



**Nonprofit
Enterprise and
Self-sustainability
Team (NESST)**



The Legal and Regulatory Framework for CSO Self-Financing in Colombia

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This guide examines the legal and regulatory framework that governs the use of "self-financing" (i.e., income-generating, commercial) activities of civil society organizations (CSOs) in Colombia and provides an assessment of the relevant law and its practical effects in order to identify areas where the law might be improved. In Chapter 1, the guide explains the importance of understanding the regulatory environment as it relates to self-financing, defines the concept of CSO self-financing, and explains the methodology used by NESST in researching and assessing the legal framework in Colombia. Chapter 2 outlines a generally-accepted typology initially developed by the International Center for Not-for-Profit Law (ICNL) for evaluating the legal framework that regulates CSO self-financing. Chapter 3 presents the current regulatory framework and its application in Colombia. The chapter illustrates that although the use of CSO self-financing is permitted in Colombia, taxation varies based on the type of organization and the level and relatedness of the activity to the overall mission and purpose of the organization. The specifics and procedures for each are also explained and an illustrative case is provided. Finally, Chapter 4 applies five criteria to critique the Colombian legal framework, assess its current strengths and weaknesses, and make recommendations for improvement.

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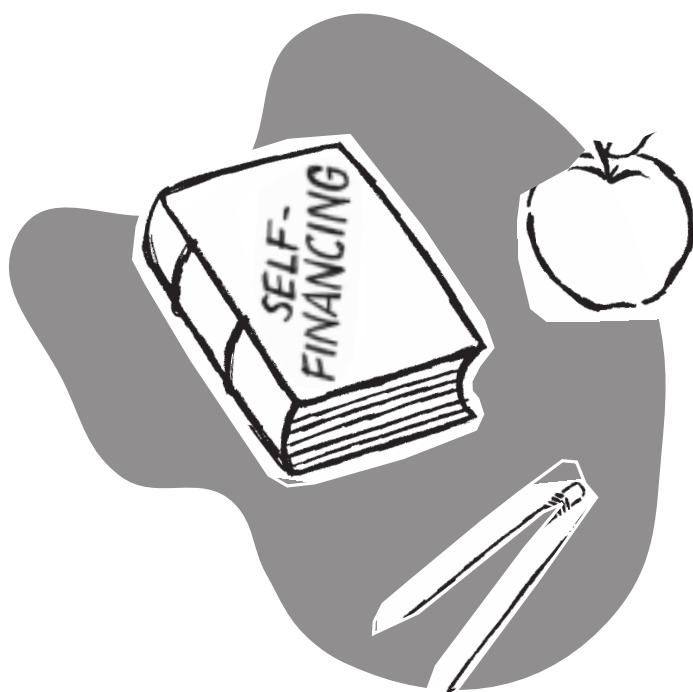
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Juan Carlos Jaramillo conducted the legal research and provided all of the legal information related to the guide. Mr. Jaramillo is a leading expert on Colombian nonprofit law and is currently the Director of the Tax Law Department of the Fundación Social and its affiliated companies and Tax Advisor to the foundations of the Banco de la Republica. **Cristina de Molina**, Development Director of CDI Chile, coordinated the initial research, including the adaptation of NESsT's legal research questionnaire. **María Isabel García-Reyes**, a Chilean lawyer, professionally translated the guide from English to Spanish. **Janis Foster** professionally edited the final document. **Guillermo Garrido**, director of Fundamor, provided all of the information on Fundamor's legal status and the rules and laws governing its self-financing activities. **Cy Hersch**, NESsT Entrepreneur-in-Residence, provided clear and thoughtful feedback on the various drafts. **The International Center for Not-for-Profit Law (ICNL)** provided the typology for classifying the use of economic or commercial activities among CSOs and the framework for assessing the Colombian legislation. **Piera Lombardi** and **Jose Neira** of Tesis provided the design and layout of the guide.

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Setting the Stage: Purpose and Methodology



The term “civil society organization” (CSO)¹ encompasses the wide diversity of not-for-profit, non-state organizations as well as community-based associations and groups that fall outside the realm of the government and business sectors. Given limited philanthropic and government assistance, many CSOs undertake self-financing to generate revenues in support of their mission and programs.

NESsT has documented hundreds of cases of CSOs in Latin America and Central Europe that engage in these types of activities and has analyzed the impact of these strategies on the organizations’ performance and sustainability. An important factor that emerged from these investigations is the need for a clear and supportive legal and regulatory framework to foster the adoption of self-financing strategies among CSOs. This framework defines whether CSOs can or cannot engage in self-financing activities and influences the circumstances under which and the degree to which they will do so. In addition, the tax structure, the level of bureaucracy, and the clarity of the applicable legal rules have a direct bearing on the use of self-financing activities.

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These organizations are often referred to as nonprofit organizations (NPOs), nongovernmental organizations (NGOs), charities, or voluntary organizations. The term “CSO” is a broadly encompassing term that includes all of these subgroups.

CSOs are often unaware of these rules. Many believe that they cannot practice self-financing; others feel that if they do, it will damage their public image or their relations with donors. Even when CSOs are aware of the relevant legislation, they often do not understand what taxes they need to pay, what forms to file, or what procedures to follow.

The purpose of this guide is to clarify the legal framework faced by Colombian CSOs and to assess the degree to which this framework provides an enabling environment for these organizations to pursue self-financing strategies.

1.1 What is Self-Financing and Why is it Important?

Self-financing strategies are used by CSOs to generate revenues in support of their missions. The use of self-financing is a response to the current funding paradigm in which CSOs compete for a limited pie of existing government and philanthropic resources from both national and international sources. This reality makes many CSOs heavily dependent on short-term, project-based funding and prevents them from focusing attention on the long-term, strategic development of their organizations. Through self-financing, CSOs may be able to increase their long-term viability and independence by generating some of their own resources to supplement support from public and private donors.

Self-financing need not lead to the commercialization of CSOs. Rather, self-financing can provide CSOs with a greater level of self-sufficiency and sustainability without compromising their mission objectives or values. Self-financing income can be one way for CSOs to support work that is often difficult to finance through traditional sources of funding (e.g., core operating expenses, new programs, advocacy efforts). NESsT does not argue that CSOs should entirely replace their traditional

sources of funding with self-financing, but instead posits that self-financing can provide a powerful complement to government and philanthropic support. Through self-financing, many CSOs are not only financially strengthened, but also institutionally empowered by their ability to generate new revenues and to determine the course of their work with fewer constraints from funders.

Furthermore, when pursued in a socially and environmentally responsible manner, the enterprise activities of CSOs can help create an “alternative economy” more responsive to the needs of local communities, small producers, and low-income people. By purchasing products and services sold by CSOs, consumers are simultaneously promoting the missions of CSOs and contributing to a more equitable and sustainable world.

Types of self-financing activities include the following:

- **Membership fees:** raising income through dues from members or constituents of the organization in exchange for some kind of product, service, or other benefit (e.g., a CSO provides a newsletter or magazine to its members and/or discounts on CSO products or services).
- **Fees for services:** capitalizing on some existing skill or expertise of the organization by contracting work to paying clients in the public or private sector (e.g., a CSO provides consultation services to businesses or local government).
- **Product sales:** selling, rather than giving away, the products of CSO projects (e.g., books or other publications); reselling products (e.g., in-kind donated items) with a mark-up; or producing and selling new products.
- **Use of “hard” assets:** renting out CSO real estate, space/facilities, or equipment etc. when not in use for mission-related activities.



- **Use of “soft” assets:** for example, generating income from the license of CSO-held patents or other intellectual property, or by endorsing products with the CSO name/reputation.
- **Investment dividends:** passive investments such as savings accounts and mutual funds, or other more active and sophisticated financial transactions (e.g., active trading on the stock market).

CSOs engage in self-financing activities primarily to strengthen their financial resources, to advance their social missions, or both. On the one hand, a CSO may be purely interested in generating profits that it can use to fund its core mission programs. In these instances, the organization is not concerned with advancing its social mission directly through the self-financing activity, but rather indirectly by applying the revenues from the activity to further its social mission. An example of this is a health education organization that starts a printing press and uses the revenues to fund the organization’s research projects. This activity would be considered *non-mission-related*.

On the other hand, a CSO may be primarily interested in using a self-financing strategy to advance its social mission. For example, a CSO whose social mission is to offer carpentry training and job placement to recovering substance abusers may begin selling the furniture that the trainees produce in order to pay for the costs of materials and the salaries of the trainees. This activity would be considered *mission-related*.

These two examples are not mutually exclusive—and neither are the financial and social goals that motivate CSOs engaging in self-financing activities. Many times, CSOs aim to achieve financial and social goals simultaneously through a self-financing activity. The health organization may be better positioned to disseminate the findings from its research by publishing its own materials, and the job training organization may be able to apply surpluses from its furniture sales to fund other

programs of the organization or its core operating expenses. In each of these scenarios, the objectives of CSO self-financing activities and the relation of these activities to the organization’s primary mission play a vital role in determining their legal treatment, as this guide will illustrate.

1.2 Purpose and contents of this Guide

In an attempt to diversify their funding base, many Colombian CSOs have initiated self-financing strategies. For the most part, however, they have done so with little know-how, capital, or other forms of support. NESsT research on the use of self-financing among CSOs in Latin America in general, and in Colombia in particular, demonstrates that many of them do not have the internal capacity (i.e., staff skills and time, adequate financial systems, stakeholder support, business plans) or the external support (i.e., financing, consulting support, favorable legal/regulatory environment) to engage in self-financing activities. When such organizations nevertheless attempt to pursue self-financing strategies, a great deal of stress is put directly on their staff and indirectly on their other programs and their underlying missions. If CSOs decide to pursue self-financing activities, it is important that they do so with the appropriate types and levels of technical and financial assistance and within an enabling external environment.

The pressures and demands faced by CSOs engaging in self-financing activities highlight the need to understand the legal environment affecting them in Colombia. In this context, the purpose of this guide is twofold:

1. **To outline the key laws, regulations, and procedures governing the use of self-financing by CSOs in Colombia.** Chapter 3 explains what Colombian law says about the use of self-financing and discusses the bureaucratic and tax regulations that apply to CSOs engaging in such

activities. It also explains the procedures-forms that must be completed and fees that must be paid-required to initiate and maintain such activities. The chapter does not provide a step-by-step description of how to navigate the law, because there is no one approach applicable to all CSOs. However, it does offer a general overview of these laws and regulations, so that Colombian CSOs have an idea of where they fit within the legal system and what they have to do if they wish to undertake self-financing.

2. To assess the relevant laws governing CSO self-financing activities in Colombia, to evaluate their practical effects, and to identify areas where the law might be improved.

This guide identifies the strengths and weaknesses of Colombian laws—whether they help or hinder the use of self-financing, whether they allow for transparent use of self-financing, and whether they foster the development of the sector as a whole. The legislation is considered within a tax treatment typology that makes it easier to understand and to assess.

The typology was first developed by the International Center for Not-for-Profit Law (ICNL) to examine the legal treatment of CSO economic/commercial activities in Central and Eastern European countries; it has now become a widely accepted typology for understanding and assessing the tax treatments of such activities.² The ICNL typology is presented in Chapter 2; Colombia's legislation is analyzed in the context of the typology in Chapter 3; and the five criteria of the framework are used as a basis for the assessments and recommendations offered in Chapter 4.

1.3 Background and Methodology

This guide is a component of NESsT's efforts to foster self-financing among CSOs in Latin America. In 1999, NESsT began conducting applied research on CSO self-financing in Latin America, particularly in Colombia and Chile, in order to identify the typical challenges and needs in the region. The objectives of the applied research were as follows:

- To assess the current use of self-financing activities among CSOs in Latin America. NESsT completed case studies documenting successes and obstacles in CSO self-financing activities in seven Latin American countries.
- To examine the current legal environment for CSO self-financing in the region overall, and particularly in Colombia and Chile, including the regulatory and tax framework in place at local and national levels that affects the self-financing activities of CSOs.
- To disseminate lessons from the research—by publishing case studies and legal guides and by organizing local workshops—for stakeholders from all sectors in an effort to develop strategies for assisting CSOs in the use of self-financing.

The research for this guide was conducted using a methodology developed by NESsT to evaluate the legal environment for CSO self-financing activities in a particular country. NESsT uses an extensive questionnaire that includes sets of questions in four key areas:

- 1. What the law states.** What is the current legal treatment of CSO self-financing activities (including current legislation, legal provisions, history of the law, revisions of the law, regulato-

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ICNL is an international organization whose mission is to facilitate and support the development of civil society and the freedom of association on a global basis. ICNL, in cooperation with other international, national, and local organizations, provides technical assistance for the creation and improvement of laws and regulatory systems that permit, encourage, and regulate the not-for-profit, non-

governmental sector in countries around the world. ICNL maintains a documentation center for laws, regulations, self-regulatory materials, and other relevant documents; provides training and education; and conducts research relevant to strengthening and improving laws affecting the NGO sector. For more information on ICNL, see <http://www.icnl.org>.

ry approach, tax rates, reporting requirements, other laws or regulations, legal cases, and organizations or lawyers providing advice or assistance)?

2. **How the law is understood.** Are the regulations of CSO self-financing activities understood by CSOs?
3. **Effects of the law.** What is the effect of current regulations on CSO self-financing activities?
4. **Recommendations for the law.** What are the most important recommendations for addressing current regulatory problems?

NESsT contracted Juan Carlos Jaramillo,³ a leading nonprofit lawyer in Colombia with extensive experience in analyzing the Colombian legal framework governing CSOs, to adapt and respond to the questionnaire. His research drew upon his own knowledge of Colombian legislation, as well as on consultations and interviews with an array of individuals and institutions including departmental and municipal tax offices;⁴ lawyers with expertise in nonprofit law; and CSOs, parliamentarians, and other experts familiar with nonprofit law or involved in drafting or lobbying for changes in the law regarding tax treatment of CSO income, etc. Local business people were consulted on their opinions about CSO self-financing activities

and perceptions of unfair competition between CSOs and for-profit businesses arising from differential legal or tax treatment.

The data were collected and assessed by Mr. Jaramillo and then used by NESsT in preparing the guide. NESsT drew upon its case study research as well as interviews with several CSOs using self-financing to develop illustrative examples of how the legislation plays out in reality. The guide was reviewed by other nonprofit lawyers as well as by CSO representatives for accuracy and clarity.

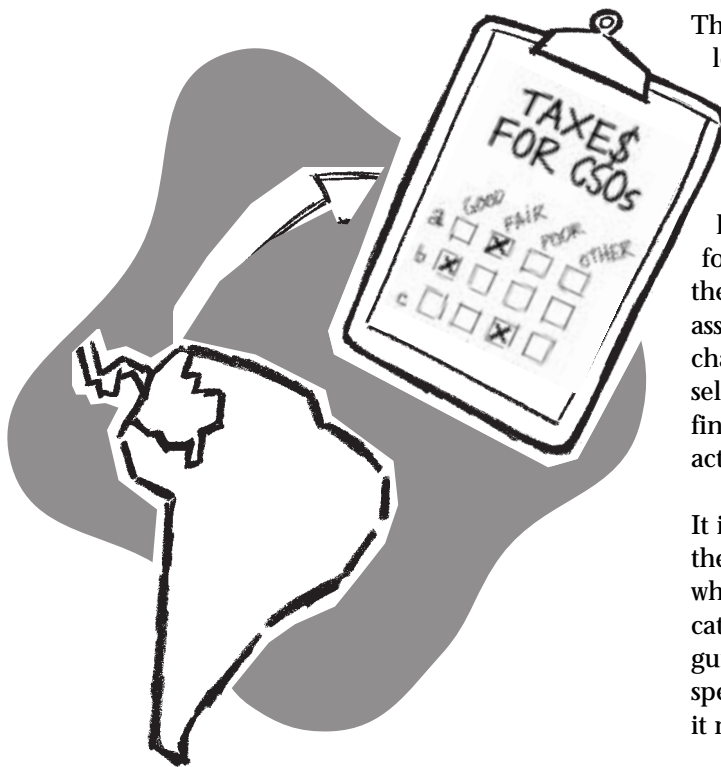
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Colombian political entities are known as departments.

Presenting a Typology for Assessing the Legal and Regulatory Framework



This chapter presents a typology for analyzing the legal rules that govern CSO self-financing activities. The typology was developed by the International Center for Not-for-Profit Law (ICNL).⁵ NESsT has expanded and modified it to be more applicable for the Colombian legal system. The following section presents four key areas that are vital for understanding the legal structure for CSO self-financing before assessing the specifics of Colombia: 1) the legal characteristics of CSOs, 2) the legal definition of self-financing, 3) the criteria for permitting self-financing, and 4) the taxation of self-financing activities.

It is important to note that in its texts, ICNL uses the term “nonprofit organizations” or “NPOs,” which refers to a subgroup of the broader classification of “CSOs,” the term used by NESsT. This guide uses the term “CSO,” except in parts that specifically draw upon the ICNL typology, where it maintains the original ICNL terminology.

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The overall typology presented in this chapter was adapted, with permission, from the paper *Regulating Economic Activities of Not-for-Profit Organizations* that was first prepared by ICNL for the Regulating Civil Society Conference in Budapest, Hungary, in May 1996 (copyright ICNL, 1997), and from the *Handbook on Good Practices Relating to Non-Governmental Organizations*, Appendix I: Economic Activities and Taxation (copyright ICNL, 2000).

Colombian laws are consistent with the broad scope of organizations encompassed by the term “CSO.”

2.1 Legal Characteristics of Nonprofit Organizations

These characteristics highlight the key differences between nonprofit and for-profit organizations and therefore provide a context for understanding how nonprofit organizations (NPOs) engage in self-financing activities. The discussion that follows in this chapter and the rest of the guide addresses a subgroup of all NPOs those whose not-for-profit purposes are intended to promote the public benefit. There is no fixed way of determining what constitutes the public benefit and in fact much of Chapters 3 and 4 addresses this issue in relation to Colombian laws. It is also important to recognize that some NPOs, such as mutual associations of stamp collectors or chess players, may not pursue these goals. These organizations are still considered NPOs and generally the same regulations apply, *but this guide will address only those NPOs that pursue the public benefit*. ICNL makes the same distinction among NPOs, and with specific reference to public benefit NPOs, its typology accordingly identifies two basic legal assumptions that distinguish this class of NPOs from their for-profit peers:

1. Non-distribution constraint. Although NPOs are not prohibited from generating profits, these profits may not be distributed to private parties who might be in a position to control them for personal gain, such as founders, members, officers, directors, agents, employees, or any related party.

The [Organizations are considered NPOs] as long as they provide a public benefit and uphold the principle of non-distribution.

The distinction between revenue-generating activities and other “commercial” activities is relevant because Colombian tax provisions treat them differently.

2. Public-benefit purpose. By definition, this class of NPOs is organized and operated primarily to provide a public benefit.

These characteristics are not primarily dependent on the particular legal form of the NPO. Accordingly, this discussion addresses NPOs of various legal forms as long as they provide a public benefit and uphold the principle of non-distribution.

As we shall see in Chapter 3, Colombian law is consistent with this description; it defines CSOs as organizations with a public-benefit purpose and prohibits private gain from the operations of these organizations.

2.2 Legal Definition of Self-Financing

There are many terms and definitions, both legal and non-legal, currently in use to describe activities that generate revenues for CSOs (e.g., commercial activity, economic activity, nonprofit enterprise, social enterprise, social-purpose business, earned income, income-generating activity). ICNL uses the term “economic activity” to refer to self-financing activity. ICNL defines economic activities as “regularly pursued trade or business activities,” with the exception of those that have traditionally been excluded (i.e., ticket sales for cultural events, tuition fees at educational institutions, and patient fees at nonprofit hospitals). NESsT, on the other hand, uses the term “self-financing” to refer to activities that generate revenues for CSOs, including the six types of activities described in the previous chapter.

Colombian law uses the term “commercial activities” to refer to all activities conducted by CSOs in

the marketplace. This term includes both activities related to the day-to-day operations of the CSO, such as buying supplies, and activities undertaken to generate revenues. However, the distinction between revenue-generating activities and other “commercial” activities is relevant because Colombian tax provisions treat them differently. As discussed in Chapter 3, commercial activities that generate revenues are those that are taxed, but only under certain circumstances and only for certain types of CSOs. This guide adopts the term “commercial activities” when referring specifically to the Colombian context in chapters 3 and 4, and uses the terms self-financing and economic activities interchangeably in presenting the ICNL typology in this chapter.

2.3 Criteria for Permitting Self-Financing

According to ICNL, “a threshold issue is the extent to which NPOs should be permitted to engage in economic or commercial activities without losing their not-for-profit status.”⁶ At this stage of the analysis, the question is not whether such activities should be tax-exempt, but under what circumstances they should be permitted at all.

There are two typical tests used by governments around the world for determining whether economic activities are “nonprofit” or “for-profit”:

1. Principal-purpose test. The principal-purpose test provides one legal model for regulating NPO self-financing. It does not prohibit the use of self-financing activities, but rather emphasizes that the NPO is established and operated primarily for not-for-profit purposes and not for private gain. The test implies that self-financing would be for mission-related, not-for-profit purposes and/or would not be the principal activity of the organization.

2. Destination-of-income test. Contrary to the principal-purpose test, the destination-of-income test, in its pure form, ignores the economic or commercial nature of the activity in question and focuses exclusively on the purposes for which profits from the activity are used. Under this test, an organization must devote all of its income to its not-for-profit purposes in order to qualify as an NPO. Accordingly, an organization that spends 99% of its time pursuing commercial endeavors, spends 1% of its time undertaking public benefit activities, and devotes all of its profits to these public benefit activities could still qualify as an NPO.

Under either test, an NPO is permitted to engage in economic activities that further the not-for-profit purposes for which it is organized. But what justification is there for governments to permit NPOs to conduct self-financing activities? There are two main public policy rationales for permitting NPOs to engage in such activities:

a. Self-financing applies non-public resources to the public good. Income from economic activities is a primary source of funds for NPOs (particularly in countries in transition, where there is an absence of private capital and philanthropic tradition) and enables them to do their public-benefit work with less dependence on governmental support and charitable donations.

b. Self-financing accomplishes public-good objectives. Certain economic and commercial activities directly accomplish public-benefit purposes. For example, although the selling of a book on teaching techniques by an educational organization is an economic activity, the distribution of the book directly serves the public-benefit purpose of promoting education. Preventing NPOs from using such commercial and economic means to attain

their goals could directly impair their ability to accomplish public-benefit purposes.

2.4 Taxation on Self-Financing Activities

While the legal treatment of CSO self-financing varies on a practical level from country to country, most have ruled out polar extremes (i.e., a complete prohibition against economic activities or allowing non-mission-related economic activities to be the principal activity of the organization). Beyond this decision, the issue becomes the tax treatment of such activities.

Governments have typically employed four approaches, singly or in combination, to determine the tax treatment for CSO self-financing activities:

1. Blanket tax. A blanket tax policy taxes income from all economic activities, regardless of the source or destination of the income. Under this approach, the organization is not limited by level or type of activity, but is taxed for all revenues generated through these activities regardless of how those revenues are used.

2. Destination-of-income tax. A destination-of-income tax policy exempts income from economic activities that is used for public-benefit purposes. Under this approach, the organization is not limited by level or type of economic activity, but is taxed on all income that is not used to further its public-benefit purposes. The destination-of-income tax should not be confused with the destination-of-income test. The test is used to establish that CSOs may conduct economic activities without compromising their nonprofit legal status as long as any revenues are destined to the organization's mission. The



Governments have typically employed four public policy approaches, singly or in combination, to determine the tax treatment for CSO self-financing activities.

destination-of-income tax, on the other hand, focuses purely on the tax treatment of nonprofit organizations.

3. Source-of-income tax (or relatedness test). A source-of-income tax policy focuses on the source of the income, granting a tax exemption only when the income results from activities that are related to the public-benefit purposes of the organization. Under this approach, the organization is taxed for all income generated from non-mission-related activity even if the income is used to support mission-related activities.

4. Mechanical tax. A mechanical tax policy makes a rigid distinction based on fixed criteria in order to determine the difference between economic activities that are taxed and those that are not. An example of a mechanical test is an exemption ceiling (i.e., an income level below which economic activities are tax-exempt and above which they are taxable).

Some governments have created hybrid tax policies that are based on two or more of these approaches. For example, it is possible to allow net income from economic activities to be tax-exempt below a specified threshold and to apply a mission-relatedness mechanical test to determine whether net income above that threshold should be taxed. As the following chapter will illustrate, Colombia's legal framework falls under a hybrid approach that classifies CSOs into three categories and applies different taxation rules to each.

There is no consensus on which of these tax approaches is best, since each entails certain benefits and costs and defines a different public pol-

icy objective. ICNL applies five criteria to shed light on the practical implications of each approach.

a. Simplicity or complexity of administration.

Blanket taxation of all economic activity is the simplest approach to administer—once economic activities are defined, NPOs are treated the same way as for-profit organizations. The destination-of-income rule is slightly more complex to administer. The main difficulty is establishing and enforcing criteria for what constitutes an expenditure in furtherance of public-benefit purposes. A mission-relatedness test is the most complicated to apply because it is difficult to specify the necessary connection between the economic activity and the public-benefit purposes.

b. Effects on revenue collection. Assuming the tax rates under the various treatments are equal, the largest potential tax revenue is generated using the blanket taxation approach, since it subjects the greatest number of NPO self-financing activities to taxation. However, empirically, it is unclear how much tax would in fact be collected, because, other things equal, the level of commercial activity by NPOs will presumably be lower under this rule than under the others (because taxation provides a disincentive for NPOs to initiate commercial activities).

In its purest form, the destination-of-income rule has the lowest potential to produce tax revenue because all income from whatever source is free from tax if it is applied to the performance of public-benefit purposes. In practice, many countries impose limits on the amount of income that is exempt under the destination-of-income rule, thus limiting potential losses to the state’s revenue base. The mission-relatedness test also potentially reduces the size of the tax base, but probably less so than the destination-of-income test, because it

provides tax benefits only for these mission-related activities. It also has the additional benefit of channeling NPO economic activity into specific areas that produce public benefit.

c. Effects on the commercial sector. The blanket taxation approach to NPO income from economic activities is most favorable for the commercial sector, since there is no possibility of “unfair” or prejudicial competition (i.e., NPOs do not receive preferential tax treatment compared with their for-profit peers). The destination-of-income rule, in its purest form, does nothing to prevent claims of unfair competition, since the nature of the use of income may give NPOs a tax advantage that their for-profit competitors do not share.

Naturally, a limit on this benefit reduces the comparative advantage for NPOs. The mission-relatedness test minimizes unfair competition by encouraging NPOs to focus on activities that produce a public benefit and by applying the standard tax treatment used for for-profit enterprises when NPO activities are conducted purely for profit. The difficulty in implementing this mission-relatedness rule lies in establishing which economic activities advance the public benefit and which do not (or which do not advance it enough).

d. Effects on the development of the NPO sector.

The blanket taxation approach reduces resources for the nonprofit sector, essentially transferring money away from NPOs and into the governmental sector. It is generally accepted that NPOs devoted to public-benefit purposes, if not eligible for state subsidies, should at the very least not be required to transfer resources to the state (in the same fashion as for-profit enterprises). Blanket taxation of all NPO income from economic activities eliminates the incentive to engage in income-generating, public-benefit activities and is most

There is no consensus on which of these tax approaches is best, since each entails certain benefits and costs and defines a different public policy objective.

unfavorable to the nonprofit sector. At the very least, NPO proponents claim, such taxes should be at a lower, preferential rate than taxes for for-profit enterprises.

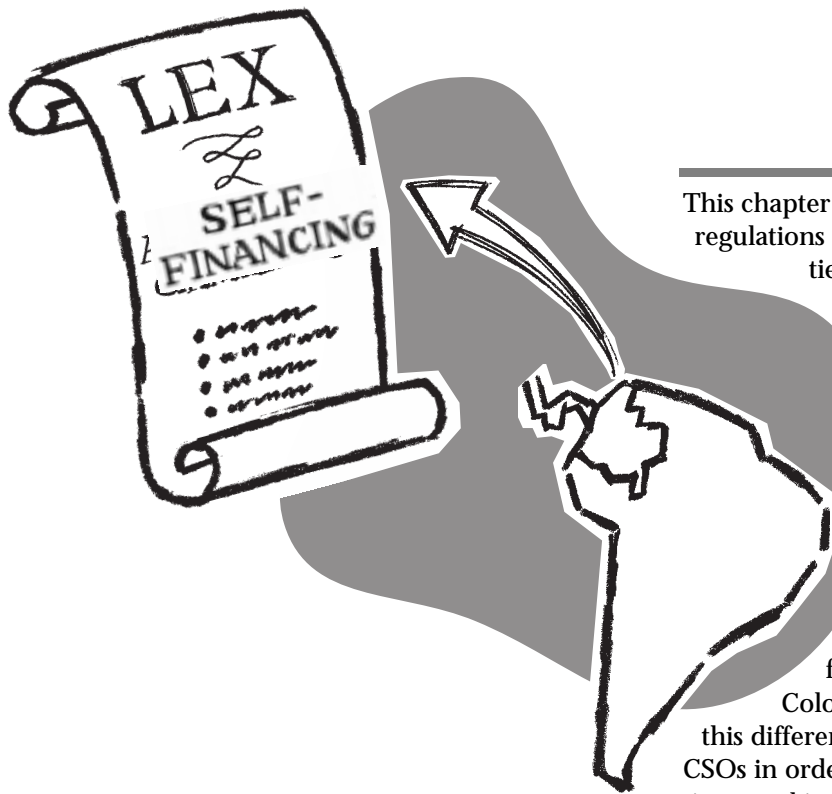
The destination-of-income rule provides the greatest potential revenue to NPOs, since virtually any income can be made tax-exempt if channeled into public benefit activities. The mission-relatedness test is less favorable to NPOs because activities that are undertaken purely to obtain revenue enjoy no tax exemption. However, the mission-relatedness test still provides significant tax benefits for NPOs, particularly when they focus on activities associated with public-benefit purposes. Moreover, the mission-relatedness test channels NPO economic activities into more socially beneficial directions than the destination-of-income test, which encourages NPOs to engage in economic activities that can earn the greatest potential financial return.

e. Practical implementation issues. The blanket taxation approach is the easiest approach to implement, since there are uniform rules for NPOs and for-profit organizations alike. The destination-of-income rule uses a mechanical approach that is relatively easy to administer, although it is necessary to define what constitutes an expenditure in furtherance of public-benefit purposes and to supervise the actual use of profits. Nonetheless, it is still necessary to monitor NPOs and their use of funds, and this “policing” function may prove to be administratively difficult. Moreover, this approach creates a greater potential for abuse by unscrupulous individuals seeking to use NPOs as vehicles for tax evasion. The mission-relatedness test is relatively difficult to implement, since a precise definition and application of this concept is elusive, and tends to

work best when developed over time through administrative practice. On the other hand, this mission-relatedness approach is the one most likely to keep NPOs focused on economic activities that also benefit the public.

Chapter 1 presented a background for understanding CSO commercial activities; Chapter 2 established the analytical typology for assessing the legal framework that governs such activities. Chapter 3 discusses the Colombian laws and regulations that are relevant to CSO commercial activities. Chapter 4 evaluates the existing Colombian legislation using the typology presented in Chapter 2.

The Colombian Legal and Regulatory Framework



This chapter examines the Colombian laws and regulations that govern CSO commercial activities. All CSOs in Colombia are allowed to engage in commercial activities.

Like their for-profit counterparts, CSOs conducting commercial activities are subject to several regulations, including the requirement to pay various taxes. Yet the tax regulations for CSOs and for-profits are different, with CSOs often receiving tax discounts or exemptions, most notably on income generated from their commercial activities. The

Colombian government has legislated this differential status for certain groups of CSOs in order to promote the efforts of organizations working for the public benefit.

Colombian law classifies CSOs into three general groups (non-taxpayers, taxpayers under special regime, and taxpayers) based on their legal formation and target sector (e.g., health, education, sports, etc.).



1. Non-taxpayers. Some Colombian CSOs receive tax exemptions on all of the income generated by their commercial activities. Non-taxpaying CSOs never pay income tax on any of their commercial activities.

2. Taxpayers under special regime. Colombian CSOs in the middle category receive exemptions or pay a moderate income tax based on the type of self-financing activity pursued. Their tax treatment is determined by three criteria: 1) the destination of income generated from commercial activities, 2) the relation of these activities to the mission of the CSO, and 3) the level of commercial activity relative to the CSO's overall work. The principles that guide the tax treatment for CSOs under special tax regime reflect a hybrid of the rules presented in the ICNL typology of destination, relation, and level discussed in Chapter 2.

3. Taxpayers. Colombian CSOs in the third group pay the same income tax imposed on for-profit businesses. Taxpaying CSOs always pay income tax on all of their commercial activities.

This chapter explains the Colombian legal framework for CSOs engaging in commercial activities, including the income tax treatments for the three different classifications of CSOs, as well as other filings that are required for tax and administrative purposes.

3.1 Defining "Nonprofit"

To examine the regulations and taxes that apply to CSOs engaging in commercial activities, it is important to determine how nonprofit organizations within Colombia are characterized. Colombian law defines nonprofit organizations as organ-

izations that never distribute whatever profits they generate to their members or partners. While nonprofit organizations are not intended to generate profits, they are not restricted from engaging in commercial activities or from holding surplus revenues, as long as these surpluses are not distributed when a member withdraws at the end of a fiscal year or when the organization ceases to operate. In the latter case, any outstanding revenues must be transferred to another nonprofit organization with similar goals.⁷ It should be noted that these principles are identical to the ones presented in the ICNL typology in Chapter 2.

Nonprofits in Colombia are legally recognized under the 1886 Political Constitution, which specifically allows for the creation of "associations." The Constitution was modified and

Colombian law defines nonprofit organizations as organizations that never distribute whatever profits they generate to their members or partners.

expanded in 1936 to allow the establishment of "public service foundations" and "public service organizations." Under the new Political Constitution of Colombia, in effect since

1991, the right to freedom of association and the right to establish different types of association under a common legal criterion ("lack of profit") are clearly acknowledged and accepted.

Article 633 of the Colombian Civil Code is an important piece of legislation that classifies nonprofit organizations, associations, and foundations as juridical persons subject to the related provisions. The regulations governing juridical persons provide that organizations wishing to conduct activities deemed to be in the general interest, grant fiscal or economic privileges, or receive certain favorable treatments under the law must include a statement of their status as nonprofit institutions in their papers and associated bylaws. Similarly, the law lists associations and foundations among other institutional forms of nonprofit juridical persons that pursue non-economic benefit.

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Juan Carlos Jaramillo Díaz, *Marco jurídico de las entidades sin ánimo de lucro en Colombia*, p. 110. Prepared for a Ford Foundation and CCRP study and analysis project on philanthropic venture foundations, May 1999.

3.2 Tax Treatment of CSO Commercial Activities

Two important pieces of legislation in Colombia establish the legal framework for CSOs engaging in commercial activities. Since all CSOs are allowed to conduct commercial activities, the most important aspects of these laws address tax treatment. Special Decree 624 of 1989, commonly referred to as the Tax Law, establishes the legal basis for CSO commercial activities and classifies CSOs into the three tax categories listed at the beginning of this chapter based on their legal formation, mission, and principal activities. Rule Decree 124 of 1997 enumerates the conditions under which CSOs may conduct commercial activities. Its language is vague and offers flexibility to the government tax authority, which commonly refers to it in issuing rulings on whether a CSO should receive a tax discount or exemption for its commercial activities.

3.2.1 Non-Taxpaying CSOs

Those groups of CSOs included under Article 23 of Special Decree 624 are non-taxpayers and may engage in any type of commercial activity without paying income tax. Legally speaking, the commercial activity does not have to be related to the mission of the CSO, the profits from the activity do not have to be destined for advancing the CSO's mission, and the CSO may undertake the commercial activity at any level. For example, a university may open a restaurant whose profits are used to open more restaurants and the income from these restaurants is not taxable, regardless of whether it is used for educational purposes or for

growing the restaurant franchise. But since universities—and all other non-taxpaying CSOs—are legally prohibited from distributing profits to shareholders, it is unlikely that a university would try to develop a restaurant franchise unless it intended to use the profits to support the institution. Thus, although non-taxpaying CSOs are unrestricted in their pursuit of profits, their legal structure in effect channels any existing revenues toward the CSOs' underlying missions.

The only requirement that applies to non-taxpaying CSOs with respect to income generated from commercial activities is the filing of a statement of income and assets to the Colombian Tax Authority, the Dirección de Impuestos y Aduanas Nacionales (DIAN). Box 3a lists the groups of CSOs included under Article 23 of Special Decree 624 that are granted non-taxpayer status.

Key legislation for CSO commercial activities in Colombia:

Special Decree 624 of 1989 ("the Tax Law") establishes the legal basis for CSO commercial activities and classifies CSOs into three tax categories based on their legal formation, mission, and principal activities.

Rule Decree 124 of 1997 enumerates the conditions under which CSOs may conduct commercial activities.

3.2.2 CSO Taxpayers Under Special Regime

CSOs listed under Article 19 of Special Decree 624 are "taxpayers under special regime" and tax treatment on their commercial activities is more complicated. These CSOs are granted an income tax exemption on commercial activities that meet the following requirements: 1) the activity is related to the organization's principal mission (relatedness), and 2) the profits are destined to further that mission (destination).⁸

An example of this would be a CSO that conducts research, issues reports, and offers workshops on health-related issues. The CSO would not pay income tax if it charges for its written materials or trainings as long as the profits generated by these

⁸ CSOs under special regime may also donate this income tax-free to other CSOs that are legally established with a similar mission.



Box 3a NON-TAXPAYING CSOs

- Unions
- Parents' associations
- Public improvement associations
- Higher education institutions approved by the Colombian Institute for Improvement of Higher Education
- Hospitals
- Alcoholics Anonymous organizations
- Community action board
- Civil defense board
- Committees of home owners administrating a condominium or housing settlement
- Alumni associations
- Political parties and movements approved by the Colombian Electoral Council
- Consumer leagues
- Pension funds
- Religious movements, associations, and congregations
- Healthcare organizations with a working permit from the Ministry of Health or National Health Superintendent

Excerpted from Article 23 of Special Decree 624

activities are used to further the organization's core mission of improving health awareness.

Unlike non-taxpaying CSOs, taxpayers under special regime pay the same 35% income tax charged to for-profit businesses when the profits from their commercial activities are not destined to advance their missions (no matter if the commercial activities are mission-related or not). If the same health organization described above used the profits from its sales and trainings to start a printing press, then it would pay 35% on the net income.

For commercial activities that are not related to the CSO's mission but whose profits are destined

to advance the mission, another criterion is used to determine tax payment. In these cases, if the level of the commercial activity is moderate relative to the overall activities undertaken by the CSO, then the income tax is 20%. However, if the commercial activity represents the principal activity of the CSO and it is not clear that the activity is necessary to advance the organization's mission, then the organization is taxed at a rate of 35%.

Thus, if the health organization's printing press operates at a moderate volume, is necessary to advance the organization's mission, and the profits from the printing press are used to fund new health investigations or to develop new workshops, then the organization would pay a 20% tax on profits from the printing press. If the printing press is extremely successful, takes over other printing presses in the area, and begins to operate at such a high volume that it becomes the principal activity of the health organization, then the organization would be required to pay 35% income tax, even if all of the profits generated from the printing press were used to fund more health research.

In this example, two significant ambiguities emerge. First, there is no prevailing definition of when the commercial activity is considered the principal activity of the organization or even what criteria is used to make this distinction. It is difficult to compare the number of research publications produced or workshops conducted by the organization with the sales volume of the printing press or the relative importance of each activity to the organization's mission. Ultimately, the DIAN makes this determination based on the volume of commercial activity relative to the organization's overall activity, but this ruling appears to be subjective (or at least no criteria are known). Second, the issue becomes

more complicated if the health organization is using the printing press to publish its own written materials. In this case, the organization could make a strong argument that the printing press is mission-related. If the DIAN upholds this claim, then the organization would be tax-exempt, regardless of the printing press's volume relative to the organization's overall activity. If the DIAN denies this claim, then the organization would pay either 20% or 35%, depending on how the DIAN classified the level of the activity.

As this example illustrates, with the same commercial activity the health organization could be tax-exempt or subject to either a 20% or 35% income tax based entirely on the ruling of the DIAN.⁹ These issues will be more thoroughly examined in Chapter 4, with reference to actual rulings from the tax authorities.

Box 3b lists the types of CSOs that are classified under Article 19(1) of Special Decree 624 as taxpayers under special regime.

The legal provisions outlined below establish the boundaries (although they are ambiguous) within which CSOs under special regime may receive income tax exemptions for their commercial activities. Article 19(1) of Special Decree 624 establishes that "Nonprofit organizations, foundations, and associations . . . whose primary mission and resources are intended for activities related to health, sports, formal education, culture, scienti-

fic, technological, or ecological research, environmental protection, or social development programs of general interest [may engage in commercial activities] provided their surplus is rein-

**Box 3b TYPES OF CSOs CATEGORIZED AS TAXPAYERS
UNDER SPECIAL REGIME**

- CSOs concerned with:
 - health
 - sports
 - formal education¹⁰
 - culture
 - scientific or technological research
 - ecological research
 - environmental protection
 - social development¹¹
- Nonprofit juridical persons engaged in borrowing and lending financial resources supervised by the Banking Authority
- Trade associations in relation to their industrial and marketing activities
- Cooperatives, cooperative associations, unions, central leagues, and high-level financial agencies
- Mutual fund associations
- Cooperative auxiliary organizations
- Cooperative confederations

Excerpted from Article 19(1) of Special Decree 624

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This example is not an isolated or special case. The health organization could also open a natural foods restaurant whose menu offerings draw upon the organization's research into healthy foods. Would this fit the organization's mission of promoting health awareness? Or, more importantly, would the Tax Authority find that this fits the organization's mission? How would the Tax Authority determine whether the restaurant is the organization's principal activity or a supplementary one?

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Colombian law distinguishes between three types of education: formal, non-formal, and informal. Formal education is defined in Article 10 of Law 115 of 1994 as a regular sequence of learning with an established progression and grade levels. CSOs engaging in formal education are classified as taxpayers under special regime. Non-formal education, as defined in Article 36 of the General Law

of Education, complements these more established educational institutions by promoting knowledge and learning but in less formal contexts. CSOs that work in non-formal education fall into the category of taxpayers. Article 43 of the General Law of Education establishes informal education as free and spontaneous interactions between people, organizations, means of communication, etc. The work of CSOs would probably not correspond to informal education, but if it did they would be classified as taxpayers. Juan Carlos Jaramillo Díaz et. al., *Entidades sin animo de lucro—regimen tributario especial*. LEGIS S.A., 1999. p. 26.

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Rule Decree 124 of 1997 defines social development programs as those that promote a collective social benefit.

vested in social activities.” This provision is an affirmation of the destination principle whereby any surplus revenues from commercial activities must be destined to advance the mission of the CSO in order for it to be eligible for the income tax exemption.

Article 19(1) continues: “It is understood that other commercial activities carried out by the organization are those that are necessary to fulfill its mission, and that the resources generated will be used for this mission. The Government shall regulate on the matter accordingly.” This statement incorporates the issue of relatedness with that of destination, explicitly allowing for commercial activities “that are necessary to fulfill [the CSO’s] mission” as long as any surpluses arising from these activities are “used for this mission.” The income tax exemption only applies if revenues are both generated from a mission-related activity and destined to promote the CSO’s mission.

Rule Decree 124 also addresses the circumstances under which CSOs may undertake commercial activities. As a regulatory provision, Rule Decree 124 is intended to enumerate the conditions that were established in principle by Special Decree 624. Article 1, paragraph 4, of Rule Decree 124 reaffirms, “For the purposes of Article 19(1) paragraph 2 of Special Decree 624, the organizations listed thereunder may also engage in commercial activities necessary to comply with the main purpose of the organization.” This language is very similar to the concept of relatedness expressed in Special Decree 624.

However, Rule Decree 124 continues: “Necessary commercial activities are understood to be indispensable activities that comply with the main purpose of the organization including, among others, acts of commerce that the nonprofit organization has to perform to conduct its operations, e.g. purchasing its headquarters, purchasing equipment

and supplies, industrial and marketing activities, provided they are undertaken in order to perform activities and programs for developing the main purpose of the organization.”

The language in this section of Rule Decree 124 introduces two potential complications to its prior consistency with Special Decree 624. First, “necessary commercial activities” are restated as “indispensable activities,” which may be interpreted narrowly to exclude the types of commercial activities the legislature intended to protect. On this point, however, there should be no debate because the regulatory provision (in this case, Rule Decree 124) may not extend beyond the scope of the law (here, Special Decree 624). Thus, the term “indispensable activities” must be understood to have the same significance as “commercial activities . . . necessary to fulfill its mission.”¹²

Second, in Rule Decree 124 those “necessary commercial activities” are elaborated upon, but not clarified, by their definition as the most basic market interactions that are required to establish an office (such as purchasing or renting space and equipment). While this appears to be an exceptionally narrow interpretation of commercial activities, the decree also provides that “necessary commercial activities” may include “industrial and marketing activities.” Rule Decree 124 defines industrial activities as the habitual extraction, transformation, or production of goods¹³, and market activities as the habitual acquisition of goods. This terminology broadens the category of necessary commercial activities to include the sale of goods and services and encompasses the full range of self-financing activities identified in section 1.1.

While Special Decree 624 and Rule Decree 124 generally apply to all CSOs, several more specific provisions regulate various CSO sub-sectors (see Box 3c).

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Marco jurídico de las entidades sin animo de lucro, p. 43.

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Marco jurídico de las entidades sin animo de lucro, p. 13.

**Box 3c SPECIAL PROVISIONS REGULATING
CSO SUB-SECTORS**

- Decree 2716 of 1994: agricultural, livestock, and non-national rural associations as nonprofit juridical entities organized to foster rural sector development in Colombia
 - Law 100 of 1990 and Law 10 of 1993: organizations in the health care sector
 - Law 115 of 1994 and Law 30 of 1992: organizations in the sector of education
 - Decree 2035 of 1991 and Law 52 of 1990: corporations, foundations, and associations organized to promote activities in Indigenous communities
 - Law 99 of 1993: environmental organizations
 - Law 24 of 1993 and Law 29 of 1998: organizations established for scientific, technological, cultural, or research purposes
 - Law 126 of 1976: community action boards
-

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3.2.3 CSO Taxpayers

Those CSOs that do not fall under either Article 19 or Article 23 of Special Decree 624 are considered taxpayers and are required to pay a 35% tax on all income arising from commercial activities. Mission relatedness, destination of income, and the level or volume of commercial activity do not affect this tax status. There is no formal list of CSOs in this classification; rather, CSOs fall into this category by default if they are not specifically listed as either non-taxpayers or taxpayers under special regime.

For example, CSOs whose principal activity is non-formal education would be placed in this category and obligated to pay a 35% tax on year-end surpluses. Yet since non-formal education CSOs generally have social-change objectives and work at the community level, they could argue for classification as social development programs, which are listed as taxpayers under special regime. The DIAN's definition of social development pro-

grams, summarized in footnote 12, suggests that the distinction between social development programs and non-formal education is relatively arbitrary. However, the practical differences in terms of taxation are substantial, and the current tendency of the DIAN has been to classify non-formal education CSOs as taxpayers rather than taxpayers under special regime.

Those CSOs that do not fall under either Article 19 or Article 23 of Special Decree 624 are considered taxpayers and are required to pay a 35% tax on all income arising from commercial activities.

CSOs may also be subject to changes in their tax status by ruling of the legislature. The recent shifts in the classification of trade associations illustrate the seemingly arbitrary distinctions of the tax status categories. Prior to Law 488 of 1998, trade associations were classified as taxpayers under special regime. They were exempt from paying income taxes on commercial activities related to health, sports and recreation, education, and social development, but they were required to pay a 20% tax on "industrial and market activities." Under Law 488 of 1998, trade associations were reclassified as taxpaying CSOs with regard to industrial and market activities and therefore were subject to a 35% income tax on these activities. However, their general status as taxpayers under special regime was not changed, so they remained exempt from taxation on commercial activities related to health, sports and recreation, education, and social development. Then, with the passage of Law 633 in 2000, their tax status prior to Law 488 of 1998 was reinstated.

During this time, little if anything changed in the nature of trade associations or in their pursuit of commercial activities, but the legislature reclassified them two times in two years.

Box 3d shows the level of income tax for each of the three categories of CSOs depending on the criteria of income destination, relatedness to mission, and level of commercial activity.

3.3 Other Tax Requirements for CSO Self-Financing Activities

Although the tax regulations regarding commercial activities of CSOs have the most significant effect on the organizations and their ability to engage in self-financing, CSOs must also be aware of and abide by several other tax regulations. This section outlines these various taxes.

1. Tax on certificates of deposit. Since the formulation of Law 383 in 1997, all CSOs have been required to pay a 7% tax on the interest paid on certificates of deposit. This tax is deducted by the bank that issues the certificate of deposit. Non-taxpaying CSOs and CSOs under special regime that do not owe taxes are entitled to apply for and receive a full reimbursement of this withholding from the DIAN. CSOs under special regime that do owe taxes and other taxpaying CSOs may apply this withholding to pay for part or all of their taxes.

2. Value-added tax. All CSOs, regardless of tax status, must pay value-added tax (VAT) of 16% on taxable services rendered and on the sale or import of taxable personal property.¹⁴ CSOs factor this tax into the price of the goods and services they sell and these payments are then invoiced on a bi-monthly basis by the government tax collection authority.

CSOs engaging in commercial activities, like their for-profit counterparts, may claim a VAT deduction based on the amount of VAT they paid. For example, for a CSO that spends COLP (Colombian pesos) 1,000,000 for wholesale wood, the VAT represents 16% of this amount (COLP 160,000). If the organization uses this wood to make furniture and then has sales of COLP 1,500,000, it must pay 16% of this amount (COLP 240,000) to the government in the form of VAT. However, it may apply the receipts from its wood purchases to receive a COLP 160,000 deduction on the COLP 240,000 that it pays.

In another issue related to VAT, but not directly related to commercial activities, it is notable that CSOs must pay VAT on purchases associated to the goods and services they provide. For example, a soup kitchen must pay VAT on the

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Box 3d TAX TREATMENTS FOR THREE CSO CLASSIFICATIONS

	DRL	DRI	Drl	DrL	dRI	drl	dRL	drL
Non-taxpaying CSOs	0%	0%	0%	0%	0%	0%	0%	0%
Special Regime CSOs	0%	0%	20%	35%	35%	35%	35%	35%
Tax-paying CSOs	35%	35%	35%	35%	35%	35%	35%	35%

Key:

D = Income is used to advance CSO's mission (destination)

d = Income is not used to advance CSO's mission

R = Commercial activity is related to CSO's mission (relatedness)

r = Commercial activity is not related to CSO's mission

L = Commercial activity represents a high level of CSO's overall activity (level)

l = Commercial activity represents a low level of CSO's overall activity

food it purchases and then provides free to its clients. The organization could “recoup” this VAT by selling the food and thus passing along the tax to its clients, but this would go against its mission of feeding those in need. This issue will be discussed more at length in section 4.4. Aside from the deduction explained above, exemptions to VAT apply only in the very specific instances outlined in Box 3e.

Box 3e EXEMPTIONS FROM VAT

“Organizations whose plans have been approved by INURBE¹⁵ or by whatever agency to which INURBE delegates authority will be entitled to reimbursement of, or compensation for, value-added tax, paid upon procurement of low-cost housing construction materials for use in construction projects whether executed by private construction firms, cooperatives, non-governmental organizations, or other nonprofit institutions.”

Article 850, paragraph 2 of Special Decree 624 of March 30, 1989

3. Tax on industry, commerce, and advertising. The tax on industry, commerce, and advertising is a district or municipal tax at the rate of 0.5% for Bogotá on income obtained from industrial, commercial, or service activities performed in the jurisdiction of Bogotá. Certain activities performed by CSOs (e.g., public education or welfare) are exempt from this tax.¹⁶ In addition, if the organization uses public space to display advertising, it is taxed an additional 15% on the cost of the tax on industry and commerce.

4. Tax on financial movements. Since 1999, all taxpayers, including all three categories of CSOs, have been subject to what is known as a tax on financial movements.¹⁷ A tax of .003% is levied on any financial transaction within the country

involving the issuance of cashier’s checks or the deposit of funds in checking or savings accounts.

5. Tax on registration with the Chamber of Commerce. Before 1995, all CSOs were legally required to register with the Chamber of Commerce and to pay the associated tax. Decrees 2150 of 1995 and 427 of 1996 eliminated this blanket requirement by specifically exempting some types of CSOs from registering and paying the registration tax.¹⁸ CSOs not exempt from registration are taxed at the same level as for-profit entities, COLP 38,200.¹⁹

At present, CSOs must also register the following with the Chamber of Commerce: the book of minutes of the assembly of members, founders, and board of directors; the book of active members; and financial accounting documents, including the ledger, balance sheet, journal, and inventory. In 2001, the cost of registering each book or document was COLP 15,000.

3.4 CSO Income-Filing Process

Law 488 was enacted in Colombia in 1998 to simplify filing for tax exemption by CSOs. Previously, expenditures and the designation of all surplus income had to be assessed for each tax period. CSOs first submitted an income filing to the Committee for Nonprofit Institutions. After the committee had assessed this filing (which often took months because the committee was understaffed) it would issue a ruling.²⁰ Non-taxpaying CSOs were automatically exempt from paying income taxes. Taxpaying CSOs and CSOs under special regime with gross income or gross assets above a fixed level were required to pay taxes.²¹ In cases where CSOs agreed with the assessment

¹⁵ INURBE stands for Instituto Urbano de Desarrollo (Urban Institute of Development).

¹⁶ Decree 400 of 1999 enumerates these exemptions.

¹⁷ Initially conceived as an assessment, it was later defined as a true

tax. First intended to be transitional, it is now permanent, pursuant to Law 633b of 2000. Originally the rate was .002%; currently it is .003%.

¹⁸ See Appendix A for the list of this group of CSOs.

¹⁹ Approximately US\$17

and ruling, they would proceed to present the corresponding tax payment to the DIAN. In cases where CSOs did not agree with the ruling, they had the opportunity to file a dispute against the Committee's decision and initiate a formal legal process challenging the ruling.

The enactment of Law 488 of 1998 significantly simplified the procedure by eliminating the Committee's responsibility for overseeing CSO tax filings. CSOs now file their taxes directly with the national government and fall under the same scrutiny from the DIAN as any other tax filing entity.

3.4.1 Income Filing for Taxpaying CSOs and CSOs Under Special Regime

Under the new law, CSOs are no longer treated uniformly with respect to income tax filing. Taxpaying CSOs and CSOs under special regime must complete a set of detailed and complicated forms that are sent directly to the DIAN. The DIAN uses these forms to determine whether revenues generated through CSO commercial activities should be taxed and, if so, at what rate. To complete the filing, CSOs must submit the following supporting documents:

- Bylaws currently in effect
- Certificate of legal existence and representation
- Balance sheet and income statement, not adjusted for inflation
- Certificate issued by tax auditor or accountant of donation beneficiaries

- Table or description of outlays, investments, and programs developed that is certified by tax auditor or public accountant
- Authenticated copy of the relevant pages of the book of minutes, including all of the minutes regarding the use of profits
- Description of profit-making activities from previous years that are also to be conducted the following year, certified by a tax auditor or public accountant

3.4.2 Income Filing for Non-taxpaying CSOs

In contrast to the complicated documentation required of their counterparts under special regime, non-taxpaying CSOs must simply submit a declaration of their income and assets. This tax statement for non-taxpaying CSOs is used primarily to gather information relevant to the tax processes for taxpaying CSOs.

Box 3f below illustrates some of the themes discussed in this chapter using a case study of a CSO in Colombia that conducts a range of commercial activities.

Box 3f FUNDAMOR CASE STUDY
Location

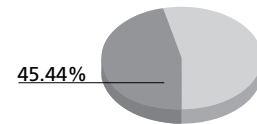
Cali, Colombia

Activities

- Culture and education
- Social services
- Environment
- Health
- Social Services
- Community Development
- HIV/AIDS

**Annual Operating Budget
(2000)**

 COLP 910,993,000
(USD 455,496)

Percent of Self-financing

Overview

Fundamor is a Colombian nonprofit organization founded in 1992 to provide integrated services to people with HIV/AIDS, both carriers and terminal patients, who have few resources or who have been rejected by society. The organization also works to create public awareness about the risks of the disease, its causes, and its effects. Fundamor's key programs include a residence and school for children who are carriers of HIV/AIDS, integrated treatment for HIV/AIDS patients, production and marketing of goods and services intended for self-financing purposes, and a national HIV/AIDS prevention and education campaign.

Since Fundamor's creation, the organization has considered self-financing a key funding strategy to maintain its programs and cover operational costs. In 1996, the organization received and renovated a building on the outskirts of Cali to house its offices and administrative services, as well as its residential and outpatient programs. From there and from its previous headquarters, Fundamor has been able to conduct a series of self-financing activities. In 2000, 45% of the organization's income came from these activities. Many of its ventures are existing programs that Fundamor extends to external clients, other stakeholders, and the general public.

Product Sales

Since 1993, Fundamor has managed a secondhand store in San Antonio, the neighborhood where it originally had its headquarters. The store sells items donated by companies and individuals.

In 1997, Fundamor established two production workshops, one producing household cleaning products and the other producing school and work uniforms, safety clothing, and shoes. Fundamor is the sole owner of the cleaning-product workshop and owns 50% of the organization responsible for production and marketing of the clothing and shoes. (The clothing and shoes are produced in 52 small workshops located in low-income areas of the city.)

In 1998, at its new headquarters, the organization began to produce organic fruits and vegetables, which it provides to residents and also sells to other HIV/AIDS centers.

Fundamor also established a small for-profit company that produces cookies, which are placed in dispensers and sold in key places throughout Cali. This activity is closely tied to the organization's public awareness campaign, and the cookies are sold under the slogan *Por gusto y solidaridad* ("For taste and solidarity").

Fee-for-Service Programs

Fundamor offers outpatient services for HIV/AIDS carriers and patients, including physical, psychological, and occupational therapy sessions. It organizes conferences on HIV/AIDS prevention and treatment for health care workers and others. It also sells *Bonos por la Vida*, which are certificates that can be presented to family members and friends in recognition of an occasion (e.g., a death or a wedding), showing that the giver has made a contribution to Fundamor in the recipient's name. Bonos are available in various amounts and can be purchased at flower shops, funeral homes, and stores.

Hard- and Soft- Asset Income

Fundamor maintains an auditorium and studio apartment for conferences and seminars, which it rents out for use by other organizations. It has also renovated its former headquarters office into several rental apartments.

Investment Dividends

Fundamor established special funds for each of its program areas with program savings or specific donations. Fundamor plans for these funds to eventually become its endowment, and thus dividends are normally reinvested. However, they are sometimes used temporarily to meet cash flow difficulties.



Legal Treatment of Self-Financing

Fundamor is classified as a health care organization and recognized as such by the Ministry of Health due to its direct service delivery agency. With this classification, Fundamor is considered a non-taxpaying CSO and is exempted from paying any income tax on revenues generated from its commercial activities. Although some of these activities are not directly related to its mission—sale of secondhand clothes, sale of organic food, sale of household cleaning supplies and uniforms, rental of apartments—the organization does not have to pay income tax on any surplus generated from these activities.

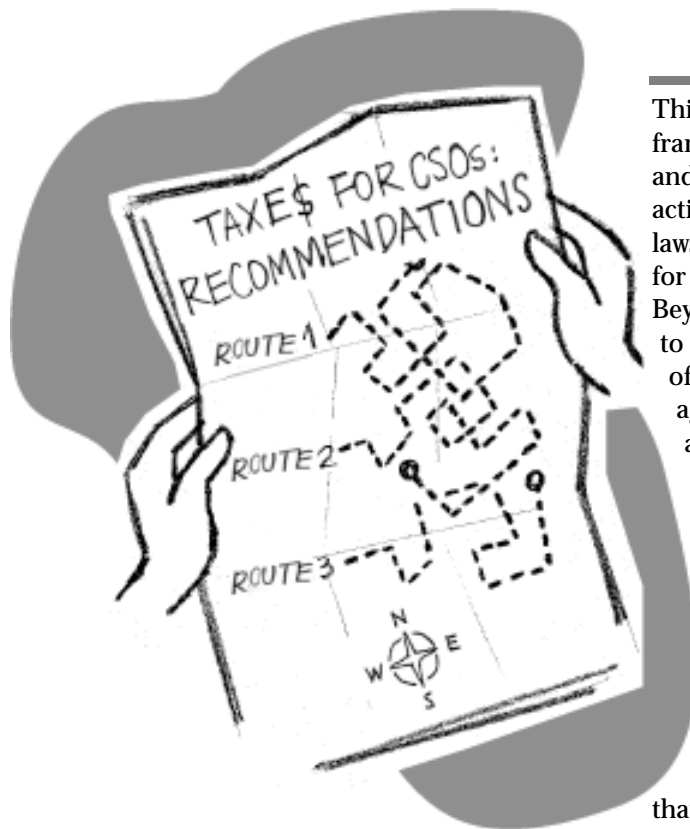
If the organization had been classified as a health organization, but not recognized by the Ministry as a direct service delivery agency, it would be considered a CSO under special regime and would not enjoy the same tax treatment. It would have to pay a 20% income tax rate on the revenues generated by these non-mission-related activities. And if a large percentage of its overall income came from any one of these activities, the organization could be required to pay a 35% income tax.

Almost all of the organization's self-financing activities are governed by its nonprofit legal status and are accounted for under its internal accounting system. The one exception to this is the sale of cookies, which is legally structured as a separate for-profit company, Campaña por Gusto y Solidaridad, which is jointly owned by Fundamor and Comida Sana. Fundamor receives a percentage of the profits of the company in the form of a donation and therefore pays no income tax on this activity.

Fundamor is not exempt from value-added tax (IVA). Fundamor charges IVA at 16% on all of the products and services that it sells (with the exception of its organic food products, which are exempt from IVA). The organization is, however, able to deduct from this amount all of the IVA that it pays for the cost of producing these products and services (i.e., raw materials, supplies, and other related costs). For example, Fundamor charges and deposits with the government a 16% tax that it collects on all of the uniforms that it sells in a given year. When the organization purchases the fabric, thread, needles, scissors, and other supplies, it must similarly pay 16% IVA on these purchases, but this amount is then returned to the organization from the IVA that it collects from the sale of the uniforms. So if Fundamor sells COLP 50,000 worth of uniforms, it also collects 16%, or COLP 8,000, in IVA from its customers. If it had spent COLP 20,000 for costs of production, it would pay 16%, or COLP 3,200, in IVA. The organization could recover COLP 3,200 from the total of COLP 8,000 that it already paid to the government.

Finally, the organization must pay 7% on interest earned from investments, but this amount is returned to the organization when it makes its monthly income declarations.

Interpreting and Critiquing The Colombian Legal and Regulatory Framework



This chapter interprets and critiques the legal framework (presented in the previous chapter) and regulatory for regulating CSO commercial activities in Colombia. In many ways, Colombian laws establish a favorable regulatory environment for CSOs to engage in commercial activities. Beyond specifically protecting the right of CSOs to conduct commercial activities, Colombian laws offer tax discounts and exemptions that encourage many CSOs to initiate commercial activities and provide financial rewards to those that do so.

Yet despite these positive aspects of the laws, vague language in recent legislation and the subjective application of regulations by government institutions often produce a disparity between the original intent of the laws and their present enforcement. This disconnect undermines the government's good intention of promoting organizations that work for the public benefit. In this context, the government's commitment to nurturing CSOs and enhancing their benefit to Colombian society is threatened by imperfect and dubiously applied laws.



4.1 Tax Rulings

In Chapter 3, we examined the legal and regulatory language that applies to CSOs conducting commercial activities and discussed the ambiguity of this language particularly in relation to CSOs under special regime. This section reviews two rulings from the tax

authorities to discuss how they have applied the laws and regulations to CSOs engaging in commercial activities. In both cases, CSOs applied

for income tax exemptions for their commercial activities and in both cases the tax authorities determined that the CSOs should pay the full 35% income tax. These cases reflect the unilateral power vested in the tax authorities to interpret and apply the tax laws and regulations.

In the first case, a CSO engaged under its bylaws in supporting television programs and classified as a taxpayer under special regime applied for a tax exemption on the income generated from its programs. The tax authorities denied the income-tax exemption on the grounds that the cultural and educational content of the television programs did not sufficiently fulfill the organization's mission. Although the tax authorities did not question that the profits were destined to support the mission of the organization—as is required for CSOs under special regime—they ruled that these programs constituted a high proportion of the organization's overall activities. Thus, rather than extending a partial income-tax discount of 20% to the organization, the tax authorities determined that it should pay the full tax of 35%. This ruling essentially denies that the principal purpose of the CSO was for the public benefit (in this case

television programs with significant cultural and educational content) espoused in its mission.

In the second case, a nonprofit foundation organized to promote, develop, and fund scientific and technological research applied for an exemption on income generated from its market invest-

Vague language in recent legislation and the subjective application of regulations by government institutions often produce a disparity between the original intent of the laws and their present enforcement.

ments. This organization falls within the CSO categories established in Article 19 of Special Decree 624 and is therefore classified as a taxpayer under special regime.

However, the tax authorities denied an income-tax exemption on the grounds that the foundation's surpluses not only originated from market investments (and were thus not related to the CSO's mission) but also were reinvested in the market and therefore not destined to its mission.

This ruling could be considered is a misapplication of the law, for while the original income from the investments was not directly channeled to the organization's mission, the purpose of reinvesting this income was to generate a larger and continuous flow of income that could sustain the organization's mission in the long run. In this sense, the income was indirectly destined to the CSO's mission. Although the organization was clearly not eligible for a tax exemption since its activities were not mission-related, the income from these activities was destined to furthering this mission. Thus, the tax authorities should have based their decision on the level of the commercial activity. Since the investment did not represent the principal activity of the organization, a 20% income tax should have been applied, rather than the full 35% tax.

4.2 Critique of the Legal Framework Regulating CSO Commercial Activities

While there are certainly weaknesses in the regulatory environment for CSOs conducting commercial activities in Colombia, there are also several positive aspects of the system to build upon. From a theoretical perspective, Colombian law not only specifically acknowledges the right of CSOs to engage in commercial activities, but also grants various tax discounts and exemptions to some CSOs based on a recognition of their positive contributions to society. Furthermore, these different tax treatments are generally organized around reasonable and logical principles that reward CSO commercial activities (at least for CSOs under special regime) through tax discounts in accordance with the contribution of the particular activity to the public benefit (mission-related activities are tax exempt, while non-mission-related activities are not).

From a theoretical perspective, Colombian law not only specifically acknowledges the right of CSOs to engage in commercial activities, but also grants various tax discounts and exemptions to some CSOs based on a recognition of their positive contributions to society.

On the other hand, the classification of CSOs into three categories with different tax treatments seems largely based on the political clout of various groups of CSOs, rather than on more fundamental principles such as their contribution to the public good.²² Although the legal treatment of CSOs under special regime is well-grounded (at least in theory), the classification of some CSOs as non-taxpayers does not have a sound justification. Not only does it unfairly privilege some CSOs over others, but it also establishes the basis for justifiable criticisms of preferential treatment from the for-profit sector, criticisms that in turn undermine the legitimacy and reputation of all CSOs. This preferential treatment for non-taxpaying CSOs is the other major weakness of an otherwise strong theoretical framework for regulating CSO commercial activities.

Beyond this theoretical assessment, the Colombian framework generally receives mixed reviews on the five ICNL criteria described in Chapter 2.

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Thus, the most powerful groups of CSOs, such as unions, religious movements, universities, and hospitals, are classified as non-taxpayers, while CSOs with smaller or less powerful constituencies, including environmental organizations, cultural groups, and social development programs-despite their value to society-are classified as taxpayers under special regime. Even more problematic is the relegation of CSOs whose principal activity is non-formal education to the category of taxpayer. This classification implies that the government does not believe that non-formal education contributes to the public good.

OVERALL CRITIQUE: COLOMBIAN LEGAL FRAMEWORK FOR CSO COMMERCIAL ACTIVITIES

	Good	Moderate	Poor
Simplicity or complexity of administration		●	
			<p>In the revised system of taxation, CSOs deal directly with the DIAN, instead of going first to the Committee on Nonprofit Institutions and then to the DIAN. In this sense, the new system simplifies and expedites the filing procedure for CSOs. Nevertheless, the required income filing return for taxpaying CSOs and CSOs under special regime is detailed and complicated, while the process for non-taxpaying CSOs is relatively simple and straightforward.</p> <p>Broader powers of CSO oversight, which reside in the executive branch and have been passed along to the mayors' offices, have only begun to be exercised in recent years.²³ This is problematic in some ways—it means, in effect, that non-taxpaying CSOs are not monitored at all and that all other CSOs are only monitored for tax purposes—but it also simplifies the situation for CSOs, which need not be concerned with excessive meddling from government institutions.</p>
Effects on revenue collection	●		
			<p>The regulatory environment for CSOs in Colombia is focused almost exclusively on collecting taxes. As discussed in the previous section, in many cases where the law appears to grant a CSO a partial or complete exemption, the DIAN has ruled otherwise. Furthermore, many organizations in Colombia, seeking to avoid the high costs of litigation entailed by a confrontation with the DIAN, prefer to pay and put an end to the proceedings rather than protest these rulings. Thus, the DIAN collects more taxes from CSO commercial activities than might be expected, given the legal provisions for tax discounts and exemptions. In this sense, the effect on tax collection is very good.</p>
Effects on the commercial sector		●	
			<p>Many in the for-profit sector charge that CSOs receive preferential treatment via tax discounts and exemptions that give them a competitive advantage over for-profit businesses. While some of these complaints may be justified at face value—particularly in the case of non-taxpaying CSOs that never pay income tax—it is unclear to what degree this differential treatment, even if “unfair,” has any practical effects on the competitiveness of for-profit businesses. Furthermore, CSOs that do receive more favorable tax benefits than their for-profit peers also operate in the marketplace with a number of disadvantages and inefficiencies compared to for-profit enterprises (for example, less access to investment capital, added costs associated with employing individuals who are untrained, or providing services to marginalized communities that are unable to pay competitive prices). Nevertheless, it is important to establish fair rules of the game that recognize the contributions CSOs make to Colombian society, but that do not give them unfair advantages (see Box 4a for further discussion of this issue).</p>

OVERALL CRITIQUE: COLOMBIAN LEGAL FRAMEWORK FOR CSO COMMERCIAL ACTIVITIES

	Good	Moderate	Poor	
Effects on the development of the NPO sector	●			Laws regulating CSO commercial activities are relatively generous in Colombia. The fact that many CSOs receive tax discounts or exemptions for their commercial activities is an incentive to initiate these activities and provides tangible benefits to organizations that do so. At the same time, the mere existence of a favorable regulatory environment does not ensure that CSOs will take advantage of these laws or that their commercial activities will be viable. CSOs often lack the necessary skills, experience, and access to capital that would enable them to take advantage of this favorable legislation. Nor does there exist adequate technical or financial support for initiating and managing commercial activities from either government institutions or other CSOs within the country. Moreover, vague language in the regulations governing commercial activities and the precedents established by the DIAN in various rulings against CSO exemptions act as deterrents to CSOs that might otherwise engage in commercial activities. The positive aspects of the regulatory environment are therefore undermined by various challenges that hamper CSO commercial activities, and the related development of the organizations and the larger sector, in practice.
Practical implementation issues		●		Many CSOs, particularly those classified as non-taxpayers, take advantage of the favorable legislation protecting them against income taxes for their commercial activities. To this extent, the laws have a positive practical effect. On the other hand, vague language in the legislation is often used to issue narrow interpretations of the law that deny CSOs tax discounts and exemptions in many cases where they should be upheld. In this sense, the legislation is sometimes misapplied with negative financial effects to the CSOs in question.

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Box 4a COMMERCIAL ACTIVITIES AND COMPETITION WITH THE PRIVATE SECTOR

Many in the for-profit sector complain that CSOs benefit from unfair laws that give them a competitive advantage in their commercial activities. As commercial activities among Colombian CSOs become more developed and publicly recognized, it is important to examine the issue from different angles. Some important points to consider:

CSO commercial activities provide added public benefits to society.

First and foremost, the role of CSOs as organizations working to provide public benefits essential to society must not be overlooked. In this context, tax protection that strengthens the ability of CSOs to contribute to society is justified. Establishing separate regulations to govern the nonprofit and for-profit sectors does not necessarily privilege one over the other; rather, it recognizes the uniqueness of each and aims to institute the most appropriate regulations possible, given their different situations and contributions.

CSOs—and the commercial activities they conduct—are widely diverse in nature.

Second, it is important to remember that CSOs are far from a homogeneous group. This diversity is accentuated by the significant differences in tax treatment between the three CSO classifications of non-taxpayers, taxpayers under special regime, and taxpayers. Lumping all CSOs together and criticizing their “preferential treatment” fails to recognize these differences. In the current context, many CSO proponents would agree that certain regulations, especially some of those that apply to non-taxpaying CSOs, are unfair—both to for-profit businesses and to CSOs that are classified differently. Yet this is not sufficient grounds for attacking all CSOs or for eliminating tax discounts and exemptions that might promote the public benefits that many CSOs indeed create through their commercial activities.

CSO commercial activities are relatively small in comparison with for-profit enterprises.

Finally, when considering complaints of unfair competition from for-profits directed at CSOs, it is essential to consider the relative resources controlled by these groups. Certainly, it would seem ridiculous for a large for-profit entity to complain of unfair competition from a community-based organization conducting a small-scale commercial operation. It might be more reasonable for the same business to complain of unfair competition from a hospital or university engaging in larger-scale commercial operations. Even more justified would be a small business owner complaining of unfair competition from the commercial activities of a hospital or university. This is not to say that the issue should be considered without reference to underlying principles. Rather, basic principles should play a central role in regulating CSO commercial activities—CSOs should receive tax exemptions, or at least tax discounts, on activities that promote the public good. Any advantages that accrue to CSOs in this context are justified if the CSOs do indeed promote a public benefit.

4.3 Key Weaknesses of the Current Framework

This guide has presented the various provisions of the Colombian legal and regulatory framework that govern the commercial activities of CSOs. While many aspects of the system promote the development of CSOs, there are a few critical weaknesses that undermine the positive effects and good intentions. Three major problems are outlined below.

1. Arbitrariness of CSO classifications for tax status.

Since all CSOs may engage in commercial activities in Colombia, tax treatment of commercial income often determines whether, how, and to what extent CSOs will conduct such activities. This tax treatment is highly regimented by the CSO's principal activity—CSOs are classified by type, and tax status follows from this classification. The different tax statuses either facilitate commercial activities (in the case of non-taxpayers or taxpayers under special regime conducting mission-related activities) or deter them (taxpayers or taxpayers under special regime for non-mission-related activities). Yet the classification of CSOs into these categories does not seem to be grounded in principle, as is especially evident with the shifting classification of trade associations in recent years (see section 3.2.3). The current system of classification for tax purposes unfairly favors some CSOs (non-taxpayers) and unfairly discriminates against others (taxpayers). Income tax provisions for CSOs under special regime are a reasonable middle ground that could be used for all CSOs.

2. **Subjective nature of provisions.** The subjective nature of the regulations governing CSO commercial activities provides tax officials with wide flexibility in determining 1) the tax status of CSOs under special regime and 2) whether CSOs are classified as taxpayers or as taxpayers under special regime. There are no clear defi-

nitions for determining mission-related activities, for measuring the level of the activity relative to the overall work of the organization, or for classifying CSO activities as social development programs (which would place them under special regime) or as non-formal education (taxpayer status). Difficulties arise because CSOs may interpret their status differently than the DIAN, which has the sole power to make the final ruling. The decisions made by the DIAN significantly affect the viability of CSO commercial activities and, in turn, the overall strength of the organizations themselves.

3. **View of CSOs as “charitable” institutions that are financially dependent.** There is a tendency in Colombia to view nonprofit organizations as simply charitable institutions, and any year-end surpluses attract special attention and review by the tax authorities. Agencies responsible for overseeing and controlling such organizations, particularly the DIAN, often fail to understand that not-for-profit organizations are not “for-loss” organizations. The fact that they report surpluses does not in any way mean that they are straying from their purpose as nonprofit institutions. What is important is that the surpluses accruing at the close of any fiscal year (in Colombia, on December 31 of the same calendar year) are not distributed or shared among the members of the organization.

4.4 Recommendations

Based on these criticisms of the laws, regulations, and practices for government oversight of CSOs conducting commercial activities, we make the following recommendations for improving the system:

1. **Establish consistent criteria for determining tax status.** The current system of classification discriminates against some CSOs and favors others without solid grounding in principles or values.

This classification system should be modified and aligned so as to promote CSO commercial activities that promote the public benefit.

One logical way to do this would be to reclassify all CSOs as taxpayers under special regime and offer tax discounts and exemptions when CSO commercial activities actually contribute to the public good.

A uniform system, like the one currently applied to taxpayers under special regime—which offers tax exemptions to mission-related commercial

activities and discounts to non-mission related activities whose revenues are used to support this mission—would be a good way to organize tax treatments. Regardless of whether the legislature chooses to expand this specific formula or develop another one, it is necessary that the present system be modified to establish clear, consistent, and principled guidelines for determining CSO tax status.

- 2. Develop clear and thorough legal and regulatory guidelines.** Because the tax regulations for nonprofit commercial activities are unclear or misconstrued, their application often produces effects contrary to their intent. Therefore, it is essential to create laws and regulations that clearly and thoroughly establish the will of the legislature so that there can be no misinterpretation in the enforcement of their intent.

The legislature is presently debating a new law for nonprofits; this law, or another that specifically addresses CSO commercial activities, should amend the regulations presently in force to clarify ambiguities in the current provisions. This would involve adjusting Special Decree 624 and Rule Decree 124 of 1997 to remove vague language and to establish guide-

lines for determining how to classify the mission-relatedness and level of commercial activities.

- 3. Educate CSOs, government officials, and the general public.** It is vital for CSOs, especially those wishing to engage in commercial activities, to be aware of applicable legislation. CSOs

will need support—most likely from the government but also, perhaps, from other nonprofit institutions—in receiving the appropriate training to effectively navigate the legal and regulatory

environment governing their activities.

Currently, such resources do not exist; the creation of a nonprofit institution that could offer legal, accounting, and other technical expertise at prices affordable to CSOs would be extremely beneficial to the development of the sector.

It is also necessary for government officials, especially DIAN officials, to be properly trained so that they can accurately enforce the laws. More broadly, it is important that the general public recognizes and appreciates the work of CSOs. Greater understanding of CSOs and their contribution to the public good will help to reduce charges of unfair competition from the for-profit sector and will generally promote the well-being of CSOs and hence their ability to further their valuable social missions.

- 4. Exempt CSOs from VAT on purchases directly related to their mission activities.** A fourth and final recommendation is not directly related to CSO commercial activities as they are commonly defined in Colombia, but addresses an issue that strongly influences the financial viability of CSOs. As mentioned in section 3.3, VAT applies to all purchases, including those that CSOs make in pursuit of their missions. A soup



kitchen pays 16% VAT on the food that it purchases to feed its clients just as a mining business pays 16% VAT on the machinery it buys to extract minerals from the earth. This uniform application of the VAT law fails to recognize and promote the benefit to Colombian society that CSOs produce. The authors of this guide believe that just as CSOs should receive favorable tax treatment for their mission-related commercial activities, so should they receive favorable tax treatment for their mission related non-commercial activities. In the case of VAT, this would involve exempting CSOs from the 16% VAT on purchases that are directly related to their mission related activities. Such an exemption would eliminate a sizeable financial burden for CSOs and thus help them to produce greater public benefits for Colombian society.

Conclusion

There is no doubt that clarifying the laws, making them more equitable, and bringing their enforcement more in line with their intent would improve the legal and regulatory framework for CSOs wishing to or already pursuing commercial activities in Colombia. We hope that this guide serves to present and explain the current legislation in Colombia and to highlight those areas that need to be considered for reform. Particularly given limited government and philanthropic resources and the lack of capacity-building and financial support for commercial activities by CSOs in Colombia, these changes would go far in fostering the transparent use of self-financing and recognizing it as a legitimate and important revenue-generating option for Colombian CSOs.

Appendix A: REGISTRATION WITH THE CHAMBER OF COMMERCE

With the exception of the groups of CSOs listed below, all CSOs must register with a Chamber of Commerce located in the jurisdiction of the juridical person that is being formed. Under Decree 2150 of 1995, the requirement to recognize the legal status of nonprofit organizations by a Chamber of Commerce was eliminated. Subsequently, Decree 427 of 1996 specified which types of organizations are not required to register with a Chamber of Commerce. These are

- Institutions of higher education
- Institutions of formal and non-formal education dealt with under Law 115 of 1994
- Juridical persons supplying private surveillance services
- Churches, congregations, and religious denominations, the federations and confederations thereof, and ministers' associations
- Organizations regulated by Law 100 on Social Security
- Unions and associations of workers and employers
- Political parties and movements
- Chambers of Commerce regulated by the Code of Commerce
- Other juridical persons whose creation and operation are expressly and specifically regulated by law, all of which shall be governed by their special provisions
- Private organizations in the health care sector dealt with under Law 10 of 1993
- Organizations under collective management on copyright and associated rights dealt with under Law 44 of 1993
- Foreign private-law nonprofit juridical persons with headquarters abroad and establishing permanent business operations in Colombia
- Official welfare and public education establishments and corporations and foundations created by laws, ordinances, and agreements regulated by Decree 3130 of 1968
- Properties governed by condominium laws regulated by Law 16 of 1985
- Family allowance clearing houses regulated by Law 21 of 1982
- Native Indian associations regulated by Law 90 of 1890
- Organizations composing the National Sports System at various levels regulated by Law 181 of 1995
- Pensioners' trade associations dealt with under Law 61 of 1993
- Jailhouses dealt with under Law 65 of 1993
- Shooting and hunting clubs and associations of arms collectors, regulated by Law 61 of 1993

The fact that this group of organizations is not required to register with the Chamber of Commerce implies that recognition of their legal status does not stem from such registration. Furthermore, the formation of these organizations, their bylaws and amendments, licenses and operation permits, as well as evidence of existence and representation, are governed by their own particular provisions. Finally, registration with the Chamber of Commerce is based exclusively on the legal status of the organizations and has no bearing on tax status.