC) of the organization
- c. Address of the organization
- d. Tax regime with which the organization taxes
- e. Service provided or type of grant
- f. Fiscal identity of the person or entity to which the receipt is issued
- g. RFC of the person or entity to which the receipt is issued
- h. Amount of grant or estimated in-kind grant

In the new electronic formats the following information has been included:

- Folio number and digital stamp issued by the SAT.

4.2 (STAGE 2) CONSOLIDATION OF THE ORGANIZATION

During this stage there are two main tasks the organization should consider to consolidate its existence and further its possibilities to receive grants and donations. First, mechanisms for establishing priority issues or the organization must be established. Fundraising

efforts must also be considered. The second task is to become an authorized donee⁴. This is done by obtaining official documents that enable the organization to be recognized as such (as discussed below).

This consolidation phase is useful to ensure grantors that the grantee is a responsible organization with ethical management of its resources⁵ and also that it has the ability to manage and develop the activities defined in its statutes and projects. Sometimes, this security is met when the organization has been registered as a tax exempt organization or authorized donee.

Some of the requirements to be met by organizations to be considered grantees are:⁶

4.2.1 Obtaining the *Clave Única de Inscripción al Registro*

On February 9, 2004, the federal law that promotes activities undertaken by CSOs organizations was published.⁷ This law was enacted in Mexico to strengthen the work of the organizations through the regulation of activities from the government entities and by defining the rights and obligations of such organizations in order to encourage their activities, as well as achieve the corporate goals.

The Federal Registry of Organizations was created by this law to have a system that allows access to information about the organizations that are registered in different government entities and groups or individuals interested in the activities developed by the organizations. Furthermore, the law enabled the identification of possible omissions that a CSO could make. The *Single Entry Code to the Federal Register of an Organization (CLUNI)*⁸ helps maintain a sort of census of organizations that can apply for the resources offered by the Federal Government, as well as influence the design of public policies. Orga-

4 Being recognized as an authorized donee by SAT implies that the organization can receive tax-deductible donations.

5 This means that it effectively and efficiently handles resources according to the law.

6 Grantees are organizations that can receive grants, the difference between a grantee and an authorized donee/ donee is that the latter has a letter from SAT that exempts it from the income tax *ISR* and the flat tax *IETU*. Authorized Donees is the name the International Center for Nonprofit Law (ICNL) has used in English for Mexican "*donatarias autorizadas*"

7 *Ley federal de fomento a las actividades realizadas por las organizaciones de la sociedad civil* (Spanish)

8 "The Federal Registry of Civil Society Organizations is the authorized body by the Federal Promotion of Activities Conducted by Civil Society Organizations to concentrate all the information that is part of the formalities of the organizations to obtain the Single Entry Code (CLUNI)". <http://www.corresponsabilidad.gob.mx/?p=482bd57ea95bb42cc15c82d63af42ea9&idContenido=1y> [Accessed August 20 2012].

nizations can obtain the CLUNI for free, as long as they are legally constituted and do not pursue profit. Also, they must not openly support political parties, political elections or any religion. See Annex 17 for the requirements to obtain the CLUNI.

4.3 (STAGE 3) AUTHORIZATION PROCESS TO BECOME A TAX EXEMPT ORGANIZATION OR AN AUTHORIZED DONEE

An authorized donee is a non-profit organization that has been authorized to receive tax-deductible donations. After receiving authorization, it has the ability to receive monetary or in-kind grants, both domestic and international and it may issue tax-deductible receipts. If not, the organization will be treated like any profitable organization, and it will have to pay income taxes and flat taxes.

For an organization to obtain the SAT's authorization as a donee, it must not pursue profitable actions and, it must gather the necessary documents so that the SAT can analyze its request. If the request is approved, the SAT will issue the organization a document that authorizes it to receive tax-deductible donations.

To become an authorized donee the organization's charter must specify that:

- The organization is a nonprofit entity.
- The organization is not to be involved in political campaigns, nor may it support any political or religious movement.
- The organization must not perform lobbying during the legislative processes.
- In case the organization decides to close, the organization must devote all of its assets to entities authorized to receive deductible contributions.⁹

In addition, the organization must not include the following guidelines in its statutes:

- The organization must not perform nor promote athletic activities, unless they are mentioned in regulation I.3.9.4 from the *miscellaneous fiscal* (fiscal resolution).

⁹ Cf. SAT. Main duties of the tax-exempt status.
ftp://ftp2.sat.gob.mx/asistencia_servicio_ftp/publicaciones/donatarias/Guia_obligacioneszon.pdf

Note: Regulation I.3.9.4: For the purposes of Article 31, second paragraph of the Rules of the Income Tax Law, it is understood that public work and public services are:

- I. Civic activities for the promotion and development of the appropriate participation of a citizen within an established legal framework, accepting the responsibilities and duties in matters of public interest, provided they do not involve nor lead to actions of electoral campaigning, nor to political nor religious proselytism.
- II. Gatherings of groups or individuals, representing, providing services and support to organizations and trusts authorized to receive tax-deductible contributions.
- III. Activities aimed at the prevention, rescue or recovery of one or more members of the population in case of a disaster or accident.

Source: *Diario Oficial de la Federación*.¹⁰ "Fiscal Resolution 2012" (Continued on Ninth Section), December 28, 2011.

- The organization should not engage in commercial or exporting activities, nor should it be involved in franchises or profitable projects.
- The organization should not include activities related to the creation, management, development, support, acquisition or possession of other commercial or business organizations. They can only perform these activities on a property that is essential or vital for the fulfillment of its social purpose.
- The organization must not include in its statutes activities characterized as a mutual exchange of the organization's assets. It must not endorse debt securities or credit transactions, guarantee third parties obligations, grant sponsorships, subsidize or support other organizations or individuals.
- The organization must not have benefits nor economic rights (profits, remainders, capital reduction, shares in other projects, return of contributions or shares, nor the disposition or use of the assets of the company by the members (for any personal reason).
- Neither the statutes nor the organization's activities should include the merger or the division with other agencies, unless it is another entity authorized to receive deductible contributions.
- The organization should not provide loans, grants or benefits on the capital or financial support, unless it is for entities authorized to receive deductible contributions.

- The organization may not provide or give professional advice or services, agency or consultancy.
- The legal representatives or agents shall not have the authority to be representative of individuals or other entities.
- The organization may not engage in editing, publishing, distribution, printing or promotion of printed or electronic media, operation and disposal of trademarks, patents, copyrights and industrial property, unless it is exclusively for meeting its own social objectives.

Since the requirements to recognize an organization as an authorized donee in Mexico have not been concentrated in a single ministry or entity, the organization must also meet the requirements defined by the SAT. This means that the organization must also obtain documents from other government bodies, depending on its activities. Annex 6 contains a list of specific documentation for activities that are considered eligible for grants. Annex 7 provides detailed information about the most important public entities issuing documentation to verify activities or social purposes that the SAT requires for granting tax exemption.

4.3.1 Application Process

A statement must be submitted that includes the information contained in the “request for authorization to receive deductible from income tax” (see Annex 8). A sample request can be found in:

http://www.sat.gob.mx/sitio_internet/servicios/donatarias/autorizadas/3o_18241.html

A simple (non notarized) copy should also be submitted which contemplates the following:

- Documents of incorporation and bylaws that have been registered in the *Registro público de la propiedad* (PRP).¹¹ If that process is in progress, you must attach a copy of the letter, certified by the public notary who provided the incorporation document specifying that situation.
- In the event that changes have been made to the deed and or organizational statues already registered with the PRP a simple copy should be included.

¹¹ Public Registry of Property

- Trust deed and amendments (if applicable).
- A document certifying the social purposes or activities of the organization (see Annexes 6 and 7).
- Copy of the notarized document that certifies the legal representative
- Official identification of the legal representative or agent who has the power to sign the authorization request.

The authorization is issued by the SAT which permits the civil organization or trust to receive grants in cash or in-kind (from national grantor agencies) free of income tax duties, the flat business tax and the foreign trade tax (when applicable). The SAT provides the organization with a document that is valid during the fiscal year in which it is requested and granted.

Once the organization is authorized, it may issue and deliver tax deductible receipts to grantors. (Since the way to issue receipts or invoices is currently in a transition period, The Mexican tax authorities suggest checking the information with an accountant or SAT staff member). Also, details from the organization are included in Annex 14 *the Omnibus Tax Resolution*, which is published annually in the Official Journal of the Federation, while the SAT website can provide the latest information. This same website provides a list where you can corroborate the fiscal year in which the grantee organization has been authorized to receive tax-deductible grants.

Note: In accordance with Article 36 bis of the *Federal Tax Code*, when an organization requests authorization to receive deductible grants in the last quarter of the year, the applicant is entitled to apply for the tax year in which he wants the authorization to take effect (either in the requested period or in the next one).

4.3.2 Conditional Authorization

When an organization does not meet the requirements for the accreditation of activities (because it was recently created or because it cannot give proof of its activities to the authority) it is possible to obtain a conditional approval. For the authorities to take this option into account, the organization must describe the reasons in the application

for which it was unable to obtain the accreditation of the activities carried out by the responsible authority. Such authorization conditions the organization to present the appropriate documentation, which means that it does not appear in the list of tax-exempt grantees (Annex 14, *Fiscal Resolution*), although it may receive grants, it is subject to comply with all the requirements requested by the SAT.

4.3.3 Renewal and revocation of the authorization

The authorization may be renewed or revoked depending on the requirements requested by the SAT. In case the authorization is not granted, the procedure must be performed again. If the organization wants to obtain an official certificate, then the application form “request of new authorization to receive deductible grants” (Annex 9) must be filled out again. It can be obtained at the following link: http://www.sat.gob.mx/sitio_internet/informacion_fiscal/tramites/registro/101_11806.html

Under current legislation:

The authorization shall remain in effect as long as the authorized donee declares through a notification during the months of January or February of each year, under oath, that they will continue to meet all the requirements and tax obligations in order to continue receiving authorization to obtain deductible grants. This can be done through the electronic data via the SAT website, using the FIEL certificate provided by the SAT.¹²

As stated above an annual “notice of tax-exempt status” must be submitted for the authorization’s renewal, declaring under oath that the organization still meets the requirements and fiscal obligations to continue with the authorization to receive deductible contributions for the current fiscal year. Such notice is submitted electronically. In order to do so, software for sending this notice to the SAT must be downloaded. At the end of the process, it is corroborated electronically. The software displays an electronic message saying that the application to continue with the authorization to receive grants in accordance with the current law has been successfully received. To

¹² http://www.sat.gob.mx/sitio_internet/e_sat/tu_firma/60_6693.html [Accessed November 26 2012].

access the information for the renewal of the authorization go to the following link:

http://www.sat.gob.mx/sitio_internet/servicios/donatarias/autorizadas/30_18237.html

4.4 (STAGE 4) PROCEDURE FOR OBTAINING AUTHORIZATION TO RECEIVE GRANTS FROM ABROAD

Individuals, corporations, foundations and CSOs in the U.S. may donate monetary or in kind resources to Mexico. For these to be tax deductible, it is necessary to obtain a second authorization, which extends the tax-deductible possibility to any foreign grantor agency. To obtain this authorization, a written document must be submitted using the sample designed for the application of the national authorization before the *Administración General Jurídica o la Administración Local de Servicios al Contribuyente*.^{13, 14} The requirements are identical to those applied to the tax-exempt authorized donees. Once the request is approved, the organization receives a second official document that enables you to receive grants (monetary or in kind) from abroad.

Tip: Since the information and requirements are identical, it is suggested that the two requests are done simultaneously.

4.4.1 Rights and Benefits of Authorized Donees

Rights and benefits of authorized donees include:

- They do not pay income tax and flat tax revenues provided they are intended for purposes of your own purpose.
- These rights and benefits are included in the fiscal resolution (Annex 14) published in the *Diario Oficial de la Federación*¹⁵ and the SAT website at the following link:

http://www.sat.gob.mx/sitio_internet/servicios/donatarias/autorizadas/30_1635.html

¹³ General Administration and Local Government Law Taxpayer Services

¹⁴ It is suggested that you contact directly the General Administration Law of the SAT, as local governments may not have the latest information on the topic.

¹⁵ Official Journal of the Federation

- With prior SAT permission, the received deductible grants can be applied to additional activities contained in its charter or bylaws.¹⁶
- Authorized donees have the ability to issue, apply for and keep reports of all kinds of grants: monetary grants and in-kind.
- They can receive unlimited grants, whether in cash or in-kind, both domestically and internationally.
- With prior import authorization, authorized donees do not pay import taxes on foreign trade.

4.4.2 General responsibilities of authorized donees

The obligations of authorized donees are that they:

- Can only perform activities that were authorized by the SAT.
- Allocate grants and, when appropriate, yields exclusively linked to the fulfillment of the authorized social aim or objective.
- Allocate assets only to the purposes of its social aim or objective or to the purposes for which it was created.
- At the time of liquidation, all its assets must be donated to entities that are authorized to receive deductible contributions.
- Tax-exempt authorized donees cannot spend more than 5 percent of their net grants to cover administrative expenses.
- In case of an address change, the authorities must be informed within 10 business days after the change.
- It must keep track of grants received in kind. In case of non delivery, it must maintain a record of its use or destruction.

4.4.2.1 TAX OBLIGATIONS OF AUTHORIZED DONEES

Tax-exempt organizations have two kinds of obligations: practical and fiscal.

¹⁶ To obtain this authorization it is also required to comply with the appropriate legislation (Article 95, sections VI, X, XI, XII, XVII, XIX and XX, 96, 98 and 99 of the Income Tax Law and 31, second paragraph and 114 of the guideline). There must be a written document requesting authorization to apply deductible grants that receive additional activities contained in its bylaws or trust agreement. The document must indicate the main activity, address, email and number of facilities. In case there are not, it must be stated.

- Photocopy of the document certifying the legal representation of the petitioner.
- Photocopy any official ID of who promotes on behalf of the organization.
- Photocopy of the certificate of incorporation and bylaws in effect, the trust agreement and, if necessary, with its amendments.
- Photocopy of the document that establishes the activities for which the authorization is requested. This must be submitted according to the undertaken activities.

Cf. http://www.sat.gob.mx/sitio_internet/informacion_fiscal/tramites_fiscales/registro_t/101_12236.html

Practical obligations are those connected to institutional activities, procedures and obligations generated by the organization, regardless of their kind. Here we present three of them.

1. Registration and notices from the *Registro Federal de Contribuyentes* (RFC)¹⁷

The Federal Taxpayers Registry is the only key used by the SAT to identify and keep track of individuals or entities conducting lawful activities. The RFC also keeps track of individuals' and entities' tax status. In order to be an authorized donee, one must register for and obtain an RFC.

2. Obtaining the single entry code, CIECF

The *Clave de Identificación Electrónica Confidencial Fortalecida* (CIECF)¹⁸ is an identification system based on the RFC that is used to perform the following procedures:

- Interim Statements.
- Annual statements.
- Reprint acknowledgments of receipt.
- And other virtual office services.¹⁹

3. Obtaining and renewing the FIEL

The *Firma Electrónica Avanzada* (FIEL)²⁰ is a set of data that is attached to an email for digital transactions. Its purpose is to identify the sender of a message as the legitimate author as if it were a written signature.

Due to its characteristics, the FIEL provides security to taxpayers' electronic transactions that can be used to identify the author of the message and to verify that it has not been modified.²¹

For more information on the requirements of these three obligations, see follow this link: http://www.sat.gob.mx/sitio_internet/informacion_fiscal/tramites_fiscales/registro_t/101_11875.html

Fiscal obligations

Fiscal obligations are designed for the authorized donee to be considered by the treasury authority. These obligations are:

¹⁷ Federal Taxpayers Registry (RFC)

¹⁸ Single Entry Code

¹⁹ Source: http://www.sat.gob.mx/sitio_internet/e_sat/tu_firma/60_3059.html#1

²⁰ Advanced Electronic Signature

²¹ Source: http://www.sat.gob.mx/sitio_internet/e_sat/tu_firma/60_11498.html

- To keep the following documents in their original form plus a copy for public consultation at the fiscal address, headquarter facilities or alternative venues, including working hours:
 - 1) Documentation of compliance with tax obligations for the past three years.
 - 2) Documentation about the authorization to receive deductible contributions.
 - 3) Documentation regarding the use that has been given to the grants received.
- Report of grants received in cash.

For individuals and companies alike, the tax-exempt authorized donees must present this statement to the SAT no later than the 17th of each month after the operation is performed.

- Informative statement about transactions with related parties or grantors.

This informative statement must be submitted to the SAT by the 17th of each month after the operation is performed.

- Information regarding transparency

To ensure transparency in the use and destination of grants, the organization must submit the report named: “Information to ensure transparency of grants received, and the use and destination of the same”.

The transparency report must be submitted each year during the months of November and December.

The transparency process is now automated. It can be accessed at the SAT: www.sat.gob.mx. Go to “my website”, in which the CIECF security code will be requested in order to have access to the Online Services. From there, the section for authorized donees and transparency will be displayed. Here the Registration of Authorized donees can be accessed to fill out the information. In order to send the information, the FIEL code must be entered. Finally, the information in process can be accessed at:

http://www.sat.gob.mx/sitio_internet/servicios/donatarias/autorizadas/30_18242.html

Annual notice of authorized donees

This notice informs the SAT, under oath, that they will continue to comply with all requirements and obligations necessary to remain as an

authorized donee so that the SAT may renew the authorization. This has to be done each year during the months of January and February.

The requirements and forms can be found at:

http://www.sat.gob.mx/sitio_internet/servicios/donatarias/autorizadas/30_18237.html

The process of the annual notice for authorized donee can be done online and in person:

On the Internet: The SAT's official site (www.sat.gob.mx) must be accessed, and then go to the "Electronic Notice" in the section of Grantees and grants. Requirements: "FIEL"

In person: Go to the SAT module that corresponds to your address, or to the *Administración General Jurídica* (General Counsel), with the following information:

- Free-form letter: In this document, there is a sworn declaration that the organization still meets the requirements and tax obligations in order to preserve the authorization to receive deductible contributions during the current fiscal year.
- Original and copy of the official ID of the legal representative
- A certified copy of the power of attorney of the legal representative
- Request an appointment previously

Important dates to remember for Authorized Donees

- Annual Statement of distributable remaining income and expenses
Must be declared no later than February 15th of each year.
- Informative statement of the withholding income tax, ISR.
Must be declared no later than February 15th of each year.
- Informative statement of payments made to foreign residents
Must be declared no later than February 15th of each year.
- Informative statement of grants given.
Must be declared no later than February 15th of each year.
- Informative statement of payrolls and expenditures made
Must be declared no later than February 15th of each year.
- Annual informative statement of income and payment
Must be declared no later than February 15th of each year.
- Simplified opinion issued by a registered public accountant
It is declared in June as required under the *Resolución Miscelánea Fiscal*,²² provided that the organization has received more than 2 million pesos in the previous fiscal year.

Note: You must submit all the information and meet the requirements set by the authorities in a timely manner. Failure to do so will result in the termination of the authorization, and all the paperwork will have to be submitted again for the authorities to reconsider granting new authorization.

Tip: In order to prevent a revocation of the authorization, we suggest following up on the completion and delivery of the statements and documentation requested by the SAT.

To clearly identify the duties and rights of non-profit organizations, one should review Chapter III of the *la Renta y el Título III del Reglamento de la Ley del Impuesto sobre la Renta*.²³ Information on this law can be found at:

Income tax laws

<http://www.diputados.gob.mx/LeyesBiblio/pdf/82.pdf>

Regulation of income tax laws

http://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LISR.pdf

To get a better idea of the documents required for carrying out some of the processes described, consult the check list in Annex 18.

4.5 IN-KIND GRANTS

Sometimes grantees prefer to receive goods that can be used directly to develop institutional activities to meet the organization's needs. In such cases, it is possible to receive grants in-kind.

Tip: Before requesting any grants in-kind to be delivered, the legal import processes of such goods must be performed through the SAT. Otherwise, the goods will probably be seized and destroyed. Also, remember that although the process has been streamlined, it still requires some time to get the appropriate import permit.

²³ Law on Income Tax and Chapter III of the Regulation of the Law.

When requesting or accepting grants in-kind, please note that although there will be no payment for donated goods, it is likely that the grant may incur other expenses. The latter may be related to the transportation, insurance and storage costs or paperwork (when a specific document is requested).

The grantee must maintain communication with the grantor. During this communication they will exchange information on the goods to be received. Thus, the grantee will have a clear understanding of the characteristics of the grant (quantity and volume). Beforehand one should identify if any of the donated items could pose legal problems.

From the communication between the grantor and the grantee regarding the previous matter, the grantee must request a letter in Spanish.²⁴ This letter includes the following information:

- Name of the grantee.
- Description of goods: quantity, volume, brands, specific details, which may include photographs, if appropriate.
- Composition of goods: include information about the manufacture of the goods where appropriate.
- Quantity and unit of measure: describe the number, volume and unit of measure of the goods to be received as a grant.
- Value of goods: describe the monetary cost of the goods.
- Country of origin: in this case, the U.S.
- Port of entry: prior to shipment and during the process of communication with the grantor, the way in which the goods will be transported (aircraft, ship, train or truck) must be identified; and the country's port of entry needs to be indicated.

Useful information to fully identify the goods (such as invoices, receipts, manuals, catalogs, etc.) can also be attached. Overall, any useful information should be included, submitting it with the paperwork requested electronically by the SAT.

To streamline the processes of grants in kind, the Mexican government has developed several regulations. These rules seek to legalize such imports, in addition to preventing any items that may have import restrictions or that may be prohibited with restrictive regula-

²⁴ Some of these regulations are: "prior permission", "maximum quotas", "country of origin branding", "certification" and "countervailing duties", among others.

tions²⁵ be included in the shipping. This is because certain goods may be harmful to the public health, national security, industry and trade. See Annex 10.

The donated goods are exempt from foreign trade taxes when grants are intended for cultural, educational, research, public health or social services. They are also exempt from taxes if imported by either a public entity or by an organization with a tax exempt status. Moreover, such goods become part of the assets of the applicant grantee, and the grantor must be a foreign entity (a member of an organization cannot donate to his or her institution from abroad), in this case from the U.S.

Depending on the applicant and location, the process can be performed at the Local *Administraciones Locales Jurídicas*²⁶ (located in 60 large cities); in the Local *Administraciones Locales de Grandes Contribuyentes*²⁷ when the application is made by a political party, a province, a federal organization or the federation itself; or at the SAT headquarters in Mexico City at the following address:

Administración General Jurídica

Administración Central de Normatividad de Comercio Exterior y Aduanal

Reforma No. 37, módulo VI, planta baja, Col. Guerrero,
Del. Cuauhtémoc, 06300, México, D.F. Tel. (55)91573729 y (55)91573730

This entity is responsible for carrying out and monitoring the process and issuing a permit if necessary.

There are two ways to apply for the legalization of donated goods: via Internet and in written form. Basically the difference is whether the goods require a special import permit. Examples of the latter are the following:

25 "The SAT requests that the information be in Spanish [we do use subjunctive here in English] so that the grantor and the grantee organizations [plural] may submit letters of intent with this information in that language/Spanish" [I would vote for repeating Spanish instead of saying "that language"]

26 Government Law Offices

27 Taxpayers Government Offices

28 Consultation of the Federal Commission for Protection against Health Risks

29 Ministry of Environment and Natural Resources

30 Secretariat of Agriculture, Livestock, Rural Development, Fisheries and Food

Type of goods	Type of permit and additional documents
Equipment and medical supplies	Verify with the <i>Comisión Federal para la Protección contra Riesgos Sanitarios (COFEPRIS)</i> . ²⁸ Health permit or operating notice from the hospital or clinic to which the donated goods are addressed.
Vehicules	Permit from the Ministry of Economy unless it is a school bus, ambulance, garbage collectors. However, they must follow the guidelines established by the <i>Secretaría del Medio Ambiente y Recursos Naturales (SEMARNAT)</i> . ²⁹ The vehicle must date from 2004 or after in case it uses diesel fuel.
Food	Verify with the <i>Secretaría de Agricultura, Ganadería, Pesca y Alimentación (SAGARPA)</i> . ³⁰

4.5.1 Policies for donated goods imported from abroad

The SAT policies for the importation of donated goods:

- Only goods for basic care requirements in housing, education, civil protection, health, clothing and food will be accepted.
- Only goods attached to *Regulaciones y Restricciones No Arancelaria (RRNA)*³¹ and *Norma Oficial Mexicana (NOM)*³² will be accepted. This has to be verified by the responsible authorities (*Secretaría de Economía, Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación, Secretaría de Salud y Secretaría de Medio Ambiente y Recursos Naturales*).³³
- By the terms of Article 44 of the *Ley Aduanera*³⁴ (see Annex 11) all articles are subject to customs inspection to authorize the entry of goods into the country,
- The application form and annexes will be considered as a permit, with which the legal term of goods in the country may be credited.
- No goods may be donated that:
 - are already in the country at the time of beginning the process.
 - are subject of compensatory fees.
 - are prohibited to be imported.
- No grants will be accepted when the grantor and the recipient are the same person.
-

³¹ Non Customs Regulations and Restrictions

³² Official Mexican Norm

³³ Ministry of Economy, Ministry of Agriculture, Livestock, Rural Development, Fisheries and Food, Ministry of Health and Ministry of Environment, and Natural Resources

³⁴ Customs Act

- Grants from individuals residing in the country will not be authorized.
- The grantor should not send the proposed goods until the process has been expressly accepted by the *Administración Central de Normatividad de Comercio Exterior y Aduanal (ACNCEA)*.³⁵
- At the time the goods are declared at customs, only those that have been described and accepted in the application form and annexes will be permitted.
- When declaring the goods to customs, one must show: permit, application forms, annexes and special permits (RRNA) if requested.
- In order to receive the goods, the document that ACNCEA issues at the Customs office of entry is required. Also, the documents needed for proving the identity of the recipient or the representative will be required, as well as an official photo ID.
- If the recipient fails to claim the goods on the agreed date, expenses for handling and storing the goods at the customs warehouse will be charged. This fee will have to be paid by the recipient.
- For ACNCEA to be able to conduct the appropriate tariff of the goods, a detailed description will be essential (see requirements).
- The grant application form will be subject to the judgment criteria on behalf of the responsible agencies (USDA, SECON and SSA -See annexes 12, 13 and 14 -).

Source: http://www.sat.gob.mx/sitio_internet/servicios/donatarias/donaciones_extranjero/9_1725.html [Accessed May 31 2012].

4.5.2 Procedure for import of goods donated from abroad

According to the SAT website, the basic procedure for importing a grant of foreign goods is as follows:

- Four sets of the official application form and annexes regarding the grant must be submitted to the ACNCEA. Here an identification number (REG) will be assigned.
- If the official application form and annexes regarding the grant meet the requirements, and if there is no specified fee for the goods, ACNCEA will calculate it and verify if there are no RRNA restrictions. The ACNCEA will also determine if the application form fulfills the official Mexican standards (NOM's). If it fails to meet the requirements, the applicant will be informed in writing, including

³⁵ Central Administration of Standardization for Foreign Trade and Customs

the original documentation, which means that the request has been rejected.

- The responsible agency or agencies will be consulted (see footnote 111) about the waiver of RRNA and NOM's (See criteria for judging in Annexes 11, 12, 13 and 14) about the goods offered as grants or donations. These will be reviewed to determine if the goods will receive a tax exemption. The authority or authorities in charge have three days to answer back to ACNCEA. If the agency does not grant the exemption, the applicant will be informed in writing, including the original documentation, which means that the request has been rejected, and therefore, concluded.
- If the responsible agency releases the goods that have met with RRNA and NOM's, the grant application form will be authorized, notifying in writing and submitting the original documentation to the grantor to be shown to customs at the moment of delivery.
- ACNCEA will coordinate with the grantor and recipient on the date of the good's entry into the country in order to create the permit (on special security paper). This permit specifies the date, name of the recipient, amount and description of goods. The original document will be submitted to the appropriate Custom's offices with a copy to the recipient.
- Customs will inspect goods. The goods will be given to the addressee, who is credited as the legal representative. The merchandise that does not match the description or quantity specified in the application form and annex will be secured by the customs authorities. The costs of handling and storage will be covered by the recipient if he or she does not recover the goods on the agreed date. In addition, he or she will be notified that they have 15 days to withdraw the goods, so as to not lose them due to abandonment.
- The process ends upon signing the document verifying that the goods were delivered and the *Servicio de Administración Tributaria de la Secretaría de Hacienda y Crédito Público*³⁶ will not be responsible for the physical condition of the delivered items.
- Once ACNCEA receives the document regarding the handover of the goods, the transaction will be finished and the final document will be sent to the recipient.

Source: http://www.sat.gob.mx/sitio_internet/servicios/donatarias/donaciones_extranjero/9_1731.html [Accessed May 31 2012].

The application form and its annex must be filled out by a computer or typewriter. In all cases, the recipient must be mentioned, and all the goods must be described in detail. If possible, try to specify the brand, model, serial number, manufacturer, the measurements and all relevant technical and commercial specifications of the goods. Along with this description, the specific use of each good must be named as well as the necessary information to identify and or distinguish them from similar ones. Catalogs and photos should be attached, if necessary.

4.5.3 Procedure through automated foreign grants

Aware of the needs of the population and the importance of in kind grants, the SAT has endeavored to streamline the procedures so as to expedite the delivery of goods. For this, an automated system was developed that aims to support entities receiving grants from abroad, exempting them from the payment of foreign trade taxes for the entry of goods that do not have regulations nor barriers' fees.³⁷

In this regard, people who are abroad and wish to donate goods, not subject to regulation and restriction fees, are required to submit the grant's application form by using the *Sistema Automatizado de Donaciones del Extranjero*³⁸ (as long as they are intended for governmental agencies and entities from the Federal Government, Provinces, Municipalities, or organizations authorized to receive deductible contributions under the Law of Income Tax -Income Tax Law-). This can be accessed through “*mi portal*” (my porthole) with the necessary CIECF and the FIEL of the final recipient of the grant.

Note: Reading through the applicable policies for foreign grants is recommended.

Procedure

- Send a grant's request through the *Sistema Automatizado de Donaciones del Extranjero*³⁸ with the CIECF and FIEL.
- The *Administración General Jurídica (AGJ)* assigns a folio number.

³⁷ http://www.sat.gob.mx/sitio_internet/servicios/donatarias/7_11673.html [Accessed May 31 2012].

³⁸ Automated System for Foreign Grants

- The AGJ verifies that the merchandise does not require one to meet the regulations and non-tariff barriers (RRNA) for clearance.
- If the application does not meet the requirements, the AGJ informs the petitioner.
- The AGJ coordinates the entry of goods into the country.
- The customs authority inspects and delivers the goods to the recipient.
- The customs authority secures goods that are not described in the application form and the annex.
- The costs of handling and storage of goods shall be paid by the recipient.
- The beneficiary has 15 days to retrieve the goods. Not retrieving them will be considered abandonment.
- The customs authority prepares a handover certificate to formalize the delivery of goods.
- The AGJ receives the document regarding the clearance and handover of the goods. At this point, the request will be terminated.
- The AGJ prepares and sends a final document to the recipient.

Source: http://www.sat.gob.mx/sitio_internet/servicios/donatarias/7_11673.html [Accessed May 31 2012]

Reminders:

- Import permits are issued only for specified goods, therefore, donors should avoid including additional items that are not stated in the permit. If these items are, the goods will be held by customs. If this happens, it will be extremely difficult to clear customs due to the violation of the rule that specifies that all the goods must be described in the application form prior to their arrival in the country.
- The grantor should be located abroad. In addition, the grantor and the beneficiary cannot be the same person.

Applicable law

- Articles 44 and 61, section XVII of the *Ley Aduanera* (see Annex 11).
- Rule 3.3.9 regarding foreign trade for 2011 (see Annex 15).

A checklist has been included in Annex 18 in order to have an idea of the required documents needed to carry out the above processes.

**Application process
for grants and in-kind
resources from
the United States**

5

The process for requesting monetary or in kind resources from the U.S. to Mexico involves several steps that must be observed. Before describing these stages, it is essential to consider some basic premises that should be kept in mind during the procurement process of grants (monetary or in kind) from grantors in the U.S. :

- Resources should be used with transparency.
- Grantmaking organizations provide grants to support the work of CSOs in order to encourage professional development activities that promote the common good.
- In order to guarantee the transfer of resources, both parties' interests must be reconciled.
- The majority of the organizations do not provide resources without a specific goal or without a well-planned project to implement the grant (the purpose of grantors is not to give money without a specific purpose).
- When requesting grants, one is most likely competing with organizations from around the world. Therefore, the project or proposal sent to the grantor agency must demonstrate the experience, the capacity and the human resources to carry it out. The proposal should be a well-supported project with a social impact.

Suggestions for the grant application process

- Become familiar with the Mexican and U.S. regulations related to the granting of resources (monetary and in kind) to identify similarities and differences between the two legal bodies, as well as the difficulties that grantors and grantees may face during the process.
- If the grantee is not a SAT authorized donee, be aware how this affects the payment of taxes to the federal treasury.
- Assess whether your organization has all the documentation and requirements requested by the Mexican and U.S. governments. Otherwise, there may be administrative and legal problems during the process. In case some documents are missing, the opportunity to receive grants could even be lost.
- Know and assess possible flaws that the organization might have. It is desirable to conduct workshops to identify the organization's strong and weak points, so that, if required, all the necessary adjustments can be made. The aim of this is to avoid difficulties that

may arise related to the lack of clarity in the project, organizational objectives, leadership issues, administrative flaws, and so on. Firstly, this will allow the organization to work as a coordinated group; and secondly, it will resolve issues before they affect the organizational performance.

- Identify different associations or organizations that support the objectives that the grantee wants to achieve so that they have more opportunities to access resources or grants, by sending (if possible) a joint project with a significant impact.
- Obtain resources not only from large organizations with a significant presence in Mexico, but also from small and medium organizations that may wish to support organizations in Mexico.
- Create a journal to keep track of the type of communication, the application, the contact person and their reply regarding: by whom and when you were given specific information regarding any administrative process. This will allow you to have the information ready and organized in case it is requested.
- Identify how the community will benefit from the project, as well as its inherent value. It is very important to know how to support the population and how the resources will impact them. Many organizations in the U.S. are guided by certain values; so, the closer the grantee values are to those of the grantor agency, the more likely that the grants will be given.
- Take into account the experience of other organizations that have received grants, so you can learn from their experience.
- Analyze the projects that the grantor organization has supported and identify the interests and the procedure that was followed. This is so that your organization's project also meets those criteria.

The process for finding and receiving grants from the U.S. to Mexico can be conceived of as comprising several stages. These phases have been detailed as a means to map the process for obtaining grants. It was conceived to be as logical and consistent as possible. However, it does not mean that it is the only way to obtain resources from grant making organizations and foundations in the U.S.

The steps in this guide cover the grant procuring process: from obtaining grants from the U.S. to the delivery of information to the grantor (if required). Since grantee organizations may be at different levels of

progress in the stages of the proposed process, it is suggested that each of the phases be reviewed and that your organization chooses the grantor that best meets the developmental stage of the organization.

5.1 SUGGESTED PROCESS FOR OBTAINING RESOURCES AND GRANTS FROM THE U.S.

The process to obtain resources from abroad can be complicated and even costly due to the requirements that must be fulfilled; however, getting resources from grantors in the U.S. may mean achieving goals and developing projects that will make the grant possible. To obtain these resources, it is necessary to be aware of the commitment that is required for the effective, efficient and strategic use of resources. Plus it involves establishing a relationship and partnership between the grantor and the grantee organization. Please note that the relationship established between the grantor and grantee often does not end with the completion of a project and the use of resources; rather, it implies the beginning of a working relationship based on mutual support. The grantor will require information and reports that support the relationship between the grantor-grantee, the resources donated and the description of its use.

5.1.1 Compliance with legal and administrative ordinances

1. Do you have the documentation to support the authorized donee status granted by the Mexican government?

Note: Not all CSOs that may receive grants from the U.S. are authorized donees. In fact, the means described previously provide for a relationship wherein no such status is required. The purpose of this document is to facilitate the access to U.S. grants since the information requested by grantors is similar to what the SAT requires to issue a permit of tax exemption.

No, there are no documents

Go to paragraph 4.3 and identify the requirements and procedures for obtaining such a status.

Note: Becoming an authorized donee entitles an organization to receive tax-free donations.¹ Nonprofit organizations without the status will be taxed, which may have an impact on the donated resources, and consequently impact the organization’s project objectives.

Yes, there are documents:

Continue the process of obtaining grants from the U.S. (see paragraph 4.4).

2. Do you want your organization to be recognized as a “tax exempt organization” by the U.S. Internal Revenue Service (IRS)?

Being included in the list of Exempt Organization Select Check (EO Select Check) allows the grantor to be recognized by grantees as an organization that provides tax deductible grants. Having an organization added to the list may be an expensive process, therefore, the implications should be analyzed before performing the recognition process. Also, you can get grants without having obtained such status.

If the organization wants to be registered on the EO Select Check list

Continue with How to Apply to Be Tax-Exempt and complete the process to be included in the list of the Exempt Organization Select Check (EO Select Check). The information can be obtained at: <http://www.IRS.gov/charities/article/o,,id=256,970.00.html> (We have included a description of the process in Annex 1).

Before starting the procedure one must have the EO Select Check information as well as prepared and experienced staff that is able to handle and deliver documents requested by the IRS. These experts are also able to facilitate the IRS recognizing the authorized donee status.

- There must be documentation of the organization (statutes, objectives, institutional programs) and, in general, the relevant information must be translated into English.
- There must be supporting documentation provided by an accountant and a lawyer who have experience with the IRC and the IRS, as well as documentation and requirements for accessing the EO Select Check.

¹ The income tax (*impuesto sobre la renta, ISR*) and a flat tax known as *impuesto empresarial a tasa única (IETU)* are waived.

- The lawyer must verify that the organization meets with the legal requirements, the IRC and the administrative arrangements indicated by the IRS. The lawyer's work is paramount. Initially, he or she must draft affidavits to obtain recognition for the organization as a public charity.
- Meanwhile, the accountant must provide relevant information that allows the IRS to recognize that it has the control and discretion in the use of grant resources.
- To remain with the IRS as an authorized donee, the joint effort of the organization's staff, the accountant and the lawyer are required. The accountant and lawyer must collect, translate and send the information, requirements and forms defined by the IRS for this purpose.

To have information on the requirements and to have access to the information requested by the IRS, go to the following link: <http://www.irs.gov/Charities-%26-Non-Profits/Exempt-Organization-Public-Disclosure-and-Availability-Requirements>

If the organization doesn't want to be registered in the EO Select Check list

There are other options that allow access to grants from organizations in the U.S. that are not recognized by the IRS.

These options are less expensive because it is not necessary to hire lawyers or accountants with knowledge and experience in U.S. fiscal and administrative matters. However, the IRS requires the grant agency to have the control and discretion over the use of the donated resources; therefore, the organization must have all relevant information to inform the IRS. That implies the need for a close relationship between the grantor and grantee, thereby enabling the grantor to meet the requirements, applications and guidelines established by the IRS.

This way, the burden of proof rests with the grantor, even though the grantee must provide all necessary and sufficient information so that the grantor agency can fulfill their tax obligations. Unless agreed upon otherwise, all information must be submitted in English. In this case you must show that your organization can be classified as a 501 (c) (3), and that it carries out tax deductible activities as indicated in Section 170 (C) of the IRC.

The options available to use this route are:

- Equivalence Determination

- Via the “friends of” scheme
- Through a public U.S. charity
- Through the exercise of responsibility on expenditure

(For more information see Section 2.4 of this document).

5.1.2 Stages for seeking and obtaining grants

The following section suggests one manner for carrying out the search and request for grants (monetary and in kind from the U.S.). This is only a guide; you may choose other means for grant applications.

5.1.2.1 SEARCH

A major step towards the facilitating the application process for monetary grants and or in kind from public charities and private foundations in the United States relates to finding the institution(s) with which the link and communication will be established.

To obtain resources for project development there are several types of private entities in the U.S. which you may approach. Among them, there are public charities and foundations which are divided into:

- *Private foundations*: these organizations receive their income from individuals, families or groups. They focus on the priorities of its founding members and organizational objectives.
- *Corporate foundations*: these entities depend on the contributions of organizations focused on making profits through the development of profitable activities.
- *Community Foundations*: these organizations are focused on funding activities or programs from a specific region.
- *Voluntary Agencies*: private organizations that support programs related to its mission.
- *Community groups*: local organizations that focus on supporting or implementing projects in their own communities.

Another form of support is *direct aid programs*: these represent the altruistic aspect of some corporations that focus on monetary grants geared towards charitable causes.

The interests of the groups and populations that need attention and support must be considered when requesting a donation. A beneficiary organization must research to find out who is interested in donating, which can be either another organization or a corporation interested in donating. This requires knowing the grantor or grant giving agency. This process involves:

- Identifying goals and priorities of the grant giving organization.
- Identifying whether the grantor is interested in supporting other organizational projects besides yours.
- Identifying if the grantor has accessible mechanisms or specific procedures for grant application and allocation.
- Identifying if the grantor has the resources to make donations to the specific project for which you want to apply, in addition to the amount that the organization usually donates.
- Analyzing previous projects that the grantor has conducted related to the type of project for which the grant is being requested.
- Identify if the grantor has a procedure or specific format for grants.
- Identify the priorities and interests of the grantor agency.

To access the websites of grantor agencies of the U.S., you can:

- Conduct an Internet search.
- Identify those organizations in Mexico working with projects similar to yours as well as ones that have already received grants (organizations and foundations located in Mexico can be contacted through the *Centro Mexicano para la Filantropía, A.C (Cemefi)*² directory.
- The Foundation Center's Foundation Directory may be accessed through the following organizations:

México, D. F.

Centro Mexicano para la Filantropía, A. C.

Cerrada de Salvador Alvarado 7, Col. Escandón, Del. Miguel Hidalgo

Tel. (55)52768531, (55)52768533 a la (55)52768544 y (55)52776111

San Miguel de Allende, Guanajuato

San Miguel de Allende Public Library, A. C.

Insurgentes 25, San Miguel de Allende, Tel. (415) 152 0293

² Mexican Center for Philanthropy

Querétaro, Querétaro

Centro de Recursos Internacionales para Organizaciones Civiles
Madero 46, oficina 7, Centro Histórico, Tel. (442)2126849

Hermosillo, Sonora

*Secretaría Social del Estado de Sonora (SEDESSON)*³
Nayarit 265 (esquina 14 de abril), Col. San Benito, Tel. (662)2147464

All these organizations have trained staff who can assist you in the searching by showing you how to use the database that has information on 108,000 organizations.

You can also access the Foundation Center website to obtain information about grantors. It should be noted that the free information provided by this site is limited because it requires the name of the organization that is sought. The way to expand the search involves paying a monthly fee or going to authorized centers where that search can be done for free.

<http://foundationcenter.org/findfunders/foundfinder/>

Additionally, other information sources can be used to identify grantmakers. One must be aware that the information provided is free but limited. To gain access, one must have the name of the grantor ready in advance.

GuideStar is one of the organizations dedicated to gathering and publishing information about non-profit organizations. They have a broad scope, managing an extensive database with detailed information. The access to basic information and the registration required to view the information are free.

GuideStar believes that “the best possible choices are made when grantors, grantees, researchers, educators, professionals, service providers, government agencies and the media use the quality information they provide. These decisions impact our world today and will continue to do so for generations to come”.⁴

Website: <http://www.guidestar.org/>

The *Non-profit expert* website focuses on supporting NGOs around the world by providing information and assistance. In the following link, you can find several philanthropic organizations in the United States:

<http://www.nonprofitexpert.com/>

³ Social Ministry of the State of Sonora

⁴ www.guidestar.org [Accessed July 15 2012].

Furthermore, through the Benjamin Franklin Library, the U.S. Embassy in Mexico has a list of U.S. foundations that provide resources to projects in Mexico. This can be consulted at:

http://www.usembassy-mexico.gov/bbf/dossiers/bfdossierS_Fondos_recursoMX.htm

The Library also has a more extensive dossier of organizations that donate resources to Mexico. This includes target areas of interest as well as the dates for requesting the application form. This folder may be requested directly from the library's staff.

The Charity Vault includes information on its website about philanthropic organizations. You can find grantors in the U.S., organized by states, as well as more than 100 countries around the world, including Mexico. The link to that charity is:

<http://www.charity-charities.org/index.htm>

Additionally, another way to find grantor organizations is by accessing the index page of grantors for Latin America. Here you can view the organizations that award grants in Mexico. Their online address is:

<http://www.indicedonantes.org/>

You can also search <http://www.fundsforngos.org/> where you can find opportunities for sustainable resources by simply entering the country's name in the search tab.

5.1.2.2 REQUEST FOR GRANTS

Before requesting a grant from abroad, the following recommendations should be considered:

1. Before submitting any application or information about your organization, a thorough background check on the grantor should be conducted. Following are some possible questions the grantor:
 - What have they done?
 - Who have they given grants to?
 - Have they funded projects similar to yours?
 - What are their interests and priorities?
 - Are there specific methodologies for project development?
2. Organizations do not give money to common causes such as, "fighting poverty", "equal rights for men and women", "save the whales", etc.

Grantmakers provide grants based on projects that are consistent with the social purpose of the organization that makes the request. The social purpose or aim must be clear and concise. They must also show the experience, maturity and capability of the organization. These objectives should demonstrate its members' capability to perform and execute them effectively and efficiently.

Therefore, you should not submit projects based on “good intentions”, but on a concise project, showing that your organization and its members are experts in the field (with verifiable experience).

3. Grantors do not grant resources to organizations that do not have a clear legal basis or status.

To obtain grants, organizations must be legally constituted, with the papers that demonstrate this status and recognized by Mexican authorities. If a grantor considers that the organization is not legally constituted, the entity will simply not take the project into account.

4. When requesting a grant, the grantor should be treated as an equal because a grantor entity wants to establish a relationship with an equal partner or associate.

The research should help identify which organizations could be grantors to support the project or projects to be implemented, as well as the mechanisms of communication and grant requests. Usually these are included in the databases.

There are two ways for a grantor to know the specific requirements and needs of a CSO.

Sometimes, in databases, along with grantors' names and information, the note “Not accepting applications” appears. In such cases, a “letter of inquiry” must be sent. This is a brief statement about the organization, its work and experience. The grantor agency reviews it, and, if interested, they will get in touch with the applicant organization.

For an example of this letter, go to the following link:
www.grantspace.org/Tools/Sample-Documents

When the grantor agency has no such limitations, a proposal can be submitted. Almost all grantors have specific mechanisms. A proposal is a concept paper which is useful even when organizations do

not have a mechanism of communication specific to the application process. Go to the following link to find the “guide to writing proposals” where important and relevant information from the Foundation Center is posted.

www.foundationcenter.org/getstarted/tutorials/gfr/proposal.html

Make sure that the language is clear and thorough; it should be complete with vocabulary consistent with the objectives of the project. If facts and figures are included, they must be up to date. The project proposal formally introduces your organization; therefore it must be well written, and the contents must suit the application in order to show a clear vision of the project. The proposal should also present a sufficient vision of the needs and requirements that must be satisfied for the best achievement of the programmed objectives.

Tip: You can use the logic model for the formulation of the project. The information required by this methodology allows for the easy development of the requirements as well as the results in a clear and objective way. Additionally, it favors an effective and efficient management of resources.

Annex 16 contains some tips and a model that can guide the development of your organization’s document.

Advice: Make sure that the documents sent to the philanthropic organization are legible and understandable, employing the appropriate language (either Spanish or English).

Moreover, when filing application forms for grants, gather all required documents to prevent loss of time that could delay or prevent your organization from being considered for the allocation of grants.

As the specialist Victoria Kovar mentions:

- The best proposal is clear, complete and to the point.
- A satisfactory proposal:
- Describes the need to be met and lays out a plan to meet it.
- Includes key individuals responsible for the work.
- Includes a budget that is complete, detailed and accurate.

- Explains how the agency will measure results.
- Uses simple, concise, and declarative statements explaining why the project, program, or organizational function is central to an agency's mission and priorities.
- Provides all information necessary for the funder to make the final decision.⁵

During the search and application process, the organization(s) from which the grant will be requested is probably unaware of your organization and the work it does. Therefore, it is essential to have information, translated in English, about institutional objectives, developed activities, major accomplishments, etc. In other words, you need any and all information that would be useful for the grantor agency to become familiar with your organization. This information will facilitate the decision-making process regarding the allocation of resources.

Note: In case of having a website, it would be useful to include a section in English so that grantors can access that information.

The process of writing and receiving a grant can be difficult, but it becomes easier if some recommendations are taken into account. For example:

- Remember that you are dealing with people from a different culture and training. Therefore, make sure there is good communication with the grantors so that they understand the objectives of the organization, the work it carries out, the primary objectives, how the population will be benefited (if applicable) and how the grants will favor the achievement of corporate goals.
- From the very first contact with the grantor, it is necessary to show, in addition to the interest in obtaining resources, that the grantee has the ability, experience and determination to achieve the specified objectives.
- Identify the name of the person or persons responsible for carrying out the analysis of projects and requests. If possible, identify their

⁵ Victoria Kovar, "The Funded proposal", p. 1.

role as the grantor entity because they might be the institutional instrument through which your organization accesses the resources. Therefore, the communication with the grantor agency should always be clear and concise. Bear in mind that one must show a willingness to learn and accept suggestions.

- Frequently, the experience with other organizations for fundraising and or grants in kind is used. Always take into account that each grant process is different and that grantor agencies have internal and external matters that distinguish them from others. It is advised to use past experiences only as a guide, and not as a set or rules to follow.
- Keep in mind that grantors have specific interests to support grantees. For this reason, research and identify entities with similar interests.
- Develop a clear, concise and realistic project. Remember to include all relevant and accurate information. Also, make sure that it is perfectly understandable. If necessary describe the technical terms for a better understanding of the proposal's scope. This step also prevents misinterpretation of technical words.
- Make sure that the project shows a clear correlation between the objectives, goals and the means to achieve them. Remember to include the means of evaluation and the accountability to enhance transparency and the ethical responsibility of the project.
- Note that the budget should be as detailed as possible. Otherwise, in the case that the grant is actually rewarded, unexpected expenses could jeopardize the achievement of the project's objectives.
- Remember, if your organization does not provide a letter stating that it is an authorized donee, taxes will have to be paid as if it were a for-profit organization.

Remember to have a clear budget in order to avoid “unexpected expenses”. Also, the activities agreed upon with the grantor must be carried out so as to facilitate the development and future evaluation of the work. Keep in mind that grantors may request specific documentation for analyzing an application. Depending on their history and organizational culture, each organization will request specific documentation in support of the proposal. The most common are:

- Operating budget. This is a document where you can see the breakdown of investment expenses, administrative expenses and oper-

ating expenses. This budget should be realistic, adhering to actual needs and the ability to manage them. Additionally, organizations take into account previous experiences in the management of resources; if they give a grant, it will be similar to the ability shown by the organization’s prior abilities to exercise them.

- Updated financial reports. They must be aware of the financial status of the organizations since they are unwilling to pay for administrative errors or debts that are not theirs. Information concerning several previous years can be requested to find the resources that the grantee has handled.
- When an organization has little experience or has recently been created, it can receive “seed money”. In this case, there will not be much information on the organization. These are grants given to those organizations that have recently been established.
- Results of audits and audited financial statements.
- List of members of the Board of trustees and curriculum of those who develop the projects.
- In case of being recognized as an authorized donee by the Mexican government, the organization must show proof of this status with official papers.
- Yearly financial reports.
- IRS 990 form (if requested).⁶

5.1.2.3 OBTAINING THE GRANT AND DEVELOPING THE PROJECT

Although this stage officially begins as soon as the grantor agency agrees to donate the resources requested by the grantee, there is a prior step. The organizations must have identified the required inputs as well as the staff that will perform the work (whether they belong to the organization or have been hired specifically for the development of the project).

When an organization has been approved for a grant, it will be notified through a letter or a report, specifying that the grantee organization has received a grant. In which case, the process of transferring the resources and the signing of the agreement⁷ establishing the scope and limits of the grant should begin. This document is usually prepared by the grantor agency.

6 Kovar, V. The Funded Proposal, in Margolin, J., E. DiMaio and Lee, S. After the grant. The Nonprofit’s Guide to Good stewardship. USA: Foundation Center, 2011.

7 The agreement should be considered and if deemed necessary to inquire whether it is possible to modify any provision.

This agreement, besides being the mechanism that formalizes the relationship between grantor and grantee, is a contract that imposes obligations and confers rights. Therefore, it is necessary that the entire organization knows its scope in order to avoid the use of resources in a discretionary manner, *animus domini*. Such a fashion would mean using the resources as if it owned them, using them in activities contrary to Mexican and U.S. standards, for illegal activities or as if it were a non-profit organization. When a grant has been given, it is also essential to write a letter of appreciation. This should include the acceptance of the grant, a description of the importance of the resources to the organization, as well as the likely impact that they will have on the target population and or the goals of the organization.

5.1.2.3.1 Ethical management of resources

It is essential that the resources are managed in an ethical fashion. For a relationship between a U.S. grantor and a Mexican grantee to work there must be certainty that the management of resources, the work of the organization and the achievement of institutional objectives are developed within an ethical framework. In terms of the use of resources, it must guarantee that there is transparency and compliance with the agreement's guidelines. This framework provides credibility that the grant is being spent properly and is not being used for other purposes. This ethical management means that the organization performs its activities according to the law—transparently and in line with its regulations and the legal framework that governs.⁸

5.1.2.4 MONITORING

Monitoring involves being aware of the progress of the process. This is done by identifying problems (solving, monitoring and evaluating them) and by being transparent. It is very helpful to have the project's information organized and classified so that anyone from outside of the organization can understand it. For example in case of external evaluations, such as a government audit, this information can also be available for other civil organizations who wish to learn from this experience.

⁸ To have more information about this topic, you can consult the following article: "La estructura ética en las organizaciones, herramientas para la gestión ética en la organizaciones", Dr. Alberto Hernandez Baqueiro, <http://www.centroscomunitariosdeaprendizaje.org.mx/sites/default/files/estructuraetica.pdf>

Additionally, the U.S. IRS may conduct audits to the grantors; therefore, they should complete all formalities and submit the information required by the authority. In order for an organization to continue being acknowledged as a public charity and to avoid the rejection of tax exempt status, the compliance with all requirements of the Internal Revenue Code (IRC) is a must.

Therefore, grantee organizations that receive grants must submit the information and documents requested, as well as ensure that the resources are used with discretion and for the purposes for which the partnership's agreement was established. Since the IRS does not clearly define what is meant by discretion and control, it is the responsibility of the grantee organization to seek all relevant information regarding its tax obligations.

Regular and reliable communication with the grantor is important to facilitate access to information about how the resources granted were allocated. This is why the agreement should include how the progress reports will be delivered; hence it is mandatory to keep all the information in order and to exercise the resources with maximum transparency. This will support the grantor with the discretion and control tasks required by the IRS.

Additionally, the grantee organization should be asked how long they should keep the information, in case it was requested. Keep in mind that sometimes the evaluation and monitoring is conducted through reports and even visits by members of the grantor organization.

Note that most of the grantors in the United States have predefined application and monitoring forms for tracking grants. Should the organization with which the contact is established have these kinds of forms, it is best to examine them carefully. They contain the grantor's requirements in detail, as well as what the grant giver requests in order to take an application into account. Such forms also contain information about how to keep track of the project's progress and the use of resources.

Reports

Whether it is a one-time grant or an ongoing one, it is necessary to provide progress reports as to the impact that the resources have on the benefited population and the professionalization of the grantee

organization. In case the grantor agency does not have its own reporting system, one should submit a document that includes the following information:

1. Give a brief description of the project or program supported by the foundation (If the grant was for general operating expenses, describe how the funds were used).
2. Describe the impact the program or organization has had on the population served. What has changed as result of the work? Please discuss qualitative positive change and or outcomes, in addition to numbers served.
3. Was the program implemented as described in the original grant proposal? Were the original program objectives achieved or exceeded? If not, please explain.
4. In retrospect, is there anything you might have done differently, or is there anything you learned that will change the program or organization in the future?
5. Did the organization encounter a change in leadership or experience significant management challenges over the course of the year? If so, how were they addressed?⁹

5.1.2.5 ABOUT THE GRANT PROCESS

Once the project's objectives have been accomplished or all the resources have been expended, one might assume that the relationship with the grantor agency has ended. However, this is not necessarily true since it may be the beginning of an ongoing relationship between grantor and grantee. The final stage of a relationship between two parties represents the seed for future collaboration between the two organizations that worked towards achieving a common project: one providing the resources and the other implementing the actions and developing the project.

As Victoria Kovar says in the book *After the grant*:

9 Nancy Wiltsek, "The grant report", p.117.

Your grant is not a gift in the traditional sense. It is not a favor. It is an investment. Foundations tend to think in terms of investment and many have a long-term outlook. Many foundations have grants files from decades past and those records show the long-term value of investments by the foundation in young agencies that would prove to become invaluable community institutions.¹⁰

As discussed earlier in this guide, one should always keep in mind that grantors are not just giving away money; rather they donate for the achievement of specific objectives that are based on their interests and organizational guidelines. As part of the basic structure of the grant, remember that in most cases grantors want to know how the resources were used (transparency), which population was benefited and what impact it had on their lives. Plus, they would wish to know the difference that was made when comparing before and after the project was implemented (monitoring).

Thus, one should conduct a follow-up process by which the grantor agency knows: how people's lives were transformed; how the supported organizations became more professional; how the local environment was improved where the grant was exercised; how this project can be continued, how the community was empowered and the supported organization be enhanced, and so on. This allows the members of the grantor agency to have a broader picture of the process that was put in place with their resources.

Sometimes this opens the door to future grants. If information is given and there is a follow-up on behalf of the grantors, then the following occurs:

- Grantors become aware of the long-term impact of the granted resources. Most of the time, grantors cannot carry out a long-term monitoring of their grants (either by lack of infrastructure or resources), so a great incentive for grantors is the fact that a grantee organization reports regularly about the progress and result of the grant.
- Grantors then have information regarding the result of their grant, which can be spread to their members and resource providers. In other words, they can see when the granted resources have transformed the life condition of a population, preserved an ecosystem or improved the administration or professionalism of a grantee, etc.

¹⁰ V. Kovar, art. cit., p. 10.

- Grantors have useful information for decision-making on future grants. Keeping in touch with the grantor agency makes the process of granting resources for other projects easier.
- It helps to acknowledge the work for purposes of transparency and accountability of the grantee.

Thus, the aim of this follow-up is to show the grantor agency as well as other interested organizations the impact its resources and project had on the population.

When the grantor agency has no specific procedure for the termination of the project or for monitoring the impact of granted resources, the grantee organization should produce a document that describes the allocation and the follow-up of the grant. This document should be a brief account of the grant process and should include a breakdown of how resources were used, a description of the real impact of the project, as well as other important aspects such as qualitative and quantitative results. Sometimes including photos or evidence (newspaper articles, journals, etc.) helps to highlight these results.

Note: Finally, remember that a final report is used to portray the impact of the grant and to thank funders for the relationship that has been established. Therefore, in this final stage one should avoid including requests for additional resources.

As mentioned, more than just closure, this final step should be regarded as the creation of a long-term link between grantor and grantee, in which the grantor agency should be treated as a partner in achieving common goals. This relationship should be based on honest communication, transparency and similar interests. It should be considered as the origin of an ongoing relationship since the efforts of both organizations will achieve shared goals; plus, they encourage causes that will help improve the life condition of individuals, groups and populations with special needs. This relationship will also help further research in the field, and it could foster economic growth or environmental protection.

To assist in giving a better idea of the required documents needed to carry out some of the processes described in this document, a checklist has been included in Annex 18.

Updates

For years, CSOs have lobbied for the IRS and the Department of the Treasury to facilitate the processes of recognition of foreign authorized grantors and or the grant processes of resources.

On September 24, 2012, the IRS proposed to change the requirements to make the process of determination of equivalence easier; however, the process did not include the expenditure responsibility process.

“Under the current regulations, an equivalency determination is considered made in good faith if it is based on either (1) an affidavit of a foreign organization or (2) an opinion of counsel of grantor or grantee”.¹¹ In this new proposal, the document can now be written by an affidavit of a foreign organization or (2) written advice of a qualified tax practitioner who is subject to Circular 230 requirements (Circular 230 governs the standards of those professionals, including rules on the opinions concerning taxes). Those practitioners can be an attorney, a certified accountant or an agent who is subject to certain IRS regulations. Note that this change applies to private foundations in the U.S., and although the provisions do not explicitly apply to all foundations that offer grants, this guidance can help when making grants from donor-advised funds to foreign organizations.

These provisions do not require the establishment of an attorney-client relationship between the tax professional and the grantor or the grantee. However, the document must be reasonable and written in good faith; plus, it must be linked to the general rules for trusted tax professionals under the section of the Internal Revenue Code.

These changes are expected to reduce professional advice costs. However, a private foundation cannot depend on foreign advisers, unless tax professional’s definitions adhere to Circular 230.

Additionally, the new rules clarify in which cases the determination of equivalence cannot be used for grants for certain organizations.

Latest developments

NGOsource

One of the projects the Council on Foundations has developed recently with Techsoup Global is called NGOsource (<http://www.ngosource.org>). This project focuses on building a virtual platform where donors can look up the main administrative and legal documents of donees so that it will be easier to determine their equivalence as a public charity defined as such in the 501(c) (3) section of the IRC.

A pilot project has been created where 4 countries are participating. One of these is Mexico. The Mexican organization that will be engaged in this project is the Mexican Center for Philanthropy (*Cemefi*). For this pilot effort, a grantmaking organization that is interested in making a donation to an organization that is not included in the former 78 list of the IRS Exempt Organization Select Check, may subscribe to NGOsource and check the webpage of the CSO that will receive the donation. There, it may identify if this organization has been certified, and thus, recognized as a public charity that can receive charitable tax exempt donations.

In case the CSO is not certified, the grantmaking organization may ask NGOsource for an equivalency determination. NGOsource will inform the chosen CSO that it is a candidate to receive a donation. If the organization wishes to receive this donation it will be sent a legal and technical questionnaire to fill out. In Mexico, the *Cemefi* will supervise and assist the CSO to complete the necessary information on the questionnaire. When the information is completed it will be sent to NGOsource for its revision, which will then proceed to give this CSO an ED certificate (valid for one year). This certificate will be then be recognized by the IRS.

This procedure will help CSO and organizations to receive donations. They will not have to employ an accountant or a Tax lawyer to determine if the organization is equivalent to a 501 (c) (3) of the IRC. Their information will be in the NGOsource repository and this will allow them to be recognized as organizations that are able to receive tax exempt donations. All paperwork will be paid for by the donor and the process may not be initiated by the donee.

Fondos a la Vista

Fondos a la Vista is a technological platform that represents the effort of several organizations: *Alternativas y Capacidades, A.C.*, the Philanthropy and Civil Society Project of the ITAM and several other partners such as the Alfredo Harp Helú Foundation, the W.K. Kellogg Foundation, *Fundemex (Fundación del Empresariado en México)*, US-Mexico Foundation, the Rosario Campos de Fernández Foundation and *Montepío Luz Saviñón*.

These organizations have created a webpage with a built in *finder* that can access institutional and financial information of different CSOs in Mexico. When accessed, the system can provide contact information and inform if the CSO is registered in the CLUNI, a Mexican register that allows them to receive funds from the Mexican government. It can also inform if the organization being searched is an Authorized Donee, which means it is a tax exempt organization for the Mexican fiscal authorities.

The *Fondos a la Vista* webpage: <http://www.fondosalavista.mx> was created to provide transparent and accessible institutional and financial information on CSOs in Mexico so that donors and donees can be in touch with each other as well as to provide better accountability of social investment in Mexico.

Its objectives are:

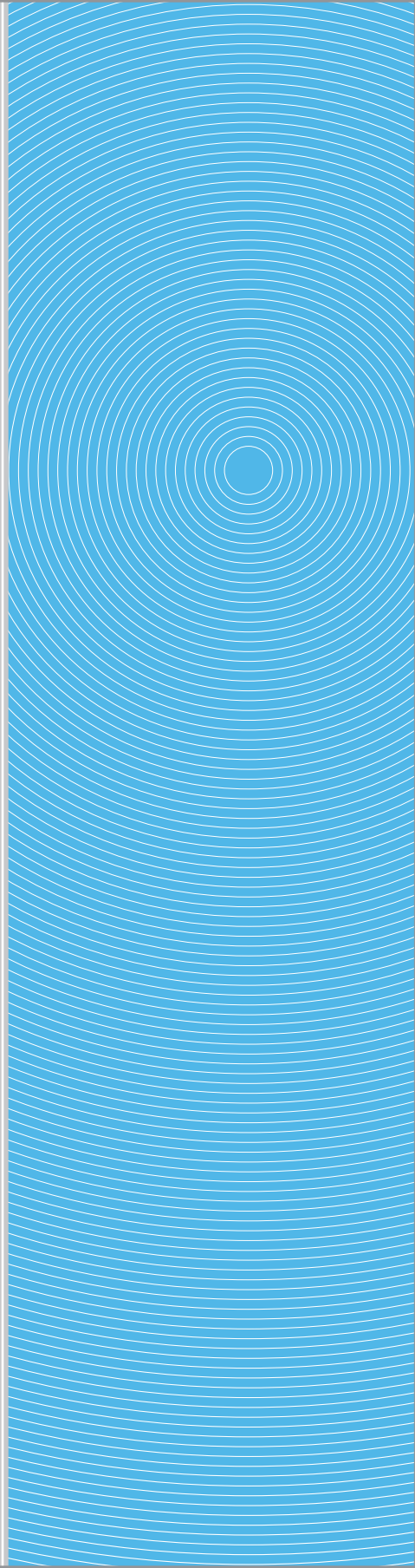
- To encourage transparency and accountability for the sector as well as promote trust towards private donations and organizations.
- Based on official Mexican information and good international practices, provide information on available resources for organizations that are looking for them and thus contribute to social development.
- To give out information of Mexican CSOs and their finances as well as present their valuable work and efforts for society.

The contents of this site are organized in four sections:

<i>¿Quiénes somos?</i>	This section provides information on the partners that created this website.
<i>Entérate</i>	This section provides the latest developments as to grant giving for CSOs.
<i>Convocatorias y eventos</i>	Events and grant giving opportunities are announced in this section.
<i>Busca donantes y OSC</i>	This section helps connections between grant givers and donees.

¹¹ "Explanation of proposed treasury regulations: Reliance standards for Making good faith determination of Equivalency determinations", September, 24th, 2012.

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GLOSSARY

Authorized donee: a Mexican nonprofit authorized by the SAT to receive tax-except donations.

Grant: a sum of money given by an organization, for a particular purpose, often with not-for-profit preconditions.

Grantmaker (also 'grantor'): a party that makes a grant of money.

Impuesto Empresarial a Tasa Única (IETU): a flat tax imposed in Mexico to certain sources of income.

Impuesto Sobre la Renta (ISR): Mexican income tax.

Incise tax: a special tax on the production or sale of a specific good.

Internal Revenue Code (IRC): the domestic portion of the U.S. tax law. The IRC is implemented by the Internal Revenue Service.

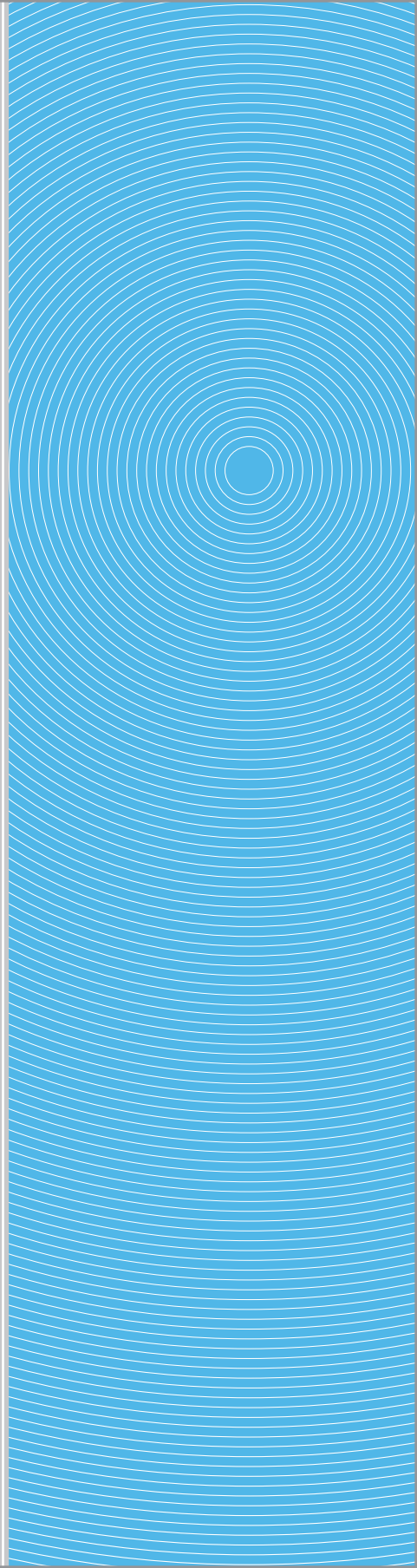
Internal Revenue Service (IRS): the internal tax agency of the United States federal government responsible for collecting taxes and the interpretation and enforcement of the Internal Revenue Code. It is the American counterpart of the SAT.

Lobbying: the act of attempting to influence decisions made by officials in the government, most often legislators or members of regulatory agencies.

ACRONYMS

- ACNCEA:** Central Administration of Standardization for Foreign Trade and Customs (*Administración Central de Normatividad de Comercio Exterior y Aduanal*)
- AOD:** Official Development Aid (*Ayuda Oficial al Desarrollo*)
- CIECF:** Single Entry Code (*Clave de Identificación Electrónica Confidencial Fortalecida*)
- CLUNI:** Single Entry Code to the Federal Register of an Organization (*Clave Única de Inscripción al Registro de las Organizaciones de la Sociedad Civil del Instituto de Desarrollo Social*)
- COFEPRIS:** Consultation of the Federal Commission for Protection against Health Risks (*Comisión Federal para la Protección contra Riesgos Sanitarios*)
- CONACYT:** National Council of Science and Technology (*Consejo Nacional de Ciencia y Tecnología*)
- DOF:** Official Journal of the Federation (*Diario Oficial de la Federación*)
- FIEL:** Advanced Electronic Signature (*Firma Electrónica Avanzada*)
- IETU:** Business Flat Tax (*Impuesto Empresarial a Tasa Única*)
- IRS:** Internal Revenue Service
- IRC:** Internal Revenue Code
- LISR:** Law on Income Tax (*Ley del Impuesto Sobre la Renta*)
- NOM:** Official Mexican Norm (*Norma Oficial Mexicana*)
- RRNA:** Non Customs Regulations and Restrictions (*Restricciones y regulaciones no arancelarias*)
- RPP:** Registry of Property (*Registro Público de la Propiedad*)
- SAGARPA:** Secretariat of Agriculture, Livestock, Rural Development, Fisheries and Food (*Secretaría Agricultura, Ganadería, Pesca y Alimentación*)
- SAT:** Tax Administration Service (*Servicio de Administración Tributaria*)
- SE:** Ministry of Economy, (*Secretaría de Economía*)
- SEMARNAT:** Ministry of Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*)
- SEP:** Public Education Ministry (*Secretaría de Educación Pública*)
- SHCP:** Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*)
- SSA:** Ministry of Health (*Secretaría de Salud*)

Annexes



ANNEX 1

Proceso para el reconocimiento como donataria ante el IRS de Estados Unidos

En la página del IRS se ha incorporado el procedimiento para ser reconocido como donataria autorizada, en el cual se avanza a través de una serie de preguntas que van guiando a la persona o representante de la asociación interesada.

En primer lugar, Ingrese a la página del Servicio de Servicio de Impuestos Internos:

<http://www.irs.gov/charities/article/0,,id=256970,00.html>

Lea el apartado *What to know before you apply* en el cual encontrará información relevante sobre el ciclo de vida de una organización exenta del pago de impuestos:

En ella se incluye la siguiente información:

1. **Punto de partida:** Creación de una organización bajo la ley estatal, la adquisición de un número de identificación patronal, y la identificación de la clasificación apropiada de impuestos federales.
2. **Solicitud de exención:** Adquirir, completar y presentar los formularios de solicitud, cómo el IRS procesa las solicitudes y cómo obtener ayuda del IRS durante el proceso de solicitud.
3. **Registros requeridos:** Las declaraciones anuales de organización exenta, formatos de ingresos y otras declaraciones y reportes que una organización puede tener que presentar.
4. **Cumplimiento en curso:** ¿Cómo una organización puede evitar poner en peligro su estatus de exención, requisitos de divulgación, impuestos sobre el empleo, y otras cuestiones relativas al cumplimiento en curso?
5. **Acontecimiento importantes:** Las auditorías, dictámenes privados y los procedimientos de terminación.¹

Adicionalmente, la página electrónica del IRS proporciona información sobre el ciclo de vida de las siguientes organizaciones: benéficas públicas, fundaciones privadas, organizaciones de beneficio social,

¹ Fuente: <http://www.irs.gov/charities/article/0,,id=169727,00.html> [Consultado 8 de agosto de 2012].

organizaciones de agricultura/ horticultura, organizaciones del trabajo, sindicatos, etc.

Después de revisar y analizar dicha información; posteriormente ingrese a la Guía paso a paso para realizar la solicitud (*Step-by-step guide to applying*). En la liga:

<http://www.irs.gov/charities/article/0,,id=96210,00.html>

Ahí encontrará, si gusta revisarlos, los tipos de organizaciones exentas, así como información de la publicación 557 Estatus de exención de impuestos para su organización (*Tax Exempt Status For Your Organization*), así como la Publicación 4220 que le ayudará durante el proceso de solicitud.

En esa página deberá responder con **yes** (sí) o **no** (no) si su organización es un fideicomiso, una corporación o una asociación.

Si su respuesta es afirmativa entonces ingresará automáticamente a la siguiente liga:

<http://www.irs.gov/charities/article/0,,id=96211,00.html>

Ahí se le preguntará si su organización tiene un propósito para la exención de impuestos y encontrará una liga para identificar los tipos de organizaciones exentas, como son:

Tipos de organizaciones exentas de impuestos

- *Información de impuestos para organizaciones benéficas públicas*
Información de impuesto para organizaciones benéficas públicas, organizaciones religiosas, científicas, literarias, y otras exentas bajo la sección 501(c)(3) del el Código de Impuestos Internos (IRC).
- *Ciclo de Vida de un Servicio de Bienestar Social*
Información, explicaciones, guías, formularios y publicaciones disponibles en irs.gov para organizaciones exentas de impuestos por servicios de bienestar social.
- *Ciclo de Vida de una Organización para la Agricultura y Horticultura*
Enlaces a información útil sobre los puntos de intersección entre las organizaciones de agricultura o la horticultura y el IRS, incluido el acceso a la información explicativa y los formatos que una organización puede tener que presentar ante el IRS.
- *Ciclo de Vida de una Organización Mundial del Trabajo*
Enlaces a información útil sobre los puntos de intersección entre las organizaciones laborales y el IRS, incluido el acceso a la información explicativa y los formatos que una organización puede tener que presentar ante el IRS.

- *Ciclo de Vida de una Liga de Empresas (Asociación de Comercio)*
Enlaces a información útil sobre los puntos de intersección entre las ligas de negocios y el IRS, incluido el acceso a la información explicativa y los formatos que una organización puede tener que presentar ante el IRS.
- *Clubes sociales*
Una breve descripción de los requisitos para la exención bajo la sección Código de Impuestos Internos 501 (c) (7).
- *Sociedades fraternales*
Una breve descripción de los requisitos para la exención bajo el Código de Impuestos Internos (IRC) secciones 501 (c) (8) y 501 (c) (10).
- *Asociaciones de beneficios para empleados o de los Fondos*
Breve descripción de los requisitos para la exención para las asociaciones de empleados en las secciones 501 (c)(4), 501 (c)(9) y 501 (c)(17).
- *Información sobre Impuestos a las organizaciones políticas*
Información de impuestos para los partidos políticos y comités de campaña sujetos a impuestos bajo la sección 527 del IRC.
- *Otras organizaciones exentas de impuestos*
Varios tipos de organizaciones que califiquen para la exención del impuesto sobre la renta federal.

En esta página deberá responder con **yes** (sí) o **no** (no) si su organización tiene propósitos de exención.

En caso de responder **no**, le aparecerá una página electrónica en la que le informa que de acuerdo a su información su organización todavía no es elegible para solicitar el reconocimiento de exención de impuestos bajo la sección 501 del código.

En caso de responder afirmativamente, aparecerá la siguiente página, en la liga:

<http://www.irs.gov/charities/article/0,,id=96446,00.html>

En la cual se identifican dos preguntas, por un lado si ya pagó los derechos correspondientes y, por otro, si completó el formato 1023.

A) Pago de derechos

En este apartado se le informa que deberá pagar determinados derechos, (los cuales oscilan entre 850 y 3000 dólares dependiendo de los ingresos de la organización) a través del formato 8718 *User Fee for Exempt Organization Determination Letter Request* (ver Anexo 1A) o en la liga siguiente:

<http://www.irs.gov/pub/irs-pdf/f8718.pdf>

En dicha página adicionalmente encontrará nuevamente la pregunta si realizó el pago debido para:

B) *Llenado de formato 1023*

Adicionalmente, se le informa que deberá llenar el formato 1023 enfocado a organizaciones que buscan encuadrarse dentro de la sección 501 (c)(3).

En esta página deberá responder con **yes** (sí) o **no** (no) si su organización llenó los formatos requeridos, en caso de responder sí aparecerá la siguiente pregunta:

¿Su organización tiene número de identificación de empleador?

¿Puso el número de identificación de empleador (EIN en la Parte I), en la página uno de la solicitud?

En esta página deberá responder con **yes** (sí) o **no** (no) si su organización cuenta con el número de empleador EIN.

En caso de responder **no** aparecerá la siguiente página:

<http://www.irs.gov/charities/article/0,,id=96229,00.html>

En ella se puede descargar el formato SS-4 y hacer la solicitud en línea, además de que se puede obtener información adicional sobre el EIN.

En caso de responder afirmativamente, aparece la siguiente página:

<http://www.irs.gov/charities/article/0,,id=96226,00.html>

En donde se pregunta si se incluyeron todas copias exactas de los documentos de la organización

En caso de responder **no**, le informarán que no es elegible para obtener el estatus de donataria:

En caso de responder **sí** lo remitirán a la siguiente página:

<http://www.irs.gov/charities/article/0,,id=96294,00.html>

En la cual le preguntan si incluyó información fiscal de los últimos tres años.

En caso de responder **no**, aparece la siguiente página

En la que encontrará la siguiente información:

Las nuevas organizaciones deben dar los estados financieros para el año en curso y los proyectos de presupuesto para los próximos dos años, incluyendo un desglose detallado de los ingresos y los gastos. Una organización de la sección 501 (c) (3) debe proporcionar esta

información en la Parte IX, del Formato 1023. ¿Ha incluido la información financiera?

Si no lo incluyó le informará que no es elegible para el estatus de donataria.

Si incluyó la información

Llenó envió los formatos requeridos, los cuales se envían a la siguiente dirección:

Internal Revenue Service
P.O. Box 12192
Covington, KY 41012-0192

En caso de que se envíe por servicio de mensajería se debe enviar a la siguiente dirección:

Internal Revenue Service
201 W. Rivercenter Blvd.
Attn: Extracting Stop 312
Covington, Ky. 41011

ANNEX 1 A

Formato 8718

Form 8718 (Rev. February 2012) Department of the Treasury Internal Revenue Service	User Fee for Exempt Organization Determination Letter Request ▶ Attach this form to determination letter application. (Form 8718 is NOT a determination letter application.)	OMB No. 1545-1798 Control number _____ Amount paid _____ User fee screener _____
1 Name of organization _____		2 Employer Identification Number _____
<p>Caution. Do not attach Form 8718 to an application for a pension plan determination letter. Use Form 8717 instead.</p>		
3 Type of request		Fee
a <input type="checkbox"/> Initial request for a determination letter for: <ul style="list-style-type: none"> • An exempt organization that has had annual gross receipts averaging not more than \$10,000 during the preceding 4 years or • A new organization that anticipates gross receipts averaging not more than \$10,000 during its first 4 years ▶ 		\$400
<p>Note. If you checked box 3a, you must complete the <i>Certification</i> below.</p>		
Certification		
I certify that the annual gross receipts of _____ <small style="margin-left: 400px;">name of organization</small>		
have averaged (or are expected to average) not more than \$10,000 during the preceding 4 (or the first 4) years of operation.		
Signature ▶ _____		Title ▶ _____
b <input type="checkbox"/> Initial request for a determination letter for: <ul style="list-style-type: none"> • An exempt organization that has had annual gross receipts averaging more than \$10,000 during the preceding 4 years or • A new organization that anticipates gross receipts averaging more than \$10,000 during its first 4 years . ▶ 		\$850
c <input type="checkbox"/> Group exemption letters		\$3,000

130

Instructions

The law requires payment of a user fee with each application for a determination letter. The user fees are listed on line 3 above. For more information, see Rev. Proc. 2011-8, 2011-1 I.R.B. 237, or latest annual update.

Check the box or boxes on line 3 for the type of application you are submitting. If you check box 3a, you must also complete and sign the certification statement that appears under line 3a.

Attach to Form 8718, User Fee for Exempt Organization Determination Letter Request, a check or money order payable to the "United States Treasury" for the full amount of the user fee. If you do not include the full amount, your application will be returned. Attach Form 8718 to your determination letter application.

Generally, the user fee will be refunded only if the IRS declines to issue a determination.

Where To File

Send the determination letter application and Form 8718 to:

Internal Revenue Service
 P.O. Box 12192
 Covington, KY 41012-0192

Who Should File

Organizations applying for federal income tax exemption, other than Form 1023 filers. Organizations submitting Form 1023 should refer to the instructions in that application package.

Paperwork Reduction Act Notice. We

ask for the information on this form to carry out the Internal Revenue laws of the United States. If you want your organization to be recognized as tax-exempt by the IRS, you are required to give us this information. We need it to determine whether the organization meets the legal requirements for tax-exempt status.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act

unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. The rules governing the confidentiality of Form 8718 are covered in section 6104.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is 5 minutes. If you have comments concerning the accuracy of this time estimate or suggestions for making this form simpler, we would be happy to hear from you. You can write to the:

Internal Revenue Service
 Tax Products Coordinating Committee
 SE:W:CAR:MP:T:M:S
 1111 Constitution Ave. NW, IR-6526
 Washington, DC 20224

Do not send this form to this address. Instead, see *Where To File* above.



ANNEX 2

Revenue Procedure 92- 94

Rev. Proc. 92-94, 1992-1 C.B. 507

SECTION 1. PURPOSE

Private foundations generally want their grants to foreign grantees to be treated as qualifying distributions for purposes of section 4942 of the Internal Revenue Code rather than as taxable expenditures for purposes of section 4945 of the Code. This treatment is assured if the foreign grantee has a ruling or determination letter classifying it as a public charity within the meaning of section 509(a)(1), (2), or (3), or a private operating foundation under section 4942(j)(3) of the Code. If a foreign grantee does not have such a ruling or determination letter, the Foundation Excise Tax Regulations set forth requirements that must be satisfied in order to assure that the grant will be considered a qualifying distribution.

In response to requests from private foundations, this revenue procedure provides a simplified procedure that private foundations (including nonexempt charitable trusts) may follow in making “reasonable judgments” and “good faith determinations” under sections 53.4945-6(c)-(2)(ii), 53.4942(a)-3(a)(6) and 53.4945-5(a)(5) of the Foundation Excise Tax Regulations. If the requirements of this revenue procedure are met, a grant to a foreign grantee will be treated as a grant to an organization that is described in section 501(c)(3) or section 4947(a)(1) of the Internal Revenue Code, and, that is either a public charity within the meaning of section 509(a)(1), (2), or (3), or a private operating foundation under section 4942(j)(3) of the Code.

SEC. 2. BACKGROUND

01 Section 53.4945-6(c)(2)(ii) of the regulations applies to a private foundation (grantor) making a grant for certain purposes to a foreign organization (grantee) that does not have a ruling or determination letter recognizing it as an organization described in section 501(c)(3) of the Code. (“Certain purposes” are those described in section 170(c)(2)(B) except for any transfer of assets pursuant to any

liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization described in section 507(b)-(2).) The grantor may treat such a grant as a grant to an organization described in section 501(c)(3) (other than section 509(a)(4)) if, in the reasonable judgment of the foundation manager, the grantee is an organization described in section 501(c)(3) (other than section 509(a)(4)).

02 Sections 53.4942(a)-3(a)(6) and 53.4945-5(a)(5) of the regulations apply to a distribution (or grant) for the purposes described in section 170(c)-(2)(B) of the Code to a foreign organization that has not received a ruling or determination letter that it is a public charity described in section 509(a)(1), (2), or (3), or an operating foundation described in section 4942(j)(3). In this case, the grant will be treated as a grant to a public charity (for purposes of both sections 4942 and 4945) or to an operating foundation (for purposes of section 4942 only) if the grantor has made a “good faith determination” that the grantee is described in section 509(a)-(1), (2), or (3), or section 4942(j)(3).

03 Under sections 53.4942(a)-3(a)(6) and 53.4945-5(a)(5) of the regulations, a “good faith determination” may be based on an affidavit of the grantee or an opinion of counsel of either the grantor or the grantee. The affidavit or opinion of counsel must give enough facts about the grantee’s operations and support to enable the Internal Revenue Service to determine that the grantee would likely qualify as an organization described in section 509(a)(1), (2), or (3), or section 4942(j)(3) of the Code.

04 Thus, under the regulations, a foundation that wishes to have a grant treated as a grant to a public charity must complete two steps. First, the foundation manager of the grantor must make a “reasonable judgment” that the grantee is an organization described in section 501(c)-(3) (other than section 509(a)(4)). Second, the grantor must make a good faith determination, based on an affidavit of the grantee or an opinion of counsel of either the grantor or the grantee, that the grantee is described in section 509(a)(1), (2), or (3), or section 4942(j)(3).

SEC. 3. SCOPE

This revenue procedure applies to a grant made for purposes set out in section 170(c)(2)(B) of the Code, (except for any transfer of assets pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization described in section 507(b)(2)), if the grant is made by a domestic private foundation to a foreign organization that does not have an Internal Revenue Service ruling letter recognizing its exemption under section 501(c)(3), or classifying it as a public charity under section 509(a)(1), (2), or (3), or as a private operating foundation under section 4942(j)(3).

SEC. 4. PROCEDURE

01 A private foundation will be deemed to have satisfied the requirements of sections 53.4945-6(c)(2)(ii), 53.4942(a)-3(a)(6), and 53.4945-5(a)-(5) of the regulations if (1) a grant is not a transfer of assets pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization described in section 507(b)(2) of the Code, and (2) the grantor bases its “reasonable judgment” and “good faith determination” (as described in the regulations) on a “currently qualified” affidavit prepared by the grantee for the grantor or another grantor that contains the information set out in Sec. 5., below. The original affidavit, or a photocopy of the original affidavit, must be retained by the grantor and made available to the Service upon request.

Whether an affidavit is “currently qualified” is discussed in .02 through .06, below. If, however, the grantor possesses information that suggests the affidavit may not be reliable, it must consider that information in determining whether the affidavit is currently qualified.

02 An affidavit will be considered currently qualified as long as the facts it contains are up to date, as provided in either .03 or .04, below, and as long as the relevant substantive requirements of sections 501(c)(3) and 4947(a)(1) of the Code and sections 509(a)(1), (2), or (3) or section 4942(j)(3) remain unchanged.

03 The facts in an affidavit will be considered up to date if those facts reflect the grantee organization’s latest complete accounting year

or the affidavit is updated to reflect the grantee organization's current data as described in .04 below.

o4 Where a grantee's status under sections 501(c)(3) and 4947(a)(1), 509(a)(1), (2), or (3) or section 4942(j)(3) of the Code does not depend on financial support, which can change from year to year, an affidavit need be updated only by asking the grantee to amend the description of any facts in the original affidavit that have changed. If the facts have not changed, an attested statement by the grantee to that effect is enough to update an affidavit. Where a grantee's status under section 509(a)(1), (2), or (3) or section 4942(j)(3) depends on financial support, the affidavit must be updated by asking the grantee to provide an attested statement containing enough financial data to establish that it continues to meet the requirements of the applicable Code section.

o5 The information required by .04, above, is not necessarily financial data from the grantee's latest accounting year. For example, financial data from years 1985, 1986, 1987, and 1988 are enough to establish that an organization is "publicly supported" within the meaning of section 509(a)(2) of the Code for years 1989 and 1990 if the granting foundation is not responsible for a substantial and material change in the grantee organization's sources of support in years 1989 and 1990. See section 1.509(a)-3(c)(1) of the regulations. A grantor will not be considered responsible for a substantial and material change in the grantee's sources of financial support as long as:

- (1) The grantee's affidavit is "currently qualified" within the meaning of .04, above;
- (2) The grantor neither has learned that the Internal Revenue Service is challenging the validity of the grantee's affidavit, nor has reason to doubt that the affidavit remains valid; and (3) The grantee is not controlled directly or indirectly by the grantor. A grantee is controlled by the grantor if the grantor and disqualified persons (defined in section 4946(a)(1)(A) through (C) of the Code) with respect to the grantor, by aggregating their votes or positions of authority, may require the grantee to perform any act that significantly affects its operations or may prevent the grantee from performing such an act.

o6 Private foundations are permitted but not required to use the procedures described above in making grants to foreign organizations. The two-step procedure referred to in Section 2.04, above, is still the general mechanism for meeting the requirements of sections 53.4945-(c)(2)(ii) 53.4942(a)-3(a)(6) and 53.4945-5(a)(5) of the regulations.

SEC. 5. AFFIDAVIT REQUIREMENTS

o1 An affidavit must be written in English and contain the substantive information set out below. However, the affidavit need not strictly follow the form set forth below. An English translation must be provided for any supporting documents that are not written in English. The affidavit must be attested to by a principal officer of the grantee organization.

o2 Affidavits for grantee organizations described in section 170(b)(1)(A)(VI) of the Code must include a financial schedule as described in .04(11), below. Grantee organizations described in section 509(a)(2) must provide comparable information.

o3 Any grantee that claims to be a school described in section 170(b)(1)(A)(ii) of the Code must provide the statement set out in .03(12), concerning whether it operates pursuant to a racially nondiscriminatory policy as to students. Section 170(b)(1)(A)(ii) describes “an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.” In addition, the affidavit must explain any basis for the grantee school’s failure to comply with one or more of the provisions of Rev. Proc. 75-50, 1975-2 C.B. 587.

o4 The affidavit must contain a declaration to the following effect:
 “The undersigned, to assist grant-making foundations in the United States of America determine whether [name of grantee organization] (the grantee organization) is the equivalent of a public charity described in section 509(a)(1), (2) or (3) of the United States Internal Revenue Code or a private operating foundation described in section 4942(j)(3) of the Code, makes the following statement:
 “(1) I am the [title of principal officer] of the grantee organization.

- “(2) The grantee organization was created by [identify statute, charter, or other document] in [year], and is operated exclusively for [check applicable box or boxes]:
- charitable
 - religious
 - scientific
 - literary
 - educational
 - fostering national or international amateur sports competition, or
 - prevention of cruelty to children or animals purposes under the laws of [the country in which the grantee organization was formed].
- “(3) The activities of the grantee organization have included [describe past and current activities and operations] and will include [describe future activities and operations].
- “(4) Copies of the charter, by-laws, and other documents pursuant to which the grantee organization is governed are attached.
- “(5) The laws and customs applicable to the grantee organization do not permit any of its income or assets to be distributed to, or applied for the benefit of, a private person or non-charitable organization other than pursuant to the conduct of the grantee organization’s charitable activities, or as payment of reasonable compensation for services rendered or as payment representing the fair market value of property which the grantee organization has purchased.
- “(6) The grantee organization has no shareholders or members who have a proprietary interest in the income or assets of the organization.
- “(7) In the event that the grantee organization were to be liquidated or dissolved, under the laws and customs applicable, or under the governing instruments, all its assets would be distributed to another not-for-profit organization for charitable, religious, scientific, literary, or educational purposes, or to a government instrumentality. A copy of the relevant statutory law or provisions in the governing instruments controlling the distribution of the organization’s assets on liquidation is attached.
- “(8) The laws and customs applicable to the grantee organization do not permit the organization, other than as an insubstantial part of its activities,

- (A) to engage in activities that are not for religious, charitable, scientific, literary, or educational purposes; or
- (B) to attempt to influence legislation, by propaganda or otherwise.
- “(9) The laws and customs applicable to the grantee organization do not permit the organization directly or indirectly to participate or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office.
- “(10) The grantee organization is not controlled by or operated in connection with any organization other than as follows [describe]:
- “(11) (The following is required only if the grantee organization’s status under sections 501(c)(3) and 4947(a)(1), 509(a)(1), (2), or (3) or section 4942(j)(3) of the Code depends on its financial support.) A schedule of support for the four most recently completed taxable years is attached showing (for each year and in total)
- (A) Gifts, grants, and contributions received;
- (B) Membership fees received;
- (C) Gross receipts from admissions, merchandise sold or services performed, or furnishing of facilities in any activity that is not a business unrelated to the organization’s exempt purposes;
- (D) Gross income from interest, dividends, rents, and royalties;
- (E) Net income from business activities that are unrelated to the organization’s exempt purposes;
- (F) The value of services or facilities furnished by a governmental unit without charge;
- (G) The total of lines (A) through (F);
- (H) Line (G) minus line (C);
- (I) Two percent of line (H);
- (J) A schedule of contributions for each donor whose support for the four-year period was greater than the amount on line (1) (a major donor), and showing the amount by which each major donor’s total contributions exceeded the amount on line (1) (excess contributions);
- (K) The sum of all major donors’ excess contributions;
- (L) The four-year total for line (H) minus the four-year totals of lines (D), (E), and (K) (the amount of public support);
- (M) Line (L) divided by the four-year total for line (H) (the percentage of the organization’s support that is public support).
- “(12) (The following is required only if the grantee is not a public charity described in section 509(a)(1), (2), or (3) of the Code but

claims to be an operating foundation described in section 4942(j)(3) of the Code.) A schedule showing that the organization satisfies (i) the income test of section 53.4942(b)-1(a) of the regulations and (ii) one of the alternative tests described in section 53.4942(b)-2.

“(13) (The following is required only if the grantee is a school described in section 170 of the Code.) The grantee organization is an organization described in section 170(b)(1)(A)(ii) of the Code that has adopted and operates pursuant to a racially nondiscriminatory policy as to students, as set forth in Rev.Rul. 71-447, 1971-2 C.B. 230, and Rev.Rul. 75-231, 1975-1 C.B. 158, and as implemented in Rev. Proc. 75-50, 1975-2 C.B. 587.”

DRAFTING INFORMATION

The principal author of this revenue procedure is Thomas J. Miller of the Exempt Organizations Technical Division. For further information regarding this revenue procedure contact Mr. Miller on (202) 622-7867 (not a toll-free number).

ANNEX 4

Ley federal de fomento a las actividades realizadas por organizaciones de la sociedad civil

Artículo 5. Para efectos de esta ley, las actividades de las organizaciones de la sociedad civil objeto de fomento son las siguientes:

- I. Asistencia social, conforme a lo establecido en la Ley Sobre el Sistema Nacional de Asistencia Social y en la Ley General de Salud;
- II. Apoyo a la alimentación popular;
- III. Cívicas, enfocadas a promover la participación ciudadana en asuntos de interés público;
- IV. Asistencia jurídica;
- V. Apoyo para el desarrollo de los pueblos y comunidades indígenas;
- VI. Promoción de la equidad de género;
- VII. Aportación de servicios para la atención a grupos sociales con discapacidad; *Fracción reformada DOF 16-06-2011*
- VIII. Cooperación para el desarrollo comunitario en el entorno urbano o rural; *Fracción reformada DOF 25-04-2012*
- IX. Apoyo en la defensa y promoción de los derechos humanos;
- X. Promoción del deporte;
- XI. Promoción y aportación de servicios para la atención de la salud y cuestiones sanitarias;
- XII. Apoyo en el aprovechamiento de los recursos naturales, la protección del ambiente, la flora y la fauna, la preservación y restauración del equilibrio ecológico, así como la promoción del desarrollo sustentable a nivel regional y comunitario, de las zonas urbanas y rurales;
- XIII. Promoción y fomento educativo, cultural, artístico, científico y tecnológico;
- XIV. Fomento de acciones para mejorar la economía popular;
- XV. Participación en acciones de protección civil;
- XVI. Prestación de servicios de apoyo a la creación y fortalecimiento de organizaciones que realicen actividades objeto de fomento por esta ley; *Fracción reformada DOF 28-01-2011*

XVII. Promoción y defensa de los derechos de los consumidores;

Fracción adicionada DOF 28-01-2011. Reformada DOF 25-04-2012

XVIII. Acciones que promuevan el fortalecimiento del tejido social y la seguridad ciudadana, y

Fracción adicionada DOF 25-04-2012

XIX. Las que determinen otras leyes.

Fracción recorrida DOF 28-01-2011, 25-04-2012

ANNEX 5

Modelo de estatutos

A continuación y a manera de orientación de conformidad con el artículo 33, fracción I del Código Fiscal de la Federación y los artículos 9, fracción XI y penúltimo párrafo, 10, primer párrafo y fracción I, 22, fracción XXV y 23, Apartado D, fracción II del Reglamento Interior del Servicio de Administración Tributaria (SAT) se muestra un modelo de documento constitutivo, para aquellas organizaciones civiles que deseen solicitar la autorización para recibir donativos deducibles de impuestos de conformidad con la Ley del Impuesto sobre Renta (LISR).

El documento contiene, una breve explicación de cada uno de los rubros que de manera general contienen los estatutos de las organizaciones civiles, de acuerdo a lo establecido en el Código Civil Federal y Leyes relacionadas en la materia, y en seguida una breve orientación que le permitirá identificar los requisitos previstos en las disposiciones fiscales, así como diversas sugerencias de redacción o estructura, a fin de facilitar la obtención de la autorización para recibir donativos deducibles.

La información contenida en este documento puede llegar a incluir comentarios de carácter general sobre la aplicación de normas y en algunos casos diferir de las interpretaciones de otras personas o entidades. Ésta se basa únicamente en disposiciones fiscales de carácter general y abstracto, por lo que en ningún momento, debe considerarse como asesoría profesional sobre el caso concreto. Por lo anterior, las actuaciones, decisiones o medidas que se adopten tomando como base el contenido y/o la información de este documento son responsabilidad exclusiva del usuario. El SAT no se responsabiliza de eventuales errores o inexactitudes derivados de modificaciones a este documento.

Fundamento legal: Código Civil Federal, Título Décimo Primero (CC), Ley del Impuesto sobre la Renta, Título III (LISR), Ley Federal de Fomento a las Actividades Realizadas por Organizaciones de la Sociedad Civil, (LFFAROSC), Reglamento de la Ley del Impuesto sobre Renta, Título III (RLISR), así como la Resolución Miscelánea Fiscal vigente (RMF).

Es importante mencionar que este modelo está diseñado para las asociaciones civiles y las sociedades civiles, en caso de que se desee constituir una institución de asistencia o beneficencia privada o un fideicomiso se deberán atender a otros modelos.

El presente documento está estructurado de la siguiente manera:

(i) En color rojo se encuentran todos los artículos de los estatutos que deberán incluirse de manera textual sin que se pueda variarse la redacción.

(ii) En color azul se encuentran todos los artículos de los estatutos que aunque deben incluirse, la redacción se puede variar (en la medida en que no sea contraria a las disposiciones legales aplicables).

(iii) En color negro están los comentarios e instrucciones que servirán al momento de preparar los estatutos y que por lo mismo, no deben incluirse en el texto de los estatutos.

MODELO:

- Denominación:

La denominación, no resulta relevante para efectos de la autorización para recibir donativos deducibles, sin embargo, respecto a la naturaleza jurídica de la organización civil, la LISR únicamente prevé la posibilidad de autorizar Asociaciones o Sociedades Civiles, Fideicomisos o Instituciones de Asistencia o Beneficencia autorizadas por las leyes de la materia.

Por otra parte, aunque el Notario Público que se encargue de constituir a la organización civil será quién lo tramite, es importante decir que las personas morales requieren permiso de la Secretaría de Relaciones Exteriores para el uso del nombre que quieran dar a la organización, por lo que previamente deberá verificarse si éste está disponible (algunas palabras, v.gr. “banco”, están reservadas exclusivamente a algunas instituciones específicas).

ARTÍCULO PRIMERO. - La denominación social será “ _____ ” y se usará seguida de las palabras “ASOCIACIÓN CIVIL, SOCIEDAD CIVIL, INSTITUCIÓN DE ASISTENCIA PRIVADA, INSTITUCIÓN DE BENEFICENCIA PRIVADA” o de su abreviatura A.C., S.C., I.A.P., I.B.P.

- Objeto:

De conformidad con los artículos 95, fracciones XIX y XX, 97, fracción I de la LISR y 31 del RLISR, las organizaciones deben constituirse y funcionar exclusivamente con los fines a que se refieren esas disposiciones, en adición, la regla I.3.9.8. de la RMF señala que por objeto social o fin autorizado, se entiende exclusivamente la actividad que la autoridad fiscal constató que se ubica en los supuestos contemplados en las disposiciones fiscales como autorizables. A continuación, se listan las actividades que, de conformidad con las leyes fiscales, son susceptibles de obtener autorización para recibir donativos deducibles de impuestos. Cabe señalar que es opcional para las organizaciones civiles realizar todas o algunas de las actividades que señalan en las disposiciones ci-

tadas; además es importante mencionar que de acuerdo a la actividad que pretenda realizar, esa organización deberá acreditar la realización de la misma.

ARTÍCULO SEGUNDO. - La (asociación / sociedad / fundación / institución) tiene por objeto:

OPCIONES:

ASISTENCIAL (Art. 95 Fracc. VI LISR y regla I.3.9.7. de la RMF): Las organizaciones civiles que se deseen constituir con el objeto de ayudar o asistir a sectores vulnerables, deberán constituirse como una organización Asistencial. Su objeto consistirá en:

La Asociación (Sociedad / Fundación / Institución) es una organización sin fines de lucro que tiene como beneficiarios en todas y cada una de las actividades asistenciales que realiza a personas, sectores y regiones de escasos recursos; comunidades indígenas y grupos vulnerables por edad, sexo o problemas de discapacidad y tiene por objeto realizar las siguientes actividades:

Es de advertir que las siguientes son las únicas opciones susceptibles de autorización, de entre las cuales se tiene que escoger cuando menos una (o varias si así se quiere).

- a) La atención a requerimientos básicos de subsistencia en materia de alimentación, vestido o vivienda.
- b) La asistencia o rehabilitación médica o a la atención en establecimientos especializados.

Se considera como asistencia médica, entre otras, la psicoterapia, la terapia familiar, el tratamiento o la rehabilitación de personas discapacitadas y la provisión de medicamentos, prótesis, órtesis e insumos sanitarios.

- c) La asistencia jurídica, el apoyo y la promoción, para la tutela de los derechos de los menores, así como para la readaptación social de personas que han llevado a cabo conductas ilícitas.

La asistencia jurídica entre otras se considera a representación ante autoridades administrativas o jurisdiccionales, salvo las electorales.

d) La rehabilitación de alcohólicos y fármaco dependientes.

e) La ayuda para servicios funerarios.

f) Orientación social, educación o capacitación para el trabajo. Entendiéndose por orientación social la asesoría en materias tales como la familia, la educación, la alimentación, el trabajo y la salud.

La orientación social, comprende entre otras, la atención o la prevención de la violencia intrafamiliar para la eliminación de la explotación económica de los niños o del trabajo infantil peligroso.

g) La promoción de la participación organizada de la población en las acciones que mejoren sus propias condiciones de subsistencia en beneficio de la comunidad.

h) Apoyo en la defensa y promoción de los derechos humanos.

El apoyo en la defensa y promoción de los derechos humanos, comprende también la capacitación, difusión, orientación y asistencia jurídica en materia de garantías individuales, incluyendo la equidad de género o de las prerrogativas inherentes a la naturaleza de la persona, establecidas en la Constitución Política de los Estados Unidos Mexicanos y en las disposiciones legales que de ella emanen, siempre que no impliquen o conlleven acciones de índole político, religioso, o destinadas a influir en la legislación.

EDUCATIVAS (Art. 95 Fracc. X LISR) las organizaciones civiles que deseen constituirse como escuelas (ya sea de nivel básico, medio o superior) deberán tener el siguiente objeto:

Impartir enseñanza en los niveles (señalar los niveles impartidos, por ejemplo: jardín de niños, primaria, secundaria, bachillerato, licenciatura, etc.) **con autorización o con reconocimiento de validez oficial de estudios en los términos de la Ley General de Educación.**

Es importante mencionar que los beneficiarios, en este caso, no están limitados como en las organizaciones asistenciales; sin embargo, si no se cuenta con el reconocimiento de validez de estudios de la SEP, aún cuando las actividades de la organización sean educativas, no podrá autorizarse que ésta reciba donativos deducibles en estos términos.

Si se desean realizar actividades educativas y no se cuenta con el reconocimiento de la SEP, se podría calificar como una organización asistencial, en los términos descritos en el apartado anterior cuando los beneficiarios sean los señalados en ese mismo apartado, o bien, si su propósito es el apoyo a las actividades de educación e investigación artísticas, se podría calificar como una organización con fines culturales en los términos que se describen en un apartado posterior.

INVESTIGACIÓN CIENTÍFICA O TECNOLÓGICA (Art. 95 Fracc. XI). Las organizaciones que deseen dedicarse a la investigación serán susceptibles de autorización siempre que estén debidamente inscritas en el Registro Nacional de Instituciones Científicas y Tecnológicas del Consejo Nacional de Ciencia y Tecnología (CONACYT), y deberán tener por objeto:

La investigación científica o tecnológica, debiendo inscribirse en el Registro Nacional de Instituciones Científicas y Tecnológicas del Consejo Nacional de Ciencia y Tecnología (CONACYT), respecto de las siguientes materias:

Señalar la materia o actividad a investigar

CULTURALES (Art. 95 Fracc. XII LISR). Las organizaciones que deseen constituirse para la realización de actividades de carácter cultural, podrán tener por objeto la realización de todas o algunas de las siguientes actividades, susceptibles de autorización:

- a) La promoción y difusión de música, artes plásticas, artes dramáticas, danza, literatura, arquitectura y cinematografía, conforme a la Ley que crea al Instituto Nacional de Bellas Artes y Literatura, así como a la Ley Federal de Cinematografía.
- b) El apoyo a las actividades de educación e investigación artísticas de conformidad con lo señalado en el inciso anterior.
- c) La protección, conservación, restauración y recuperación del patrimonio cultural de la nación, en los términos de la Ley Federal sobre Monumentos y Zonas Arqueológicas, Artísticas e Históricas y la Ley General de Bienes Nacionales; así como el arte de las comunidades

indígenas en todas las manifestaciones primigenias de sus propias lenguas, los usos y costumbres, artesanías y tradiciones de la composición pluricultural que conforman el país.

d) La instauración y establecimiento de bibliotecas que formen parte de la Red Nacional de Bibliotecas Públicas de conformidad con la Ley General de Bibliotecas.

e) El apoyo a las actividades y objetivos de los museos dependientes del Consejo Nacional para la Cultura y las Artes.

BECANTE (Art. 95 Fracc. XVII y 98 LISR). Las organizaciones que quieran otorgar becas para realizar estudios en México o en el extranjero, lo podrán hacer siempre que las instituciones educativas cuenten con reconocimiento de validez oficial de estudios y la beca se otorgue mediante concurso abierto al público en general. En dicho caso, deberán tener el objeto siguiente:

Otorgar becas para realizar estudios en instituciones de enseñanza que tengan autorización o reconocimiento de validez oficial de estudios en los términos de la Ley General de Educación o, cuando se trate de instituciones del extranjero éstas, estén reconocidas por el Consejo Nacional de Ciencia y Tecnología, las cuales se otorgaran mediante concurso abierto al público en general y se asignarán con base en datos objetivos relacionados con la capacidad académica del candidato.

ECOLÓGICAS (Art. 95 Fracc. XIX LISR). En el caso de las organizaciones que pretendan realizar actividades ecológicas, podrán tener por objeto cualquiera de las siguientes opciones (pueden ser ambas):

- *Primer Supuesto:*

La realización de actividades de investigación o preservación de la flora o fauna silvestre, terrestre o acuática, dentro de las áreas geográficas definidas que señale el Servicio de Administración Tributaria mediante reglas de carácter general. (“Anexo 13” de la RMF vigente)

- *Segundo Supuesto:*

Promover entre la población la prevención y control de la contaminación del agua, del aire y del suelo, la protección al ambiente y la preservación y restauración del equilibrio ecológico.

REPRODUCCIÓN DE ESPECIES EN PELIGRO DE EXTINCIÓN (Art. 95 Fracc. XX LISR). Adicionalmente, dentro de las actividades ecológicas, las organizaciones se podrán constituir para la reproducción de especies en peligro de extinción, lo cual deberán hacer dentro de los límites establecidos por la ley y previa opinión de la SEMARNAT. En este caso el objeto deberá ser:

Dedicarse exclusivamente a la reproducción de (*señalar la especie protegida*), el (la) cual es una especie en protección y peligro de extinción y a la conservación de su hábitat, siempre que se obtenga opinión previa de la Secretaría de Medio Ambiente y Recursos Naturales.

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APOYO ECONÓMICO (Art. 96 LISR) *Las organizaciones que no deseen realizar las actividades que se enlistan aquí, pueden tener por objeto la recaudación de fondos para distribuirlos a otras entidades que sí realicen las actividades antes mencionadas. Para acreditar la realización de dicha actividad bastará con exhibir a las autoridades fiscales un convenio celebrado con alguno de los beneficiarios de los fondos que procuren. En este caso, deberán contar con el siguiente objeto:*

Apoyar económicamente las actividades de personas morales autorizadas para recibir donativos deducibles en los términos de la Ley del impuesto sobre la renta.

OBRAS O SERVICIOS PÚBLICOS (Art. 31, segundo párrafo RLISR y regla 1.3.9.4. de la RMF) *Se puede realizar en este rubro cualquier obra o servicio público, para cuya realización se haya celebrado un convenio de colaboración con algún órgano gubernamental. Los límites a esta actividad quedarán fijados en el propio convenio que se celebre con las autoridades. Las organizaciones que se encuentren en el presente caso, deberán tener el siguiente objeto social:*

Realizar obras o servicios públicos que efectúen o deban efectuar la Federación, Entidades Federativas o Municipios, previo convenio de colaboración con las mismas, enfocadas a las siguientes actividades de desarrollo:

Señalar la obra o servicio público

Se consideran actividades relacionadas con la realización de obras y servicios públicos, las siguientes:

- *Las actividades cívicas de promoción y fomento de la actuación adecuada por parte del ciudadano dentro de un marco legal establecido, asumiendo sus responsabilidades y deberes en asuntos de interés público, siempre que no impliquen o conlleven acciones de proselitismo electoral, índole político partidista o religioso.*
- *El agrupar, representar, prestar servicios y apoyo a organizaciones civiles y fideicomisos autorizados para recibir donativos deducibles.*
- *Las actividades destinadas a la prevención, el auxilio o la recuperación de uno o más miembros de la población ante la eventualidad de un desastre o siniestro.*

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MUSEOS Y BIBLIOTECAS PRIVADOS (Art. 114 RLISR). Para establecer museos y bibliotecas, el objeto deberá ser:

La instauración y establecimiento de bibliotecas y/o museos (señalar las características del museo o biblioteca) que se encuentren abiertos al público en general.

Otras Actividades (DENTRO DEL ARTÍCULO SEGUNDO).

Dentro de este mismo artículo segundo de los estatutos, en adición a la descripción del objeto que se haya elegido, se podrán incluir aquellas actividades que, aún y cuando no se consideran vinculadas al rubro susceptible de autorizar, sí se establecen como admisibles, toda vez que permitirán el desarrollo de las actividades de la organización. En este punto es importante que se tenga cuidado en NO incluir actividades que no sean propias de la organización, es decir, que no resulten indispensables para su operación cotidiana o que comprometan el patrimonio de la misma (por ejemplo, garantizar obligaciones de terceros). Para tales efectos se ejemplifican las siguientes a manera de orientación:

OPCIÓN A.

Para efectos de cumplir el objeto social enunciativo y no limitativamente la Asociación (*Sociedad / Fundación / Institución*) podrá realizar:

- I.- Adquirir por cualquier título derechos literarios o artísticos, relacionados con su objeto.
- II.- Obtener por cualquier título, concesiones, permisos autorizaciones o licencias, así como celebrar cualquier clase de contratos, relacionados con el objeto anterior, con la administración pública sea federal o local.
- III.- Emitir, girar endosar, aceptar y suscribir toda clase de títulos de crédito, sin que constituyan una especulación comercial.
- V.- Conferir toda clase de mandatos.
- VI.- Adquirir toda clase de bienes muebles e inmuebles, derechos reales y personales relacionados con su objeto y para ser destinados al desarrollo del mismo.
- VII.- Contratar al personal necesario para el cumplimiento del objeto social.
- VIII.- La organización de cursos, seminarios, pláticas o cualquier evento similar relacionados con su objeto social.
- IX.- Concientizar a las personas sobre la importancia de dar tiempo y esfuerzo en la búsqueda de una mejoría de la calidad de vida a través del voluntariado.
- X.- Solicitar y obtener recursos materiales o económicos de personas, organizaciones, fundaciones, y organismos públicos y privados, para la realización de proyectos de la Asociación (*Sociedad / Fundación / Institución*) encaminados a cumplir con el objeto social.
- XI.- Obtener de los particulares, organismos no gubernamentales o instituciones oficiales y privadas, nacionales o internacionales, la cooperación técnica y económica que requiera el desarrollo del objeto social.
- XII.- Celebrar convenios de colaboración con entidades públicas y privadas, nacionales e internacionales para el cumplimiento de su objeto social.

La Asociación Civil (*Sociedad / Fundación / Institución*) no persigue fines de lucro y las actividades que tendrán como finalidad primordial

el cumplimiento de su objeto social, por lo que no podrá intervenir en campañas políticas ni en actividades de propaganda o destinadas a influir en la legislación; no se considera que influye en la legislación la publicación de un análisis o de una investigación que no tenga carácter proselitista o la asistencia técnica a un órgano gubernamental que lo hubiere solicitado por escrito.

OPCIÓN B.

Para efectos de cumplir con el objeto social (*la asociación civil, sociedad civil, fundación o institución*), podrá realizar todos los actos y actividades que sean necesarios para la subsistencia de la misma y el cumplimiento de los fines para los que se constituye.

La Asociación Civil (Sociedad / Fundación / Institución) no persigue fines de lucro y las actividades que tendrán como finalidad primordial el cumplimiento de su objeto social, por lo que no podrá intervenir en campañas políticas ni en actividades de propaganda o destinadas a influir en la legislación; no se considera que influye en la legislación la publicación de un análisis o de una investigación que no tenga carácter proselitista o la asistencia técnica a un órgano gubernamental que lo hubiere solicitado por escrito.

- *Domicilio*

Lo relativo al domicilio, no es valorado para efectos de la autorización, sin embargo deberá considerar que la organización debe estar inscrita ante el Registro Federal de Contribuyentes (RFC), manifestando un domicilio fiscal cierto y comprobable, y en su caso los establecimientos con los que cuenten distintos del domicilio fiscal, de conformidad con lo establecido en los artículos 27 del CFF, 96 y 97 de la LISR, respecto de la información que deben proporcionar a terceros que lo soliciten.

ARTÍCULO TERCERO.- La asociación (*Sociedad / Fundación / Institución*) tiene su domicilio en _____ (aquí se pone el nombre de una ciudad; esto determinará en qué lugar deben celebrarse las asambleas y en que registro deben anotarse los actos corporativos)_ pudiendo establecer oficinas o representaciones en cualquier parte del país.

- Duración

ARTÍCULO CUARTO.- La duración de la asociación será de NOVENTA Y NUEVE AÑOS, contados a partir de la fecha de firma de este instrumento (la duración puede ser menor o, incluso, indefinida).

- Cláusula de Admisión o Exclusión de extranjeros

La decisión entre una y otra depende de si existirá o no la posibilidad de que ingresen extranjeros a la organización (en este respecto es importante mencionar que en caso de que se desee obtener la inscripción de la organización en el Registro Federal de Organizaciones de la Sociedad Civil, sus órganos de administración y representación deberán estar integrados mayoritariamente por ciudadanos mexicanos). Cualquiera de las dos sería correcta:

OPCIÓN A: CLÁUSULA DE ADMISIÓN

ARTÍCULO QUINTO.- Los asociados (socios / miembros / integrantes / etc.) extranjeros actuales o futuros, se obligan ante la Secretaría de Relaciones Exteriores en considerarse como nacionales respecto de las partes sociales o derechos que adquieran en la presente Asociación (Sociedad / Fundación / Institución) de los bienes, derechos, concesiones, participaciones o intereses de que sea titular la sociedad y de los derechos y obligaciones que deriven de los contratos en que sea parte la presente sociedad, por lo cual no invocarán la protección de sus gobiernos, bajo la pena de perder en beneficio de la nación mexicana los bienes y derechos que hubieren adquirido.

Lo anterior en términos de la fracción primera del artículo veintisiete constitucional, del artículo décimo quinto de la Ley de Inversión Extranjera y del artículo catorce del Reglamento de la Ley de Inversión Extranjera y del Registro Nacional de Inversiones Extranjeras.

OPCIÓN B: CLÁUSULA DE EXCLUSIÓN

ARTÍCULO QUINTO.- La asociación adopta la cláusula de exclusión de extranjeros, por lo que los asociados (socios / miembros / integrantes / etc.) convienen en que la asociación (Sociedad / Fundación / Ins-

titución) no admitirá directa ni indirectamente como asociados (socios / miembros / integrantes / etc.) a inversionistas extranjeros ni a sociedades o asociaciones con cláusula de admisión de extranjeros.

- *Patrimonio*

ARTÍCULO SEXTO.- El patrimonio de la asociación se compondrá de:

- I. Las cuotas, aportaciones o cooperaciones de cualquier especie, ordinarias o extraordinarias de los (asociados, socios, miembros, integrantes, etc.) que al efecto establezca la Asamblea de Asociados. (socios / miembros / integrantes / etc.) Las cuotas de recuperación que se establezcan en el ejercicio y desarrollo de su objeto.
- II. Los donativos que reciba.
- III. De los apoyos o estímulos que reciba.
- IV. Realización de rifas o sorteos.
- V. Cualquier otro ingreso que se vincule con su objeto social y que legalmente pueda proporcionarse.

Las actividades anteriores, son opcionales para las organizaciones civiles, ya que pueden incluir o suprimir algunas otras actividades, siempre que sean llevadas a cabo por la organización.

Se debe incluir una de las tres opciones que se enlistan a continuación dentro del artículo de patrimonio y ésta debe constar de manera irrevocable.

A continuación se mostrarán tres (3) modelos de redacción relativas al patrimonio:

a. PROPUESTA DE REDACCIÓN PARA ORGANIZACIONES AUTORIZADAS PARA EXPEDIR RECIBOS DEDUCIBLES DEL IMPUESTO SOBRE LA RENTA

El patrimonio de la organización, se destinará exclusivamente a los fines propios de su persona física alguna o a sus integrantes personas físicas o morales, salvo que se trate, en este último caso de alguna persona moral autorizada para recibir donativos deducibles en términos de la Ley del Impuesto sobre la Renta o se trate de la remuneración de servicios efectivamente recibidos. Lo estipulado en la presente disposición es de carácter irrevocable.

b. PROPUESTA DE REDACCIÓN PARA ORGANIZACIONES QUE SE VAYAN A INSCRIBIR EN EL REGISTRO FEDERAL DE LAS OSC Y AUTORIZADAS PARA EXPEDIR RECIBOS DEDUCIBLES DEL IMPUESTO SOBRE LA RENTA

El patrimonio de la asociación, incluyendo los apoyos y estímulos públicos que reciba, se destinará exclusivamente a los fines propios de su objeto social, no pudiendo otorgar beneficios sobre el remanente distribuible a persona física alguna o a sus integrantes personas físicas o morales, salvo que se trate, en este último caso de alguna persona moral autorizada para recibir donativos deducibles en términos de la Ley del Impuesto sobre la Renta o se trate de la remuneración de servicios efectivamente recibidos. La asociación no deberá distribuir entre sus asociados, remanentes de los apoyos y estímulos públicos que reciba. Lo estipulado en la presente disposición es de carácter irrevocable.

c. PARA EL CASO INSTITUCIONES DE ASISTENCIA PRIVADA, AUTORIZADAS PARA RECIBIR DONATIVOS DEDUCIBLES DEL IMPUESTO SOBRE LA RENTA QUE SE VAYAN A INSCRIBIR EN EL REGISTRO FEDERAL DE LAS OSC

El patrimonio de la institución, incluyendo los apoyos y estímulos públicos que reciba, se destinará exclusivamente a los fines propios de su objeto social, no pudiendo otorgar beneficios sobre el remanente distribuible a persona física alguna o a sus integrantes personas físicas o morales, salvo que se trate, en este último caso de alguna persona moral autorizada para recibir donativos deducibles en términos de la Ley del Impuesto sobre la Renta o se trate de la remuneración de servicios efectivamente recibidos.

La institución no deberá distribuir entre sus asociados, remanentes de los apoyos y estímulos públicos que reciba. Lo estipulado en la presente disposición es de carácter irrevocable.

Respecto de estos puntos, lo que deberá cuidar al momento de constituirse o bien de redactar sus estatutos sociales, es que de conformidad con la cláusula de patrimonio es una obligación el hecho de que ningún socio, asociado, integrante o cualquier otra persona física o moral pueda recibir beneficio alguno sobre el patrimonio de la Asociación (Sociedad / Fundación / Institución).

ARTÍCULO SÉPTIMO.- Son (asociados, socios, miembros, integrantes, etc.) los otorgantes del presente instrumento y aquéllos otros que la asamblea de asociados (socios / miembros / integrantes / etc.) admita con posterioridad. La calidad de asociado (socio, miembro, integrante, etc.) es intransferible.

ARTÍCULO OCTAVO.- En caso de fallecimiento de alguno de los (asociados, socios, miembros, integrantes, etc.) la (Asociación / Sociedad / Fundación / Institución) continuará con los sobrevivientes. **Los herederos o legatarios no tendrán derecho a la devolución de las aportaciones realizadas por el socio fallecido.**

ARTÍCULO NOVENO.- En ningún caso, los (asociados / socios / miembros / integrantes / etc.) tendrán derecho a recuperar sus aportaciones (cuotas, etc.).

- *Causas de exclusión: Pueden agregarse otros motivos.*

ARTÍCULO DÉCIMO.- Los asociados (socios / miembros / integrantes / etc.) pueden ser excluidos:

- I.- Por comisión de hechos fraudulentos o dolosos contra la asociación (Sociedad / Fundación / Institución).
- II.- Por incapacidad declarada judicialmente.

ARTÍCULO DÉCIMO PRIMERO.- La (Asociación / Sociedad / Fundación / Institución) llevará un libro de registro de asociados, (socios / miembros / integrantes / etc.) en el cual se inscribirán el nombre y el domicilio de cada uno, con indicación de sus aportaciones, en su caso. Este libro estará al cuidado del director o consejo de directores, que responderán de su existencia y de la exactitud de sus datos.

- *Asamblea de Asociados: lo importante es que se celebre cuando menos una vez al año*

ARTÍCULO DÉCIMO SEGUNDO.- La asamblea de (asociados, socios, miembros, integrantes, etc.) es el órgano supremo de la asociación (Sociedad / Fundación / Institución).

ARTÍCULO DÉCIMO TERCERO.- Las asambleas se celebrarán cuando menos una vez al año, en el domicilio social o en el lugar que la asamblea determine.

ARTÍCULO DÉCIMO CUARTO.- Las convocatorias para asambleas deberán ser hechas por (.....), cuando menos (.....) días antes de la fecha señalada para la reunión. Dicha convocatoria la harán cuando lo juzguen conveniente o cuando se los pida cuando menos el cinco por ciento de los asociados. (*socios / miembros / integrantes / etc.*)

En este último caso, rehusaren hacer la convocatoria, la hará el juez de lo civil a petición de dichos asociados. (*socios / miembros / integrantes / etc.*)

ARTÍCULO DÉCIMO QUINTO.- Las convocatorias deberán enviarse mediante (.....) y deberán indicar la fecha, hora y el lugar de la reunión e incluir la orden del día, anunciando los asuntos que la asamblea deba resolver.

ARTÍCULO DÉCIMO SEXTO.- Si todos los asociados (*socios / miembros / integrantes / etc.*) estuvieren presentes no será necesaria la convocatoria, pero previamente a la discusión de los asuntos, los asociados (*socios / miembros / integrantes / etc.*) deberán aprobar, por unanimidad, la orden del día.

ARTÍCULO DÉCIMO SEPTIMO.- Para que una asamblea se considere válidamente reunida deberá convocarse de acuerdo con lo que establecen los presentes estatutos y se considerará legalmente instalada con los presentes o representados cualquiera que sea su número.

En las asambleas actuarán como presidente y secretario las personas que designen los asociados. (*socios / miembros / integrantes / etc.*)

ARTÍCULO DÉCIMO OCTAVO.- Las resoluciones de la asamblea se tomarán por mayoría de votos, siendo éste el 75 por ciento de los presentes.

ARTÍCULO DÉCIMO NOVENO.- En las asambleas cada asociado tendrá derecho a voto.

Las Asambleas podrán ser ordinarias y extraordinarias. Las asambleas ordinarias se celebrarán cada (.....) y resolverán temas tales como (.....); y las asambleas extraordinarias cuando el caso lo requiera.

ARTÍCULO VIGÉSIMO.- Los (asociados, socios, miembros, integrantes, etc.) tendrán obligación de asistir a las asambleas personalmente o a través de la representación de un tercero (.....)

ARTÍCULO VIGÉSIMO PRIMERO.- De cada asamblea se levantará acta que deberá contener la fecha, hora y lugar de la reunión, los nombres de los asistentes, la orden del día y el desarrollo de la misma.

Las actas deberán ser firmadas por quienes hayan actuado como presidente y secretario.

- *Administración:*

Las personas morales son gobernadas por medio de órganos internos; en particular, el órgano de administración se encarga de tomar las decisiones del día a día: administrar recursos, pagar por servicios, revisar gastos, etc.; en cambio, corresponde a la Asamblea, tomar aquellas decisiones fundamentales, por ejemplo: disolución de la persona moral, aceptación de socios o asociados.

El órgano de administración puede ser único (integrado por una persona) o colegiado (integrado por dos o más personas). Es importante mencionar que para recibir donativos deducibles en el extranjero (para efectos de los tratados internacionales), es necesario contar con una administración a cargo de un órgano colegiado que represente el interés general, en lugar del interés particular o privado de un número limitado de donantes o personas relacionadas con esos donantes.

ARTÍCULO VIGÉSIMO SEGUNDO.- La administración de la (Asociación / Sociedad / Fundación / Institución) estará a cargo de (Consejo Directivo / Mesa Directiva...).

Por lo que respecta a la celebración de las Asambleas Generales Ordinarias y/o Extraordinarias, podrá señalar el quórum mínimo de asistencia, votación y en su caso la celebración de las mismas.

En principio el representante de la persona moral es el órgano de administración, pero pueden existir otras personas que no formen parte de dicho órgano y se les otorgue un poder para representar a la persona moral con los límites que al efecto se establezcan:

Es importante señalar, que para efectos de reconocer la representación legal del promovente ante esta autoridad respecto de la autorización para recibir donativos deducibles, deberá acreditar que le fue conferido un poder para actos de administración o de dominio.

ARTÍCULO VIGÉSIMO TERCERO. - El (.....) tendrá la representación legal de la asociación, (*Sociedad / Fundación / Institución*) y gozarán de los poderes y facultades siguientes, los cuales podrán ser limitados por la asamblea.

- I.- Poder general para pleitos y cobranzas, con todas las facultades generales y aún con las especiales que de acuerdo con la Ley requieran poder o cláusula especial, en los términos del párrafo primero del artículo dos mil quinientos cincuenta y cuatro del Código Civil.

De manera enunciativa y no limitativa se mencionan entre otras facultades las siguientes:

- A).- Para intentar y desistirse de toda clase de procedimientos, inclusive amparo.
- B).- Para transigir.
- C).- Para comprometer en árbitros.
- D).- Para absolver y articular posiciones.
- E).- Para recusar.
- F).- Para hacer cesión de bienes.
- G).- Para recibir pagos.
- H).- Para presentar denuncias y querellas en materia penal y para desistirse de ellas cuando lo permita la ley.
- II.- Poder general para actos de administración en los términos del párrafo segundo del citado artículo.
- III.- Poder general para actos de dominio, de acuerdo con el párrafo tercero del mismo artículo.
- IV.- Poder para otorgar y suscribir títulos de crédito, en los términos del artículo noveno de la Ley General de Títulos y Operaciones de Crédito.
- V.- Facultad para otorgar poderes generales y especiales y para revocar unos y otros. Queda facultado para autorizar a los apoderados, para que a su vez, otorguen o revoquen poderes, inclusive con la presente facultad.

VI.- Las facultades a que aluden los incisos anteriores se ejercerán ante particulares y ante toda clase de autoridades administrativas o judiciales, locales o federales y ante las Juntas de Conciliación y Arbitraje, locales o federales y autoridades de trabajo.

Para el otorgamiento de poderes, es importante tomar en cuenta que no deberán incluirse facultades que impliquen el desvío del patrimonio a fines distintos al del objeto social, por ejemplo, garantizar obligaciones de terceros, constituirse como obligados solidarios, avalar títulos de crédito, otorgar préstamos, llevar a cabo contratos de mutuo, etc.

ARTÍCULO VIGÉSIMO CUARTO.- Los ejercicios sociales correrán del primero de enero al treinta y uno de diciembre de cada año.

ARTÍCULO VIGÉSIMO QUINTO.- El estado financiero anual se practicará al final de cada ejercicio y deberá concluirse dentro del mes siguiente a la clausura del mismo, quedando como los demás documentos a disposición de los asociados. (*socios / miembros / integrantes / etc.*)

- *Disolución: Pueden incluirse más causas que estas.*
- *Liquidación:*

ARTÍCULO VIGÉSIMO SÉPTIMO.- Disuelta la (Asociación / Sociedad / Fundación / Institución) se pondrá en liquidación y la asamblea nombrará uno o varios liquidadores quienes gozarán de las mismas facultades que en estos estatutos se confieren al director o al consejo de directores.

ARTÍCULO VIGÉSIMO OCTAVO.- La liquidación se practicará de acuerdo con las bases siguientes:

- I.- Se continuarán las operaciones pendientes de la manera más conveniente a la Asociación, (Sociedad / Fundación / Institución) cobrando los créditos y pagando las deudas.
- II.- Se formulará el estado financiero de liquidación, el cual deberá ser aprobado por la asamblea.

En este apartado se sugieren tres cláusulas referentes al requisito de liquidación y debe incluirse una de manera irrevocable:

a. PROPUESTA DE REDACCIÓN PARA ORGANIZACIONES AUTORIZADAS PARA EXPEDIR RECIBOS DEDUCIBLES DEL IMPUESTO SOBRE LA RENTA

La Asociación, (Sociedad / Fundación / Institución) al momento de su liquidación y con motivo de la misma, destinará la totalidad de su patrimonio a personas morales autorizadas para recibir donativos deducibles del Impuesto sobre la Renta. Lo estipulado en la presente disposición es de carácter irrevocable.

b. PROPUESTA DE REDACCIÓN PARA ORGANIZACIONES INSCRITAS EN EL REGISTRO FEDERAL DE LAS OSC Y AUTORIZADAS PARA EXPEDIR RECIBOS DEDUCIBLES DEL IMPUESTO SOBRE LA RENTA

Liquidada la asociación, la totalidad de su patrimonio, incluyendo los apoyos y estímulos públicos, se destinará a personas morales autorizadas para recibir donativos deducibles del Impuesto sobre la Renta que se encuentren inscritas en el Registro Federal de las Organizaciones de la Sociedad Civil. Lo estipulado en la presente disposición es de carácter irrevocable.

Otra Opción para la cláusula de liquidación puede ser:

En caso de disolución y liquidación, el Patrimonio de la Asociación será destinado en su totalidad a una o varias instituciones autorizadas para recibir donativos deducibles en los términos de la Ley del Impuesto Sobre la Renta, en la inteligencia de que los bienes adquiridos con apoyos y estímulos públicos, así como en su caso, los remanentes de dichos apoyos y estímulos, se destinarán a una o varias instituciones autorizadas para recibir donativos deducibles en los términos de la Ley del Impuesto Sobre la Renta que se encuentren inscritas en el Registro Federal de las Organizaciones de la Sociedad Civil. Lo estipulado en la presente disposición es de carácter irrevocable.

c. PARA EL CASO INSTITUCIONES DE ASISTENCIA PRIVADA, AUTORIZADAS PARA RECIBIR DONATIVOS DEDUCIBLES DEL IMPUESTO SOBRE LA RENTA INSCRITAS EN EL REGISTRO FEDERAL DE LAS OSC

En caso de liquidación de la Institución, la totalidad del patrimonio de la misma se destinará a otra Institución de Asistencia Privada con fines análogos o a otra que se constituya, que estén autorizadas para recibir donativos deducibles para efectos del Impuesto sobre la Renta, que se encuentren inscritas en el Registro Federal de las Organizaciones de la Sociedad Civil de acuerdo con lo que determine la Junta de Asistencia Privada conforme a la Ley de Instituciones de Asistencia Privada para el Distrito Federal. La disposición contenida en este párrafo es de carácter irrevocable. (ésta redacción deberá adecuarse de conformidad con las disposiciones locales de las juntas de asistencia privada en los Estados).

TRANSITORIOS

PRIMERO.- Los comparecientes de este instrumento acuerdan: Confiar la Administración de la (*Asociación / Sociedad / Fundación / Institución*) y para tales efectos designan al señor (_____) quién contará con las facultades otorgadas en el artículo (____) de los presentes estatutos.

ANNEX 6

Recomendaciones para acreditar la actividad por la que solicitará autorización para recibir donativos deducibles de impuestos

¿Qué es un acreditamiento? Es un documento emitido por una entidad gubernamental competente que haga constar las actividades por la cuales se solicita la autorización.

Concepto	Descripción
Asistenciales	Tratándose de Asociaciones o Sociedades Civiles, constancia emitida por la Indesol, Sedesol, DIF o entidad estatal o municipal competente, tratándose de ABP, IAP IBP o FBP Inscripción ante la Junta de Asistencia Privada u órgano análogo o en su defecto inclusión en los Estatutos Sociales de dicha inscripción.
Educativas	Autorización o Reconocimientos de Validez Oficial de estudios en términos de la Ley General de Educación, por cada nivel educativo que se imparta y de los que se solicite autorización. Para obtener información sobre el RVOE ingrese a la siguiente página electrónica: http://www.dges.com.mx/rvoe/nueva-solicitud.php
Investigación científica y tecnológica	Constancia de Inscripción al Registro Nacional de Empresas Científicas y Tecnológicas del Consejo Nacional de Ciencia y Tecnología (Conacyt). Ver Anexo 6 A o ingrese a la siguiente página electrónica: http://www.conacyt.gob.mx/registros/reniecyt/Paginas/default.aspx
Cultural	Para realización de actividades de promoción de música, artes plásticas, artes dramáticas, danza, literatura, arquitectura y cinematografía, constancia expedida por el Consejo Nacional para la Cultura y las Artes (Conaculta), Instituto Nacional de Bellas Artes y Literatura (INBA), Instituto Nacional de Antropología e Historia (INAH) u órganos estatales o municipales competentes.
Cultural	Para la realización de actividades de investigación artísticas, constancia expedida por el Consejo Nacional para la Cultura y las Artes (Conaculta), Instituto Nacional de Bellas Artes y Literatura (INBA), Instituto Nacional de Antropología e Historia (INAH) u órganos estatales competentes.
Cultural	Para protección, conservación, restauración y recuperación del patrimonio cultural de la Nación, en términos de la Ley Federal sobre Monumentos y Zonas Arqueológicas, Artísticas e Históricas y la Ley General de Bienes Nacionales constancia expedida por el Instituto Nacional de Bellas Artes y Literatura (INBA), Instituto Nacional de Antropología e Historia (INAH). Arte de las comunidades indígenas en todas las manifestaciones primigenias de sus propias lenguas, constancia expedida por el Consejo Nacional para la Cultura y las Artes (Conaculta), Instituto Nacional de Bellas Artes y Literatura (INBA), Instituto Nacional de Antropología e Historia (INAH) u órganos estatales competentes.

Concepto	Descripción
Cultural	Para la instauración y establecimiento de bibliotecas que formen parte de la Red Nacional de Bibliotecas Públicas, constancia expedida por el Consejo Nacional para la Cultura y las Artes (Conaculta).
Cultural	Para apoyo a las actividades y objetivos de museos dependientes del Consejo Nacional para la Cultura y las Artes, constancia expedida por el Consejo Nacional para la Cultura y las Artes (Conaculta).
Ecológica de investigación o preservación	Constancia emitida por la Secretaría de Medio Ambiente y Recursos Naturales, (Semarnat), en la que se hagan constar las actividades en las zonas geográficas establecidas por el S.A.T. a través del "Anexo 13" de la Resolución Miscelánea Fiscal publicado el 28 de abril de 2006, prorrogado el 29 de abril de 2009 hasta nueva publicación.
"Anexo 13"	En él encontrará las áreas geográficas definidas por el SAT donde se podrán llevar a cabo las actividades de investigación o preservación de la flora y fauna silvestres, terrestres o acuáticas.
Ecológica de prevención y control	Constancia expedida por la Secretaría de Medio Ambiente y Recursos Naturales u organismos estatales o municipales en materia ecológica.
Reproducción de especies en protección y peligro de extinción	Secretaría de Medio Ambiente y Recursos Naturales, (Semarnat)
Donatarias autorizadas	Convenio de apoyo celebrado con la Donataria o Donatarias Autorizadas para Recibir Donativos Deducibles, susceptible(s) de recibir dicho beneficio.
Obras o servicios públicos	De apoyo en obras y servicios públicos. Convenio de participación y apoyo celebrado con la dependencia gubernamental en el que se establezca la obra o servicio público a realizar.

Concepto	Descripción
Becantes	Inclusión en los Estatutos Sociales o Reglamento de becas, donde establezca que las becas se otorgan para estudiar en Instituciones de enseñanza con autorización o reconocimiento de validez oficial de estudios en términos de la Ley General de Educación, en caso de estudios en el extranjero, estén reconocidas por el Consejo Nacional de Ciencia y Tecnología (Conacyt), asimismo, se establezca que dichas becas se otorguen mediante concurso abierto al público en general y su asignación se base en datos objetivos relacionados con la capacidad académica del candidato.
Biblioteca o museo privado	Oficio emitido por el Consejo Nacional para la Cultura y las Artes (Conaculta), organismo estatal o municipal, que establezca que dicho museo se encuentra abierto al público en general.

Fuente: http://www.sat.gob.mx/sitio_internet/servicios/donatarias/autorizadas/default.asp
[Consultado 14 de junio de 2012].

ANNEX 6 A

Cómo obtener el RENIECYT

¿Qué es el RENIECYT?

El Registro Nacional de Instituciones y Empresas Científicas y Tecnológicas es un instrumento de apoyo a la investigación científica, el desarrollo tecnológico y la innovación del país a cargo del CONACYT a través del cual identifica a las instituciones, centros, organismos, empresas y personas físicas o morales de los sectores público, social y privado que llevan a cabo actividades relacionadas con la investigación y el desarrollo de la ciencia y la tecnología en México.

RENIECYT constituye una base de datos sobre las empresas, instituciones y personas inscritas, esta se publica (con las reservas de la información identificada como confidencial) en el Sistema Integrado de Información Científica y Tecnológica respecto a su conformación por grupos y entidad federativa se puede consultar aquí.

¿Quiénes pueden inscribirse?

Aquellas instituciones públicas y privadas, centros, organismos, empresas y personas físicas, nacionales o con residencia en México, que tengan vinculación o que realicen actividades de investigación científica y tecnológica, desarrollo tecnológico y producción de ingeniería básica o productos de base tecnológica. Conoce el Proceso de Inscripción al RENIECYT.

¿Qué beneficios se obtiene?

Los inscritos podrán participar en los programas de apoyo y estímulo que derivan de los ordenamientos federales sujetos al cumplimiento de los requisitos y condiciones que se establezcan para cada caso en la normatividad.

¿Tiene algún costo?

La inscripción es gratuita y se tramita vía internet, para lo cual es recomendable que consulte los requerimientos técnicos que optimizan su operación.

¿Conoce los requisitos de inscripción?

Tanto los requisitos de inscripción como los formatos de la solicitud se encuentran diferenciados por tipo de institución y por tamaño de empresa, estos los pueden consultar en Criterios de Aceptación

¿Cuánto tiempo se tarda en obtener el Registro?

Si cumple con los requerimientos establecidos en las Bases de Organización y funcionamiento del RENIECYT, y los criterios de aceptación, tendrá información de su solicitud en un plazo de seis días hábiles a la fecha de recibida su solicitud en RENIECYT.

¿Vigencia del Registro?

La inscripción tiene una vigencia de 3 años y transcurrido ese plazo se deberá actualizar la información contenida en su solicitud y realizar el envío para iniciar el trámite de reinscripción.

Durante los 3 años de vigencia de la inscripción, la aplicación informática permite en cualquier momento actualizar la información.

Proceso de Inscripción

Se ingresa a la siguiente página que informa sobre el Reniecyt: <http://www.conacyt.gob.mx/registros/reniecyt/Paginas/default.aspx>

En ella después de la información general se señala el enlace *Inicie su registro*, a través de él se ingresa a la siguiente página:

http://wmain.main.conacyt.mx/pls/enruta_url/cyt_nusuario.enrutar

- En caso de contar con el CVU (número interno del CONACYT utilizado para identificar a sus usuarios) pero si se tienen problemas de acceso o pérdida de la contraseña se puede comunicar con personal del área de soporte técnico.
- En caso de no contar con el número CVU, se registra como nuevo usuario, en este caso se debe registrar el titular, el representante legal o el enlace designado con el Reniecyt.

Posteriormente de obtener la clave de acceso y contraseña para ingresar al CVU se ingresa a la página principal del Reniecyt y por medio de la liga *Ingrese su clave de acceso* se accede al ingreso de los datos del CVU. Al ingresar a dicha página se completa la solicitud y se envía, tarda 5 días hábiles para conocer la respuesta.

ANNEX 7

Directorio de entidades que emiten documentación adicional

Directorio de principales autoridades federales que emiten el documento que acredita las actividades de las organizaciones civiles que desean solicitar la autorización para recibir donativos deducibles de impuestos

Entidades gubernamentales federales

Actividad	Dependencia	Teléfono	Página Web	Representaciones
Asistencial	Secretaría de Desarrollo Social	5328-5000	www.sedesol.gob.mx	Distrito Federal y representaciones en cada entidad federativa
	Desarrollo Integral para la Familia	5601-2222	www.dif.gob.mx	Distrito Federal y representaciones en cada entidad federativa y municipios
	Instituto Nacional de Desarrollo Social	5554-0390	www.indesol.gob.mx	Distrito Federal
	Secretaría de Salud	5553-6888	www.ssa.gob.mx	Distrito Federal y representaciones en cada entidad federativa y municipio
	Centro para la Prevención y Control de VIH/SIDA e Infecciones de Transmisión Sexual	5528-4848	www.ssa.gob.mx/conasida/index.htm	Distrito Federal
	Comisión Nacional de Derechos Humanos	5681-8125	www.cndh.org.mx	Distrito Federal y representaciones en cada entidad federativa
	Instituto Nacional de las Mujeres	5322-4200	www.inmujeres.gob.mx	Distrito Federal y representaciones en cada entidad federativa

Actividad	Dependencia	Teléfono	Página Web	Representaciones
Asistencial	Instituto Nacional de las Personas Adultas Mayores	5536-1143	www.inapam.gob.mx	Distrito Federal y representaciones en cada entidad federativa
	Instituto Nacional para la Educación de los Adultos	5241-2700	www.inea.sep.gob.mx	Distrito Federal y representaciones en cada entidad federativa
	Instituto Nacional Indigenista	5651-3199	www.ini.gob.mx	Distrito Federal
Educativa	Comisión Nacional para el Desarrollo de los Pueblos Indígenas	9183-2100	www.cdi.gob.mx	Distrito Federal y representaciones en cada entidad federativa
	Secretaría de Educación Pública	9179-6000	www.sep.gob.mx	Distrito Federal y representaciones en cada entidad federativa
Investigación científica o tecnológica	Consejo Nacional de Ciencia y Tecnología	5327-7400	www.conacyt.mx	Distrito Federal y representaciones en cada entidad federativa
	Consejo Nacional para la Cultura y las Artes	5662-3432	www.cnca.gob.mx	Distrito Federal
Cultural	Instituto Nacional de Antropología e Historia	5533-2264	www.inah.gob.mx	Distrito Federal y representaciones en cada entidad federativa
	Instituto Nacional de Bellas Artes	5280-8771	www.inba.gob.mx	Distrito Federal

Actividad	Dependencia	Teléfono	Página Web	Representaciones
Ecológica (investigación o preservación ecológica)	Secretaría de Medio Ambiente y Recursos Naturales	5628-0600	www.semarnat.gob.mx	Distrito Federal y representaciones en cada entidad federativa
	Comisión Nacional de Áreas Naturales Protegidas	5449-7000	www.conanp.gob.mx	Distrito Federal
	Comisión Nacional Forestal	(33) 3777-7077	www.conafor.gob.mx	Jalisco
	Instituto Nacional de Ecología	5424-6400	www.ine.gob.mx	Distrito Federal y representaciones en cada entidad federativa
	Instituto Mexicano de Tecnología del Agua	(777) 329-3600	www.imta.gob.mx	Morelos
	Procuraduría Federal de Protección al Medio Ambiente	5449-6300	www.profepa.gob.mx	Distrito Federal
	Comisión Nacional para el Conocimiento y Uso de la Biodiversidad	5004-5000	www.conabio.gob.mx	Distrito Federal
Ecológica (Prevención y control ecológicos)	Secretaría de Medio Ambiente y Recursos Naturales	5628-0600	www.semarnat.gob.mx	Distrito Federal y representaciones en cada entidad federativa
	Comisión Nacional de Áreas Naturales Protegidas	5449-6003	www.conanp.gob.mx	Distrito Federal
	Instituto Mexicano de Tecnología del Agua	(777) 329-3600	www.imta.gob.mx	Morelos

Actividad	Dependencia	Teléfono	Página Web	Representaciones
	Instituto Nacional de Ecología	5424-6400	www.ine.gob.mx	Distrito Federal y representaciones en cada entidad federativa.
	Comisión Nacional Forestal	(33) 3777-7077	www.conafor.gob.mx	Jalisco
	Comisión Nacional de Áreas Naturales Protegidas	5449-7000	www.conanp.gob.mx	Distrito Federal
Ecológica (Prevención y control ecológicos)	Comisión Nacional del Agua	5174-4000	www.conagua.gob.mx	Distrito Federal y representaciones en cada entidad federativa.
	Procuraduría Federal de Protección al Medio Ambiente	5449-6300	www.profepa.gob.mx	Distrito Federal
	Comisión Nacional para el Conocimiento y Uso de la Biodiversidad	5004-5000	www.conabio.gob.mx	Distrito Federal
Reproducción de especies en protección y peligro de extinción	Secretaría de Medio Ambiente y Recursos Naturales	5628-0600	www.semarnat.gob.mx	Distrito Federal y representaciones en cada entidad federativa.
Bibliotecas y museos privados abiertos al público en general	Consejo Nacional para la Cultura y las Artes	5662-3432	www.cnca.gob.mx	Distrito Federal

Entidades gubernamentales estatales y municipales

Actividad	Dependencia	Teléfono	Página Web	Representaciones
Asistencial	Desarrollo Integral de la Familia Estatal o Municipal	Consulte en su localidad		
	Junta de Asistencia Privada de Campeche	(01981) 8116204		Campeche
	Junta de Beneficencia Privada del Estado de Chihuahua	(01614) 2016900 al 03	www.chihuahua.gob.mx/jap	Chihuahua
	Junta de Asistencia Privada del Estado de Colima	(01312) 3120934, 3145519 Y 3145819	www.japcolima.org	Colima
	Junta de Asistencia Privada del Distrito Federal	(0155) 52797272	www.jap.org.mx	Distrito Federal
	Junta de Asistencia Privada del Estado de México	(01722) 2777290, 2777291	www.edomex.gob.mx	Estado de México
	Junta de Asistencia Privada del Estado de Guerrero	(01747) 4714186 Y 4723405		Guerrero
	Junta General de Asistencia en el Estado de Hidalgo	(01771) 7185205 Y 7184838	www.montepiopachuca.com	Hidalgo

Actividad	Dependencia	Teléfono	Página Web	Representaciones
Asistencial	Instituto Jalisciense de Asistencia Social	(01333) 8195300, 8237312		Jalisco
	Junta de Asistencia Privada del Estado de Michoacán	(01443) 3175256, 3137388		Michoacán
	Junta de Beneficencia Privada del Estado de Nuevo León	(0181) 20202020 ext. 2058	www.jbpnl.org	Nuevo León
	Junta para el Cuidado de las Instituciones de Beneficencia	(01222) 23117408		Puebla
	Junta de Asistencia Privada del Estado de Querétaro	(01442) 2232364, 2132606		Querétaro
	Junta de Asistencia Privada del Estado de Quintana Roo	(01983) 8330836, 8331715	www.japqroo.org.mx	Quintana Roo
Asistencial	Junta de Asistencia Privada de Sinaloa	(01667) 7155729, 7156950	www.japsinaloa.org.mx	Sinaloa
	Junta de Asistencia Privada del Estado de Sonora	(01662) 1110417, 2108340		Sonora

Actividad	Dependencia	Teléfono	Página Web	Representaciones
Asistencial	Organismos estatales y municipales competentes en materia asistencial			
Educativa	Organismos estatales competentes en materia educativa			
Cultural	Organismos estatales y municipales competentes en materia cultural			
Ecológica (prevención y control ecológico)	Organismos estatales y municipales competentes en materia ecológica.			
			www.gob.mx Para consultar páginas de Internet de las 32 entidades federativas.	

ANNEX 8

Solicitud de autorización para recibir donativos deducibles del impuesto sobre la renta

SOLICITUD DE AUTORIZACIÓN PARA RECIBIR DONATIVOS DEDUCIBLES DEL IMPUESTO SOBRE LA RENTA

LUGAR Y FECHA: _____

ASUNTO:

SE SOLICITA AUTORIZACIÓN PARA RECIBIR DONATIVOS DEDUCIBLES.

C. ADMINISTRADOR:¹ _____
PRESENTE.

DENOMINACIÓN O RAZÓN SOCIAL: _____

REGISTRO FEDERAL DE CONTRIBUYENTES: _____

DOMICILIO FISCAL: _____

TELÉFONO y/o FAX: _____

CORREO ELECTRÓNICO: _____

NOMBRE DEL REPRESENTANTE LEGAL Y PERSONAS AUTORIZADAS PARA RECIBIR NOTIFICACIONES: _____

DOMICILIO CONVENCIONAL² (Recibir notificaciones): _____

CUENTA CON ESTABLECIMIENTOS:³

(____) SÍ (____) NO

DOMICILIO Y TELÉFONO DE LOS ESTABLECIMIENTOS:³ _____

SOLICITA AUTORIZACIÓN PARA RECIBIR DONATIVOS DEDUCIBLES EN:

(____) MÉXICO (____) EXTRANJERO (____) MÉXICO Y EXTRANJERO

DESCRIPCIÓN DE LAS ACTIVIDADES U OBJETO (Síntesis):

EN CASO DE SOLICITAR AUTORIZACIÓN POR 2 O MÁS ACTIVIDADES, SEÑALAR LA ACTIVIDAD PREPONDERANTE:⁴

INDICAR SI CON ANTERIORIDAD YA SE LE HABÍA OTORGADO AUTORIZACIÓN Y, EN SU CASO, SI ÉSTA LE FUE REVOCADA:

DOCUMENTACIÓN QUE ACOMPAÑA:

- Copia simple de la escritura constitutiva y/o estatutos⁶
- Copia simple del contrato de fideicomiso⁵
- Copia simple de la(s) modificación(es) a la escritura constitutiva y/o estatutos⁶
- Copia simple del convenio de modificaciones al contrato de fideicomiso
- Copia simple del poder del representante legal⁷
- Copia simple de la identificación oficial del representante legal o apoderado
- Copia simple del documento que acredite la actividad por la que se solicita la autorización que contenga la denominación exacta de la organización⁸
- Otros, especifique:

Nombre y firma del representante legal o del apoderado

INSTRUCTIVO DE LLENADO

- 1 *Administrador Local de Servicios al Contribuyente o Administrador General Jurídico, según corresponda.*
- 2 *Domicilio diferente al domicilio fiscal donde se desea recibir notificaciones respecto al trámite de referencia, en su caso.*
- 3 *Cualquier lugar en el que desarrollen, parcial o totalmente el objeto social o actividades (sucursales, agencias, oficinas, instalaciones) de los cuales se dio aviso de apertura ante el Registro Federal de Contribuyentes.*
- 4 *En el caso de que solicite autorización por dos o más rubros (actividades), se deberá de especificar cuál de ellos lleva a cabo la organización principalmente.*

5 Sólo aplica para fideicomisos.

6 Los Instrumentos Notariales deberán contener los datos de inscripción de la escritura pública en el Registro Público de la Propiedad correspondiente. En caso de que la escritura pública se encuentre en trámite de inscripción en el referido Registro, bastará con que se anexe copia simple de la carta del fedatario público que otorgó la escritura, en la que señale dicha circunstancia.

7 Puede estar incluido en la escritura constitutiva y/o estatutos.

8 Tratándose de solicitud de autorización para recibir donativos deducibles “condicionada” conforme a la regla I.3.9.8., fracción V, inciso a) de la Resolución Miscelánea Fiscal 2012, el solicitante deberá explicar, en su escrito de solicitud los motivos por los que no ha podido obtener el acreditamiento.

9 En el caso de presentar su solicitud de autorización para recibir donativos deducibles en territorio nacional durante el último trimestre del ejercicio, el promovente podrá solicitar expresamente el ejercicio en el que desea se le otorgue la citada autorización, si por el ejercicio en el que presentó su solicitud o por el inmediato posterior. Lo anterior en términos del artículo 36 BIS del CFF y sujeto a los tiempos de atención por parte de la Autoridad competente.

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* Puede consultar la dirección de las Administraciones Locales de Servicios al Contribuyente y los demás requisitos en la página www.sat.gob.mx

Disposiciones jurídicas aplicables

Artículos 18, 18-A, 19 del Código Fiscal de la Federación y 25 de su Reglamento, artículo 2 de la Ley del Impuesto sobre la Renta, Reglas I.3.9.2., I.3.9.8. y I.3.9.14., de la Resolución Miscelánea Fiscal para 2012 y la ficha 10/ISR del Anexo 1-A de la citada Resolución.

ANNEX 9

Formato para solicitud de nueva autorización para recibir donativos deducibles

SOLICITUD DE NUEVA AUTORIZACIÓN PARA RECIBIR DONATIVOS DEDUCIBLES

LUGAR Y FECHA: _____

ASUNTO:

SE SOLICITA NUEVA AUTORIZACIÓN PARA RECIBIR DONATIVOS DEDUCIBLES DEL ISR CONFORME A LA REGLA I.3.9.13. DE LA RESOLUCIÓN MISCELÁNEA FISCAL 2012.

C. ADMINISTRADOR:¹ _____
 PRESENTE.

DENOMINACIÓN O RAZÓN SOCIAL: _____

REGISTRO FEDERAL DE CONTRIBUYENTES: _____

DOMICILIO FISCAL: _____

TELÉFONO y/o FAX: _____

CORREO ELECTRÓNICO: _____

NOMBRE DEL REPRESENTANTE LEGAL Y PERSONAS AUTORIZADAS PARA RECIBIR NOTIFICACIONES: _____

DOMICILIO CONVENCIONAL² (Para oír y recibir notificaciones): _____

CUENTA CON ESTABLECIMIENTOS:³

() SÍ () NO

DOMICILIO Y TELÉFONO DE LOS ESTABLECIMIENTOS:³ _____

“ANTE USTED Y EN CUMPLIMIENTO A LO PREVISTO EN LA REGLA I.3.9.13, ÚLTIMO PÁRRAFO Y LA FICHA 13/ISR “SOLICITUD DE NUEVA AUTORIZACIÓN PARA RECIBIR DONATIVOS DEDUCIBLES” DEL ANEXO 1-A DE LA RESOLUCIÓN MISCELÁNEA FISCAL PARA

2012, SOLICITO SE EMITA NUEVAMENTE AUTORIZACIÓN PARA RECIBIR DONATIVOS DEDUCIBLES DEL IMPUESTO SOBRE LA RENTA A (DENOMINACIÓN DE LA ORGANIZACIÓN CIVIL), MANIFESTANDO –BAJO PROTESTA DE DECIR VERDAD– QUE LA DOCUMENTACIÓN Y SUPUESTOS CON BASE EN LOS CUALES SE OTORGÓ LA ANTERIOR AUTORIZACIÓN CONTINÚAN VIGENTES Y EN LOS MISMOS TÉRMINOS Y QUE MI REPRESENTADA SIGUE CUMPLIENDO CON LOS REQUISITOS Y OBLIGACIONES FISCALES PARA SER AUTORIZADA PARA RECIBIR DONATIVOS DEDUCIBLES.”

() MÉXICO () MÉXICO Y EXTRANJERO

DESCRIPCIÓN DE LAS ACTIVIDADES U OBJETO (Síntesis):

MI REPRESENTADA () NO () SÍ HA PROMOVIDO CON ANTERIORIDAD.

De conformidad a la ficha 13/ISR del Anexo 1-A de la Resolución Miscelánea Fiscal para 2012, no será necesario que se anexe de nueva cuenta la documentación que hubiere sido exhibida con anterioridad; sin embargo, se dictaminará a efecto de revisar que cumple con las disposiciones fiscales vigentes para obtener dicha autorización, asimismo, en cumplimiento del último párrafo de la regla I.3.9.13. de la Resolución Miscelánea Fiscal vigente, se anexa:

- Opinión favorable respecto del cumplimiento de obligaciones fiscales a que se refiere la regla II.2.1.9., de la Resolución Miscelánea Fiscal vigente.

Nombre y firma del representante legal o del apoderado

INSTRUCTIVO DE LLENADO

1 *Administrador Local de Servicios al Contribuyente o Administrador General Jurídico, según corresponda.*

2 *Domicilio donde se desea recibir notificaciones respecto al trámite de referencia, puede ser el mismo domicilio fiscal o uno distinto.*

3 Cualquier lugar en el que desarrollen, parcial o totalmente el objeto social o actividades (sucursales, agencias, oficinas, instalaciones) de los cuales se dé aviso de apertura ante el Registro Federal de Contribuyentes.

4 En el caso de presentar su solicitud de autorización para recibir donativos deducibles en territorio nacional durante el último trimestre del ejercicio, el promovente podrá solicitar expresamente el ejercicio en el que desea se le otorgue la citada autorización, si por el ejercicio en el que presentó su solicitud o por el inmediato posterior. Lo anterior en términos del artículo 36 BIS del CFF y sujeto a los tiempos de atención por parte de la Autoridad competente.

* Puede consultar la dirección de las Administraciones Locales de Servicios al Contribuyente y los demás requisitos en la página www.sat.gob.mx

Disposiciones jurídicas aplicables

Artículos 18, 18-A, 19 del Código Fiscal de la Federación y 25 de su Reglamento, artículo 2 de la Ley del Impuesto sobre la Renta, Reglas I.3.9.13. y II.2.1.9., de la Resolución Miscelánea Fiscal para 2012 y la ficha 13/ISR del Anexo 1-A de la citada Resolución.

ANNEX 10

Mercancías susceptibles y prohibidas a ser donadas

De acuerdo al artículo 61, fracción XVII y párrafo último de la ley las mercancías que no recibirán el permiso correspondiente son:

- Aquellas que antes de iniciar el trámite de donación ya se encuentran en territorio nacional.
- Cuando el donante y el donatario sea la misma persona.
- Cuando el donante radique en territorio nacional.
- Todas aquéllas sujetas a cuotas compensatorias.

Mercancías susceptibles de recibirse como donación en especie (atención de requerimientos básicos):

1. Ropa nueva
2. Comida enlatada cuya fecha de caducidad sea mayor a tres meses al momento de entrar al país
3. Equipo de cómputo con sus periféricos nuevo o usado (para instituciones de educación pública, los segundos en específico para educación básica o media básica).
4. Equipo médico y hospitalario en óptimas condiciones y con una vida útil mínima del 30 por ciento al momento que ingresa al país.
5. Agua embotellada cuya fecha de caducidad sea mayor a tres meses al momento de entrar al país.
6. Medicina cuya fecha de caducidad sea mayor a un año al momento de entrar al país.
7. Calzado nuevo, excepto aquél cuyo origen de países de Asia,
8. Juguetes, excepto aquéllos cuyo origen sea China.
9. Sillas de ruedas y material ortopédico
10. Anteojos reconstruidos o armazones
11. Prótesis diversas
12. Libros
13. Instrumentos musicales
14. Artículos deportivos
15. Extinguidores
16. Artículos de aseo personal
17. Artículos para limpieza del hogar

18. Equipo de oficina y escolar
19. Vehículos especiales con equipo integrado que permita impartir enseñanza audiovisual
20. Vehículos tipo escolar
21. Autobuses integrales para uso del sector educativo
22. Vehículo para recolección de basura, barredoras
23. Carros de bombero
24. Ambulancias y clínicas móviles para ofrecer servicio médico o con equipos radiológicos
25. Camiones con canastilla para mantenimiento de alumbrado público
26. Camiones para desazolve del sistema de drenaje
27. Camiones con equipo hidráulico o de perforación, dedicado a la prestación de servicios públicos.

En general cualquier mercancía que satisfaga necesidades básicas de la población.

Nota: En caso de duda se sugiere realizar una consulta a personal de la Administración General Jurídica para recibir asesoría.

ANNEX 11

Artículos aplicables de la ley aduanera

ARTÍCULO 44. El reconocimiento aduanero y segundo reconocimiento consisten en el examen de las mercancías de importación o de exportación, así como de sus muestras, para allegarse de elementos que ayuden a precisar la veracidad de lo declarado, respecto de los siguientes conceptos:

- I. Las unidades de medida señaladas en las tarifas de las leyes de los impuestos generales de importación o exportación, así como el número de piezas, volumen y otros datos que permitan cuantificar la mercancía.
- II. La descripción, naturaleza, estado, origen y demás características de las mercancías.
- III. Los datos que permitan la identificación de las mercancías, en su caso

ARTÍCULO 61. No se pagarán los impuestos al comercio exterior por la entrada al territorio nacional o la salida del mismo de las siguientes mercancías:

- XVII.** Las donadas al Fisco Federal con el propósito de que sean destinadas al Distrito Federal, estados, municipios, o personas morales con fines no lucrativos autorizadas para recibir donativos deducibles en los términos de la Ley del Impuesto sobre la Renta, que en su caso expresamente señale el donante, para la atención de requerimientos básicos de subsistencia en materia de alimentación, vestido, vivienda, educación, y protección civil o de salud de las personas, sectores o regiones de escasos recursos.

En los casos en que las mercancías sean donadas al Fisco Federal, no se requerirá de la utilización de los servicios de agente o apoderado aduanal, debiendo utilizarse únicamente la forma que para esos efectos dé a conocer el Servicio de Administración Tributaria.

Si la importación de las mercancías de que se trate, requiere del cumplimiento de regulaciones o restricciones no arancelarias, o de normas oficiales mexicanas, las autoridades aduaneras de inmediato lo harán del conocimiento de la dependencia competente, quien con-

tará con un plazo de tres días para determinar si las exime de su cumplimiento. Transcurrido dicho plazo sin que se comunique la resolución correspondiente, se entenderá que dicha dependencia resolvió positivamente y las autoridades aduaneras pondrán las mercancías a disposición del interesado, en la aduana correspondiente.

Fracción adicionada DOF 01-01-2002

Para los efectos de las fracciones XV, tratándose de vehículos especialmente adaptados para personas con discapacidad, así como la de la XVII, tratándose de los donativos en materia de alimentación y vestido en caso de desastre natural o condiciones de extrema pobreza, únicamente podrán ser realizados en términos de las reglas de carácter general que al efecto emita el Servicio de Administración Tributaria.

ANNEX 12

Criterios de dictamen y requisitos emitidos por parte de la secretaría de economía, aplicables a mercancías donadas al fisco federal

Mercancía	Criterio	Requisito documental
Equipo de cómputo usado	<p>Especificar marca, modelo, número de serie y demás características.</p> <p>Equipo de cómputo nuevo y sus periféricos para instituciones educativas públicas y equipo de cómputo usado y sus periféricos para instituciones de educación pública básica y media básica.</p>	<ol style="list-style-type: none"> 1 Fotografías o catálogo con las especificaciones técnicas. 2 Especificar marca (s), modelo (s), número (s) de serie y en su caso, tipo de procesadores y su capacidad (es) de velocidad, de disco duro y de memoria.
Vehículos especiales con equipo integrado que permita impartir la enseñanza audiovisual.	Ninguno	<ol style="list-style-type: none"> 1 Título de propiedad o factura. 2 Especificaciones técnicas. 3 Catálogos o fotografía (s). 4 Especificar marca, modelo, año y número de serie del (los) vehículo (s). 5 Únicamente se autorizarán 5 unidades por año.
Camiones tipo escolar	Ninguno	<ol style="list-style-type: none"> 1 Título de propiedad o factura. 1 Especificaciones técnicas. 2 Catálogos o fotografía (s). 3 Especificar marca, modelo, año y número de serie del (los) vehículo (s). 4 Únicamente se autorizarán 5 unidades por año.
Autobuses integrales para uso del sector educativo	Ninguno	<ol style="list-style-type: none"> 1 Título de propiedad o factura. 1 Especificaciones técnicas. 2 Catálogos o fotografía (s). 3 Especificar marca, modelo, año y número de serie del (los) vehículo (s). 4 Únicamente se autorizarán 5 unidades por año.

Mercancía	Criterio	Requisito documental
Vehículos recolectores de basura equipados con compactador o sistema roll off, coches barredoras.	Ninguno.	1 Título de propiedad o factura. 1 Especificaciones técnicas. 2 Catálogos o fotografía (s). 3 Especificar marca, modelo, año y número de serie del (los) vehículo (s). 4 Únicamente se autorizarán 5 unidades por año.
Ambulancias y clínicas móviles para servicios médicos y/o equipo radiológico.	Ninguno.	1 Título de propiedad o factura. 1 Especificaciones técnicas. 2 Catálogos o fotografía (s). 3 Especificar marca, modelo, año y número de serie del (los) vehículo (s). 4 Describir equipamiento. 5 Únicamente se autorizarán 5 unidades por año.
Camiones grúa con canastilla.	Ninguno	1 Título de propiedad o factura. 1 Especificaciones técnicas. 2 Catálogos o fotografía (s). 3 Especificar marca, modelo, año y número de serie del (los) vehículo (s). 4 Únicamente se autorizarán 5 unidades por año.
Camiones para el desazolve del sistema de alcantarillado.	Ninguno	1 Título de propiedad o factura o factura preforma. 1 Especificaciones técnicas. 2 Catálogos o fotografía (s). 3 Especificar marca, modelo, año y número de serie del (los) vehículo (s). 4 Únicamente se autorizarán 5 unidades por año.
Camiones con equipo hidráulico o de perforación.	Ninguno.	1 Título de propiedad o factura o factura preforma. 1 Especificaciones técnicas. 2 Catálogos o fotografía (s). 3 Especificar marca, modelo, año y número de serie del (los) vehículo (s). 4 Únicamente se autorizarán 5 unidades por año.

ANNEX 13

Listado de productos para donación que serán aceptados en razón del país de origen, emitido por parte de la secretaría de agricultura, ganadería, desarrollo rural, pesca y alimentación

Mercancía	Características (País de Origen)
Alimentos preparados y cárnicos de porcino o ave enlatados esterilizados que no requieran refrigeración ni presenten fecha de caducidad.	Cualquier país.
Leche en polvo ultra pasteurizada que no requiere refrigeración.	Países reconocidos por México como libres de fiebre aftosa.
Quesos madurados.	Países reconocidos por México como libres de fiebre aftosa.
Carne fresca de bovino, ovino, porcino o ave que presenten el sello de inspección sanitaria del país de origen.	Estados Unidos de América, Canadá, Australia, Nueva Zelandia, Dinamarca.
Leche fluida, quesos semimaduros, quesos blandos, yogurt, crema.	Países reconocidos por México como libres de fiebre aftosa.

Última modificación: 28/agosto/2010, 16:01, información vigente http://www.sat.gob.mx/sitio_internet/servicios/donatarias/donaciones_extranjero/9_1728.html [Consultado 31 de mayo de 2012].

ANNEX 14

Características de los insumos para la salud destinados para donaciones, emitidos por parte de la secretaría de salud

Mercancía	Características	Requisito documental
<p>Medicamentos</p>	<ul style="list-style-type: none"> • Etiqueta en cada envase, señalando el nombre genérico, la forma farmacéutica, la cantidad, el número de lote y el nombre del fabricante. • Caducidad mínima de 1 año al momento de ingreso al país. • No debe tratarse de medicamentos que hayan sido facilitados a otros pacientes y más tarde devueltos. • Los medicamentos se deberán envasar e ir acompañados de la lista detallada de embalaje que indique el contenido de cada caja, nombre genérico, número de lote y fecha de caducidad. • En el embalaje de los medicamentos no deben figurar otros artículos. 	<ul style="list-style-type: none"> • Escrito del beneficiario en el que especifique los establecimientos a los que irán destinados los productos Licencia Sanitaria o Aviso de Funcionamiento • Aviso de responsable sanitario • Copia de la cédula profesional del médico responsable
<p>Equipo Médico</p>	<ul style="list-style-type: none"> • Debe estar funcionando adecuadamente. • Contar por lo menos con un 30 por ciento de vida útil. • Contar con los manuales de instalación y funcionamiento. • El destinatario deberá contar con el área e infraestructura física adecuada para su instalación y funcionamiento. • El destinatario debe contar con personal capacitado para su manejo. 	<ul style="list-style-type: none"> • Escrito del beneficiario en el que especifique los establecimientos a los que irán destinados los productos • Licencia Sanitaria o Aviso de Funcionamiento • Aviso de responsable sanitario • Copia de la cédula profesional del médico responsable
<p>Otros Dispositivos Médicos</p> <ul style="list-style-type: none"> • Ropa Quirúrgica • Cama • Jeringas • Catéteres • Vendas 	<ul style="list-style-type: none"> • No deben haber sido usados. 	<ul style="list-style-type: none"> • Escrito del beneficiario en el que especifique los establecimientos a los que irán destinados los productos • Licencia Sanitaria o Aviso de Funcionamiento • Aviso de responsable sanitario • Copia de la cédula profesional del médico responsable

ANNEX 15

Reglas 3.3.9, 3.3.10 y 3.3.11 de carácter general en materia de comercio exterior para 2011

3.3.9. Para los efectos del **artículo 61, fracción XVII** y último párrafo de la Ley, las personas que deseen donar al Fisco Federal mercancías que se encuentren en el extranjero, con el propósito de que sean destinadas a la Federación, Distrito Federal, Estados, Municipios, incluso a sus Órganos Desconcentrados u Organismos Descentralizados, o demás personas morales con fines no lucrativos autorizadas para recibir donativos deducibles en los términos de la LISR, estarán al siguiente procedimiento:

- I. Utilizar el formato denominado “Declaración de mercancías donadas al Fisco Federal conforme al **artículo 61, fracción XVII** de la Ley Aduanera y su Anexo 1”, que forma parte del **apartado A del Anexo 1**, el cual es de libre reproducción y podrá obtenerse en las embajadas y consulados mexicanos o ingresando a la página electrónica www.sat.gob.mx. En dicho formato se deberá señalar expresamente lo siguiente:
 - a) Finalidad de la donación.
 - b) Descripción a detalle de las mercancías que se pretendan donar, adjuntando todos los elementos que permitan a la autoridad identificar las mercancías, tales como catálogos, fotografías, medidas y material del que estén compuestas, así como asentar su clasificación arancelaria de conformidad con la TIGIE, en caso de conocerla. Cuando no se señale la clasificación arancelaria de la mercancía, la misma será determinada por la ACNCEA.
 - c) Domicilio legal del donante, señalando invariablemente: la calle, número exterior, código postal, municipio/ciudad y país del que se trate.
 - d) Tratándose de equipo e insumos médicos, se deberá presentar escrito del beneficiario en el que especifique los establecimientos a los que irán destinados los productos, adjuntando copia de la licencia sanitaria o aviso de funcionamiento de acuerdo al servicio que proporcionan, del aviso de responsable sanitario y de la cédula profesional del médico responsable.

Los datos señalados en dichos incisos y la demás información requerida en el formato, deberá ser proporcionada en la forma y términos que determine su instructivo.

Cuando las mercancías sean donadas al Fisco Federal con el propósito de ser destinadas a la Federación, Distrito Federal, Estados, Municipios, incluso a sus Órganos Desconcentrados u Organismos Descentralizados, o demás personas morales con fines no lucrativos autorizadas para recibir donativos deducibles en los términos de la LISR, se deberá asentar expresamente tal circunstancia en el formato o anexarse a éste un escrito de aceptación de la donación, efectuado por el destinatario final. En dicho formato o escrito, se deberá señalar el nombre de la persona que en representación del destinatario final, recibirá en la aduana de que se trate, las mercancías objeto de la donación.

En el caso de que no se cuente con la aceptación del destinatario final, se entenderá que las mercancías son ofrecidas en donación al Fisco Federal y una vez considerada la utilidad de las mismas, podrá aceptar dicha donación para darle destino conforme a sus facultades o negarse, en cuyo caso, se tendrá por concluido el presente procedimiento, remitiendo la documentación presentada por servicio de mensajería, el formato y sus anexos deberán remitirse en original a la ACNCEA.

II. Podrán optar por utilizar el siguiente formato electrónico, cuando se trate de mercancías que no requieran del cumplimiento de regulaciones y restricciones no arancelarias:

- a)** Realizar el trámite vía Internet ingresando a la página electrónica www.sat.gob.mx y accediendo al programa “Donaciones del Extranjero”, para lo cual el destinatario final de la donación, deberá contar con CIECF y FIEL. D.O.F. 20/04/2011
- b)** Capturar los datos generales solicitados en el programa y cumplir con lo siguiente:
 - 1.** Señalar la finalidad de la donación.
 - 2.** Indicar el domicilio legal del donante, señalando invariablemente: la calle, número exterior, código postal, municipio/ciudad y país del que se trate.
 - 3.** Tratándose de vehículos, anexar copia del título de propiedad y fotografías.
 - 4.** Adjuntar escrito del donante a través del cual solicite la autorización de la donación, indicando el destinatario final.

Las mercancías que se pretendan donar, deberán ser declaradas en el Anexo 1 del programa, seleccionándolas dentro del catálogo de mercancías publicado en el sistema; cuando las mercancías no se encuentren especificadas en dicho catálogo, se deberán apegar a lo establecido en la **fracción I** de la presente regla.

El SAT dará a conocer el catálogo de mercancías mediante el sistema automatizado de “Donaciones del Extranjero”.

Concluida la captura, se deberá firmar la declaración con la FIEL y enviarse a través de la página electrónica www.sat.gob.mx, quien enviará a los solicitantes por la misma vía, el acuse de recibo electrónico, mismo que contendrá el número de folio con el que se recibió la solicitud.

La utilización de la FIEL que corresponda a cada beneficiario, equivaldrá a la firma autógrafa de éstos.

III. Una vez recibido el formato de que se trate y sus respectivos anexos en la ACNCEA, se procederá a su análisis y resolución conforme a lo siguiente:

- a) Si se observa que se omitió alguno de los datos, información o documentación requerida en las **fracciones I y II** de la presente regla, la solicitud se tendrá por no presentada. Asimismo, si se detectan causas para no aceptar la donación, la citada unidad administrativa comunicará el rechazo en el término de 5 días.
- b) Una vez verificada o determinada la clasificación arancelaria de las mercancías declaradas en el formato a que se refiere la **fracción I** del primer párrafo de la presente regla, se determinarán las regulaciones o restricciones no arancelarias y NOM's que deben cumplir para su importación definitiva, procediendo a notificar a las dependencias competentes para que autoricen o rechacen la importación definitiva de dicha mercancía, en su caso. La clasificación arancelaria de las mercancías declaradas en dicho formato o la que efectúe la autoridad no constituirá resolución firme.

Cuando las citadas dependencias no liberen las mercancías ofrecidas en donación del cumplimiento de regulaciones o restricciones no arancelarias o de las NOM's, o su liberación sea parcial, la ACNCEA deberá notificar al donante tal circunstancia remitiendo la documentación presentada, en el entendido de que podrá efectuar dicha donación siempre que obtenga el documento que

compruebe el cumplimiento de la restricción o regulación no arancelaria o de la NOM no liberada por la dependencia competente.

Transcurrido el plazo de 3 días, contados a partir del día siguiente al que surta efectos la notificación a que se refiere el primer párrafo de este inciso, sin que las dependencias correspondientes se pronuncien mediante oficio entregado a la ACNCEA, ésta asentará en el formato tal circunstancia y procederá a notificar al donante la aceptación de la donación, comunicándole que puede enviar las mercancías a la aduana o sección aduanera señalada en el formato.

- c) La clasificación arancelaria y descripción de las mercancías declaradas en el formato a que se refiere la **fracción II** del primer párrafo de la presente regla, serán verificadas a fin de determinar que no requieran del cumplimiento de regulaciones y restricciones no arancelarias para su importación definitiva. La aceptación de dicha clasificación no constituirá resolución firme.

Cuando las mercancías declaradas en el formato tengan que cumplir con regulaciones y restricciones no arancelarias debido a modificaciones en la TIGIE, se notificará al beneficiario tal circunstancia, en el entendido de que podrá efectuar la donación apegándose a lo establecido en la **fracción I** del primer párrafo de la presente regla.

- d) Una vez aceptada la donación, la ACNCEA, notificará al donante la resolución de autorización para su internación al país, comunicándole que puede enviar la mercancía a la aduana o sección aduanera señalada en el formato de que se trate. La aceptación de la donación de la mercancía, no prejuzga sobre la veracidad de su clasificación arancelaria.

La mercancía donada en términos de la presente regla, por la cual se otorgue la autorización respectiva, deberá presentarse directamente ante la aduana señalada para su despacho, el cual se llevará a cabo presentando el original del oficio de autorización emitido por la ACNCEA y del formato con su anexo en cuadruplicado. Tratándose del formato a que se refiere la **fracción II** del primer párrafo de la presente regla, el oficio de autorización, el formato y su anexo, deberán ser impresos previamente en el sistema automatizado de “Donaciones del Extranjero” con sello digital y ser presentados en cuadruplicado.

Únicamente cuando la descripción o la cantidad de las mercancías presentadas ante la autoridad aduanera para su despacho no coincida con la declarada en el formato de que se trate, o su clasificación arancelaria sea distinta a la que se consideró para aceptar su donación, la aduana asegurará dichas mercancías.

Una vez despachadas las mercancías, se efectuará inmediatamente su entrega al destinatario final o a la persona autorizada para recibirlas, mediante constancia que se entregue en la aduana por la que se realice la importación, previo el pago de los gastos de manejo de las mercancías y, en su caso, los que se hubieran derivado del almacenaje de las mismas, los cuales correrán a cargo del destinatario final.

La persona que acuda a retirar las mercancías de la aduana, deberá acreditar su personalidad como representante del destinatario final de la donación. Tratándose de personas morales con fines no lucrativos autorizadas para recibir donativos deducibles en los términos de la LISR, deberá acreditarla mediante poder notarial. Si el destinatario final es la Federación o sus Órganos Desconcentrados u Organismos Descentralizados, Distrito Federal, Estados o Municipios, bastará con la presentación de una copia de la constancia de nombramiento oficial o el original de la carta poder en la que se le autorice para recibir las mercancías. En ambos casos se deberá presentar una identificación oficial con fotografía.

Efectuado el despacho de las mercancías sin que el destinatario final o la persona autorizada para recibir la donación se presente para recibirlas, la aduana las almacenará en el recinto fiscal o fiscalizado y notificará al destinatario final que cuenta con un plazo de 15 días para retirarlas, previo pago de los costos de manejo y almacenaje que se hubieren generado, apercibiéndolo que de no hacerlo, causarán abandono en términos de la legislación aduanera. En ese mismo acto, la autoridad aduanera comunicará a la ACNCEA, tal circunstancia.

Las notificaciones al donante o al destinatario final a que se refiere esta regla, podrán efectuarse por correo electrónico, por servicio de mensajería o correo certificado.

No podrán donarse conforme a lo previsto en la presente regla, las mercancías siguientes:

- I.** Las que al momento de iniciarse el trámite a que se refiere la presente regla, ya se encuentren en territorio nacional.
- II.** Cuando el donante y el destinatario final sean la misma persona.

- III. Cuando el donante sea residente en territorio nacional.
- IV. Las que se encuentren sujetas a cuotas compensatorias.

3.3.10. Para los efectos del **artículo 61, fracción XVII** de la Ley, se consideran como mercancías propias para la atención de requerimientos básicos, las siguientes:

- I. Ropa nueva.
- II. Comida enlatada cuya fecha de caducidad sea mayor a tres meses a la fecha de su internación al país.
- III. Equipo de cómputo nuevo y sus periféricos para instituciones educativas públicas y equipo de cómputo usado y sus periféricos para instituciones de educación pública básica y media básica.
- IV. Equipo e instrumental médico y de laboratorio, el cual deberá estar en óptimas condiciones, responder a los criterios de uso y aceptación internacional y tener un mínimo de 30 por ciento de vida útil con respecto del promedio estimado por los mercados internacionales, cuyas fracciones arancelarias se encuentran relacionadas en el Anexo 9.
- V. Agua embotellada cuya fecha de caducidad sea mayor a tres meses a la fecha de su internación al país.
- VI. Medicinas cuya fecha de caducidad sea mayor a un año a la fecha de su internación al país o de acuerdo a los lineamientos emitidos por la Secretaría de Salud.
- VII. Calzado nuevo.
- VIII. Juguetes.
- IX. Sillas de ruedas y material ortopédico.
- X. Anteojos nuevos, usados, reconstruidos o armazones.
- XI. Prótesis diversas.
- XII. Libros.
- XIII. Instrumentos musicales.
- XIV. Artículos deportivos.
- XV. Extinguidores.
- XVI. Artículos para el aseo personal.
- XVII. Artículos para la limpieza del hogar.
- XVIII. Equipo de oficina y escolar.
- XIX. Vehículos especiales con equipo integrado que permita impartir la enseñanza audiovisual.
- XX. Camiones tipo escolar.

- XXI.** Camiones para uso del sector educativo.
- XXII.** Vehículos recolectores de basura equipados con compactador o sistema roll off, coches barredoras.
- XXIII.** Carros de bomberos.
- XXIV.** Ambulancias y clínicas móviles para brindar servicios médicos o con equipos radiológicos.
- XXV.** Camiones grúa con canastilla para el mantenimiento de alumbrado público en el exterior.
- XXVI.** Camiones para el desazolve del sistema de alcantarillado.
- XXVII.** Camiones con equipo hidráulico o de perforación, destinados a la prestación de servicios públicos.
- XXVIII.** Vehículos, maquinaria, material y equipo para protección civil.
- XXIX.** Electrónicos y electrodomésticos.
- XXX.** Maquinaria pesada destinada a municipios ubicados en microregiones.

También podrán aceptarse en donación, todas aquellas mercancías que, por su naturaleza, sean propias para la atención de los requerimientos básicos de subsistencia a que se refiere la propia Ley.

3.3.11. Para los efectos del último párrafo del **artículo 61** de la Ley, tratándose de los donativos en materia de alimentación y vestido en caso de desastre natural o condiciones de extrema pobreza, se considera:

- I.** Por desastre natural, la definición que señala el artículo 30., fracción VIII del “Acuerdo por el que se emiten las Reglas de Operación del Fondo de Desastres Naturales”, publicado en el DOF el 22 de octubre de 2004, así como las definiciones específicas que contiene su Anexo 1.
- II.** Por condiciones de extrema pobreza, las de las personas que habitan las poblaciones ubicadas en las Microrregiones del país que determine el Gobierno Federal.

ANNEX 16

Sugerencias para describir un proyecto (*concept paper*) para una organización donante en los Estados Unidos

Para dar a conocer a la organización donante su proyecto debe hacerlo de manera escrita en un documento concreto, específico en el que se incluya la información que sea necesaria para conocerlo, detallar su impacto y las necesidades de su organización, por ello se sugiere la redacción de un *concept paper* (a menos que la organización donante tenga un procedimiento o un documento específico que deba ser llenado).

Un *concept paper* es un documento básico, no mayor a 6 cuartillas, que permite dar a conocer determinado proyecto, de tal forma que se capture el interés del personal de la organización donante, se demuestre la seriedad de la propuesta enviada y, por lo tanto, la valía del proyecto para ser considerada para recibir recursos. Adicionalmente, en ocasiones, este documento sirve como preámbulo para que la organización donante solicite mayor información o un proyecto en extenso.

Las partes básicas de un *concept paper* son:

Título: piense en un título que describa el contenido de la propuesta y que no dé lugar a dudas sobre lo que se desea trabajar.

Introducción: En este apartado además de una breve descripción del problema identificado y que se desea abordar se incluye información de la organización donataria, experiencia en el tema tratado en el proyecto y la vinculación de dicha experiencia y los objetivos del proyecto con los intereses de la organización donante.

Propósito: en este apartado se provee de documentación e información de apoyo (datos estadísticos, gráficas) de tal forma que demuestre el conocimiento sobre el tema, la comprensión de sus vínculos e interacciones e identificación de los problemas específicos que se deben resolver. Es una especie de fotografía de la situación mientras más apegada esté a la realidad permitirá conocer a la organización donante los problemas que se desean afrontar o resolver.

Descripción del proyecto: en este apartado se describe más ampliamente lo que desea realizar, la población objetivo y la manera cómo se realizará.

Metas y objetivos: detalla las metas (la condición, estado o intención abstracta a la que se desea alcanzar) y los objetivos (logros medibles y cuantificables que responden a las cuestiones quién, qué y cuándo)

Metodología y cronología: Aquí se especifican las etapas del proyecto y las actividades que se realizarán como parte del mismo, así como los tiempos específicos para cada una de ellas

Resultados o beneficios esperados/ anticipados: Se detallan brevemente los alcances del proyecto y el impacto esperado del mismo.

Costos y apoyo requerido: Se detalla el monto solicitado, el cual se desglosa de tal forma que el personal de la agencia donante reconozca la manera como será utilizado.

Información del contacto: se incluye el nombre del contacto principal o contactos, la dirección de la organización, teléfonos, páginas Web institucionales (en caso de contar con ellas) y correos electrónicos.

ANNEX 17

Proceso de obtención de la CLUNI

REGISTRO FEDERAL DE LAS OSC Y SISTEMA DE INFORMACIÓN

El Registro Federal de Organizaciones de la Sociedad Civil, está a cargo de la Secretaría Técnica de la Comisión, y se auxilia por el Consejo Técnico Consultivo.

- En el Registro se concentra la información de las organizaciones de la sociedad civil cuyas actividades estén contempladas en el Art. 5 de la Ley. Asimismo concentra la información sobre las acciones de fomento que realizan las dependencias y entidades de la Administración Pública Federal dirigidas a las organizaciones, a través del Sistema de Información que funciona mediante una base de datos distribuida y compartida.
- El Registro es la instancia autorizada por la Ley para concentrar toda la información que forme parte o se derive del trámite y gestión respecto de la inscripción de las organizaciones, así como de la recepción del Informe Anual, las modificaciones y los avisos de disolución de las organizaciones.

El Art. 16 fracción III, de la LFFAROSC indica el establecimiento de un Sistema de Información que identifique de acuerdo con lo establecido en Art. 5 de esta Ley, las actividades que las organizaciones de la sociedad civil realicen, así como los requisitos a que se refiere el Art. 18, con el objetivo de garantizar que las dependencias y entidades cuenten con los elementos necesarios para dar cumplimiento a la misma.¹

Requisitos para el Trámite de Inscripción

1. Solicitud de Inscripción en línea.
2. Acta constitutiva de la organización.
3. Identificación oficial vigente del (o los) representante (s) legal (es) de la organización (IFE, Pasaporte Vigente o Cédula Profesional).
4. Cédula de Inscripción al Registro Federal de Contribuyentes (RFC).

¹ http://consejotecnicoconsultivo.org.mx/index.php?option=com_content&view=article&id=83&Itemid=80 [Consultado 11 de diciembre de 2012].

5. Comprobante de domicilio (Solicitud de Inscripción al Registro Federal de Contribuyentes o Aviso de Actualización o Modificación de Situación Fiscal ante el SAT).
6. Documento notariado vigente que acredite la personalidad y ciudadanía del (o los) representantes (s) legal (es) de la organización (en su caso).
7. Acta (s) Protocolizada (s). En caso de haber efectuado modificaciones a la escritura constitutiva.²

¿Cómo obtienes tu CLUNI?

- Ingresa a <http://www.corresponsabilidad.gob.mx>
- Llena el formato de inscripción en línea.
- Imprime el formato debidamente llenado.
- Verifica que el representante legal lo firme.

Presenta tu solicitud en el módulo del Registro Federal de Organizaciones de la Sociedad Civil más cercano a tu domicilio.

Lleva los siguientes documentos en original y copias simples para su cotejo:

- Acta constitutiva de la organización.
- Documento notariado que acredite la personalidad y ciudadanía de los representantes legales.
- Identificación oficial vigente del o de los representantes legales de la OSC (credencial de elector, pasaporte vigente o cédula profesional).
- Cédula de inscripción al Registro Federal de
- Contribuyentes (RFC).
- Comprobante de domicilio legal (solicitud de inscripción al RFC o aviso de cambio de domicilio).
- Acta protocolizada, en caso de haber modificado la escritura constitutiva.³

² <http://consejotecnicoconsultivo.org.mx/images/ctc/registro/inscripcion.pdf> [Consultado 11 de diciembre de 2012].

³ http://consejotecnicoconsultivo.org.mx/images/ctc/registro/obten_tu_cluni.pdf [Consultado 11 de diciembre de 2012].

ANNEX 18

Sugerencia de listas de comprobación

A continuación se incluyen unos cuadros con listas que comprobación que pueden ser útiles para identificar proceso, documentos o requisitos para diversos procesos vinculados a la configuración y obtención de donativos.

Conformación

	Sí	No
Se cuenta con normatividad que establezca que su objeto social se vincula a actividades susceptibles de recibir donativos		
Los fines benéficos de la organización son reconocidos bajo el Código de impuestos estadounidense IRC		
Se cuenta con un nombre y con estatutos protocolizados que la definen como una OSC sin fines de lucro		
Se cuenta en los órganos de gobierno con al menos una asamblea y asociados y el órgano de administración		
Se tiene definido el tipo de miembros con los que cuenta la organización		
Se cuenta con un representante legal exclusivo (que no sea mandatario de otras organizaciones)		
Se cuenta con RFC, CIECF y FIEL		
Se cuenta con información administrativa, financiera y contable ordenada y sistematizada		
Se cuenta con información de proyectos desarrollados, impacto y conclusiones		
Se cuenta con facturas electrónicas (cuando sea el caso)		

Consolidación

	Sí	No
Se cuenta con la CLUNI		
Se cuenta con el oficio-constancia que acredita como donataria autorizada ante el SAT para recibir donativos nacionales		
Se cuenta con el oficio-constancia que acredita como donataria autorizada ante el SAT para recibir donativos internacionales		

Para obtener oficio-constancia que acredita como donataria autorizada ante el SAT

En el acta constitutiva se detalla que	Sí	No
Las cláusulas dan certeza a la autoridad que la organización no tendrá fines de lucro.		
La organización no se involucra en campañas políticas ni realiza proselitismo político o religioso		
La organización no realiza cabildeo en los procesos legislativos o para la modificación de leyes.		
Se cuenta con cláusulas en el acta constitutiva en la que se establezca que en caso de que se liquide, la organización deberá destinar la totalidad de su patrimonio a entidades autorizadas para recibir donativos deducibles.		
La organización no realiza ni tiene en sus estatutos la promoción de actividades deportivas, morales o cívicas, a menos que sean actividades de obras y servicios contemplados en la regla 1.3.9.4 de la resolución miscelánea fiscal.		
El objeto social, objetivos son reconocidos por el SAT como susceptibles de recibir donativos.		
Se cuenta con las acreditaciones de actividades expedidas por las autoridades competentes (ver Anexos 6, 6A y 7).		

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Para donativos en especie

	Sí	No
Se ha recibido una propuesta de donativo en especie		
La propuesta (carta) está en español y detalla clara y específicamente las características de la mercancía donada y cumple con las especificaciones de la norma		
Se cuenta con el mayor número de detalles o información que permita el reconocimiento inequívoco de la mercancía		
Se ha revisado que los artículos que serán recibidos como donación no estén sujetos a restricciones a la importación (ver Anexo 10).		
Se requieren dictámenes de SAGARPA, SECON, SEMARNAT y SSA.		
Se llenó el formato requerido por el SAT		
Se envió la solicitud a la Administración General Jurídica del SAT		

Proceso de solicitud de donaciones

	Sí	No
Se cuenta con la experiencia probada y comprobable del grupo de expertos		
Se cuenta con información de la organización traducida al inglés		
El proyecto para el cual se desea obtener el donativo es viable, cuenta con información actualizada, fidedigna y comprobable.		
El presupuesto del proyecto es acorde a las necesidades del mismo y a la capacidad de la organización de realizarlo		
El proyecto cuenta con la información y metodologías más actuales, que reflejen el conocimiento del estado del arte en la materia		
Se ha revisado la base de datos de las organizaciones que otorgan donaciones		
Se han identificado otros proyectos similares y se han tomado en cuenta sus experiencias		
Se ha incluido esa información y experiencias en la información		
Se ha identificado si la entidad donante recibe propuestas para la obtención de donativos		
Se han identificado los medios oficiales para la comunicación con la entidad donante		
Se cuenta con oficinas en México o sólo en Estados Unidos		
Se ha enviado la propuesta a la entidad donante		
Se lleva un archivo de las propuestas enviadas y la respuesta recibida		

En caso de obtenerse el donativo

	Sí	No
En caso de que se obtenga el donativo y la propuesta se haya enviado a varias entidades donantes ¿ya se les informó a las otras entidades donantes que no dieron respuesta que se obtuvieron los recursos requeridos?		
Se escribió y envió el mensaje de agradecimiento- aceptación a la entidad donante		
Se recibió y analizó el convenio de colaboración		
Es necesario modificar alguna cláusula		
Se ha solicitado la posibilidad de modificación de la(s) cláusula(s)		
El convenio establece fechas de entregas de recursos, trabajos, cuenta con indicadores que seguimiento y evaluación		

Al realizar y finalizar el proyecto

	Sí	No
Se dio seguimiento a las actividades conforme a lo señalado en el convenio		
Se enviaron los reportes de avance del proyecto a la entidad donante		
Se ha informado a la entidad donante sobre los avances del proyecto o pedido permiso —en caso de requerirlo— para realizar cambios en el proyecto		
Se alcanzaron los objetivos del proyecto detallados en el convenio		
Se ha enviado un documento en el que se informe la finalización del proyecto, los logros alcanzados, el impacto del proyecto en la situación que se deseaba apoyar.		
Se cuenta con la información del proyecto sistematizada y ordenada, en caso de sea requerida para seguimiento, revisión o fiscalización		

Resources for Development

Resources for Development is a practical guide that is seeking to facilitate both fundraising and grant giving to nonprofit organizations in Mexico. In this guide you will find information on most of the bi-national legislation & regulations required as well as some practical suggestions on the grant making process. If you are interested in donating resources from the US to Mexico, *Resources for Development* is definitively the place to begin.

CIESC


The Centro de Investigación y Estudios Sobre Sociedad Civil is a civil society organization that intends to generate an open dialogue for researchers and practitioners for the exchange of information and expertise to create and disseminate knowledge on civil society, philanthropy and volunteering.

Conocimiento para la acción social/
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