

# Masterclass: Commerciality

2021 University of Texas School of Law  
Nonprofit Organizations Institute

Susan H. Mac Cormac, Morrison & Foerster LLP  
Ruth M. Madrigal, KPMG LLP  
David A. Shevlin, Simpson Thacher & Bartlett LLP

January 21, 2021

1

## Contents

Introductions	3
Revenue Generating Activity	4
Commerciality: The Law	9
Aggregation of Capital	25
Business Model Changes for Large Corporates	35
Emerging Company Models	47
Deployment of Capital	57
Commerciality: Final Thoughts	60

2

2

# Introduction



## Suz Mac Cormac

Suz Mac Cormac is a Corporate Partner at Morrison & Foerster and serves as co-chairs of the firm's Social Enterprise & Impact Investing Group. Suz has dedicated her career to crafting creative capital market solutions to address climate change and other pressing social and environmental issues. She focuses on innovative corporate forms and governance, tandem and hybrid structures, and debt and equity instruments that ensure financial and impact returns. Her client base includes leading growth and private equity investors, "impact first" foundations and family offices together with marque social enterprises and public companies focused on sustainability and ESG. Suz was named a CA Lawyer Attorney of the Year in 2012 and 2016 by *Daily Journal* and the Most Innovative Lawyer in North America by *The Financial Times* (2015). She was a founding board member of the Sustainability Accounting Standards Board, is a member of the Ceres President's Council and the Board of Earth Genome Project.



## Ruth M. Madrigal

Ruth Madrigal has extensive experience, both within the government and in private practice, advising on a wide variety of tax policy issues affecting charities and other tax-exempt entities. She is a principal at KPMG LLP and the leader of the Exempt Organizations group in the firm's Washington National Tax practice. Ruth has more than a decade of private practice experience in law firms, advising a broad range of exempt organizations and their donors, as well as advising corporations and individuals on such areas as charitable giving, social impact activities, and corporate social-responsibility programs. From 2010 to 2016, Madrigal served as an attorney and policy advisor in the Office of Tax Policy at the U.S. Department of the Treasury, where she was responsible for advising the Assistant Secretary of Tax Policy on all matters involving tax-exempt organizations and their donors.



## David A. Shevlin

David Shevlin is a Partner at Simpson Thacher & Bartlett LLP and is Head of the Exempt Organizations Practice. He advises a variety of international and domestic exempt organizations, including all forms of private foundations and public charities. David also advises donors to, and the governing bodies, of exempt organizations. In particular, he advises universities, foundations, hospitals and cultural institutions on the investment of their endowments. David has particular expertise in working with charitable organizations in connection with social enterprise and program-related investments. David also has been involved in assisting governing bodies on internal investigations. David has been recognized as a leading not-for-profit lawyer in *The Legal 500 United States* (2015-2020) and as a leading practitioner in *Chambers USA: America's Leading Lawyers for Business* (2008-2013). He was selected as a member of the David Rockefeller Fellows Class of 2015 and named *The Best Lawyers in America's "Lawyer of the Year"* for Non-Profit/Charities Law for New York City (2014-2015, 2017, 2018).

# Revenue Generating Activity

# Revenue Generating Activity

*Why are tax-exempt organizations increasingly gravitating towards revenue generating activities?*

## 1. To efficiently adjust the quantity/quality of charitable activities to meet societal needs and allocate burdens/benefits

- Hospitals/healthcare
- Performing arts
- Colleges/Universities
- Social services

# Revenue Generating Activity

*Why are tax-exempt organizations increasingly gravitating towards revenue generating activities?*

## 2. To accomplish charitable missions more effectively.

- Health/social service outreach
- Impact investing
  - Mission-related investments.
  - Program-related investments.
    - Example: an environmental organization may invest in renewable energy companies as a tool to fight climate change just as educating the public can be a tool to fight climate change.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Masterclass: Commerciality

Also available as part of the eCourse

[2021 Nonprofit Organizations eConference](#)

First appeared as part of the conference materials for the  
38<sup>th</sup> Annual Nonprofit Organizations Institute session  
"MASTER CLASS C: Commerciality"