

➤ New law on tax benefits for donations to non-profit legal entities

On April 12, 2022, Law No. 21,440 was published in the Official Gazette, which modifies Law Decree No. 3,063 (Municipal Income Law), creating a new regime applicable to donations in favor of non-profit legal entities, which contemplates certain tax benefits. This new regime will be complementary to those contained in special regulations regarding donations.

Hereinafter, we describe its main elements:

I. Who can be donors?

Taxpayers of Corporate Income tax, Personal Income tax, Payroll tax, and Withholding tax, will be able to benefit from the law. Withholding tax taxpayers would need to make an annual income tax return to make use of the benefits of this law in case they are not required to do so.

II. Who can be donees?

Only the entities that meet the following copulative requirements may request their incorporation in the public registry mentioned in the section VII, and therefore make use of the tax benefits treated in the section IV:

- 1 Be non-profit institutions governed by the Civil Code, Fire Brigades, or religious entities constituted according to Law No. 19,638.
- 2 Promote the purposes that are set forth in the law, briefly indicated in section III.
- 3 Be public benefit entities, which means that offers its services or activities to the entire population, or to a group of people with general and uniform characteristics, without discrimination.

A regulation of the Ministry of Finance will regulate the manner of proving compliance of said requirements. Said regulation must be issued within three months from the publication of the law in the Official Gazette.

III. Donations eligible for this new regime

- 1 The purpose of the donation must be the financing of certain specific aims, which are expressly contemplated in the law, such as: health promotion, educational, scientific research, cultural projects, etc. It should be noted that the law includes purposes that up until the moment were not recognized in other special donations regimes, such as gender equality, human rights protection, strengthening of the democracy and humanitarian aid in foreign countries.
- 2 Donations may be made in money, tangible or intangible assets. In the latter case, the intangible asset shall be subject under a registral regime.
- 3 It is expressly recognized that donations from foreign countries, made by persons or entities not domiciled nor resident in Chile, will not be subject to donations tax, provided that the donated assets are located abroad, and are not financed with resources coming from Chile.

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IV. Tax benefits

- 1 Donations under this law shall not be subject to donations tax.
- 2 Likewise, they shall be free of judicial authorization.
- 3 Donors will be able to reduce from their tax base of the corresponding tax, the amount of the donations, with an annual cap determined by the following rules:
 - a Corporate Tax: The least value between: (i) the equivalent in Chilean pesos to 20,000 monthly tax units ("MTU") (USD 1.4 million approx.), at its value at the end of business year; (ii) some of the following amounts, chosen by the donor: (a) 5% of the tax base; (b) 0.48% of its own taxable equity; or (c) 0.16% of its effective equity.
 - b Payroll tax, Personal Income tax and Withholding tax: the least value between: (i) the equivalent in Chilean pesos of MTU 10,000 (USD 680,000 approx.); and (ii) 5% of the tax base of the corresponding tax.

Any amount that exceeds these limits will not be accepted as a deductible expense and will not be allowed to be deducted of the tax base. However, it will not be subject to the fine tax contemplated in article 21 of the Income Tax Law.

- 4 Donations under this law will not be subject to the absolute global limit established in the Law No. 19,885. However, donations under this law will not be able to benefit from other tax benefits regulated in special laws.

V. Obligations for the involved entities

V.1) Donees

- 1 Allocate donations for:
 - a Operational expenditures strictly related to the general interest purposes that motivated the donation.
 - b Construction, maintaining, reparation and improvement of the equipment and estates destined to the general interest purposes.
 - c Finance the programs, projects, plans, initiatives, and activities destined to the fulfillment of the general interest purposes.
- 2 Send the donor a donation certificate within 10 business days from the date of its reception. Likewise, the donee shall deliver a receipt of the donation delivery. The Chilean IRS shall regulate, through a resolution, how to issue the certificate and which documents will be useful as a receipt of delivery.
- 3 Submit an annual report to the Technical Secretary, which contains, among others, information on: activities made, detailed use of the resources received, donations in excess of USD 20,000, total payments made to projects in general, total payments for administrative expenditures, initial balance of the period and final balance available for the next period.
- 4 Maintain updated information published in the donation's portal administered by the Technical Secretary (see section VII).
- 5 If the annual amount of donations from foreign countries exceeds USD 10,000, the donee shall make a sworn statement before the Chilean IRS.
- 6 Inform the Chilean IRS of the details of the donated assets that have been imported, in the manner and within the term determined by the Chilean IRS by a resolution.

V.2) Donors

Donors shall have the obligation to communicate the Chilean IRS the donations made during the business year in the manner and within the term established by the Chilean IRS by a resolution.

To access the tax benefits, the donors shall exhibit the donation certificate issued by the donee and the receipt of the donation delivery. Nevertheless, the donor can always prove the effectiveness and the amount of the donations by any legal means of proof.

VI. *Prohibitions affecting donees*

- 1 Making considerations in favor of donors, their employees, related entities, directors, spouses, civil partner or family members, for a period ranging from 12 months prior to and 48 months after the date on which the donation is made. This prohibition will not apply when the compensation has a value of less than 10% of the donated amount and does not exceed MTU 50 (USD 3,400 approx.).
- 2 Remunerate the services provided by the members of the entity, their spouses, civil partner, or family members, at values higher than normal market values.
- 3 Receive donations from members of their board of directors, their spouses, civil partners, or family members.

VII. *Creation of a Technical Secretary*

- 1 A Technical Secretary is created, in charge of the Ministry of Finance, which will oversee the administration of the public registry where donees shall register, and of supervising compliance with the provisions of the law, especially the obligations and prohibitions that affect the donees.
- 2 Public registry: all the donees that operate under this law shall register in this registry, through an electronic form, including information about the family links between members of the board of directors, between them and their employees, and indicate related interest groups.

The regulation mentioned in section II shall establish a procedure of registration and removal; the information which the entities shall submit; the grounds for removal; and all matters relating to the operation and administration of the registry.

- 3 Donation's portal: the Technical Secretary shall also manage a public digital donations portal, which shall contain updated information regarding:
 - a The list of registered entities, with the details of their associates or partners, founders, members of the board, financial statements, and bylaws.
 - b The historical list of donations received, with date, amount, and the specification if they come from abroad.
 - c Annual reports of the registered donees (see section V.1).
 - d Any information required by law or regulation referred to in section II.
- 4 The Technical Secretary shall implement both the public registry and the portal no later than three months since the publication of the law in the Official Gazette.

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