

# France

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## I. Summary

### A. Types of Organizations

French law recognizes two primary legal forms of not-for-profit, non-governmental organizations (“NGOs”): associations and foundations. Associations may serve either a private or public benefit. Public benefit associations fall into one of two categories: (1) general interest; and (2) public utility.

French law also recognizes three primary forms of foundations: (1) public utility foundations, (2) sheltered foundations, and (3) corporate foundations. Four other forms of

foundations also exist but are not frequently created: research foundations, partnership foundations, university foundations, and scientific cooperation foundations.

These foundations are all subject to different regulatory regimes; for example, only commercial entities may found a corporate foundation. All foundations must serve a public benefit purpose.

Trade unions, religious organizations, and political parties also qualify as NGOs, though their limited interaction with U.S. grantmakers places them outside the scope of this Note.

## **B. Tax Laws**

Generally, NGOs may receive donations, grants, and other contributions (with the exception of “contractual donations”) without incurring any income tax liability. VAT exemptions are provided for specified types of activities or goods. A reduced VAT rate is applied to certain goods, including medicine, pharmaceutical products, and equipment for handicapped individuals.

All foundations, except for corporate foundations, are entitled to tax credits for their donations to NGOs with general interest or public utility status. Legal entities may receive tax credits worth up to 0.5% of their annual income for donations, while individuals may receive tax credits worth up to 20% of their annual taxable income for donations.

Contractual donations, which are grants or conditional gifts that impose certain obligations on the recipient, are subject to a special levy. Only certain types of organizations may receive contractual donations, and of those eligible, only certain ones are exempt from paying tax on the donation.

## **II. Applicable Laws**

- Law on Associations of July 1, 1901 (“Associations Law”);
- Decree of August 16, 1901 on Regulation of Public Administration for the Implementation of the Law of July 1, 1901 on Association Contracts (“Implementation Decree of the Associations Law”);
- Law No. 87-571 of July 23, 1987 on the Development of Philanthropy (“Law on Philanthropy Development”);
- [Law No. 90-559 of July 4, 1990 Creating Corporate Foundations and Modifying the Content of Law No. 87-571 on the Development of Philanthropy](#);
- [Law No. 2002-5 of January 4, 2002 on the Museums of France](#);
- [Law No. 2003-709 of August 1, 2003 on Philanthropy, Associations and Foundations](#);
- Law N°2006-450 of April 18, 2006 on Research;

- Law N° 2007-1199 of August 10, 2007 on Rights and Responsibilities of Universities;
- Law N° 2007-1223 of August 21, 2007 in favor of Work, Employment and Purchasing Power;
- Law N°2008-776 of August 4, 2008 on Modernization of the Economy;
- Decree N° 2008-326 of April 7, 2007 on University Foundations' General Functioning Rules;
- Decree N° 2009-158 of February 11, 2009 on Endowment Funds;
- Circular “*Circulaire*” of May 19, 2009 on the Organization, Operations and Control of Endowment Funds;
- Law N°2009-879 of July 21, 2009 on Hospital Reform and Regarding Patients, Health and Territories;
- Tax Code;
- Implementation Regulation (EEC) No. 2290/83 of July 29, 1983 of Regulation (EEC) 918/83;
- Instruction of the Ministry of Taxation, September 15, 1998 (“Instruction of 1998”);
- Instruction of the Ministry of Taxation, April 9, 2004 (“Instruction of 2004”);
- Instruction of the Ministry of Taxation, December 18, 2006;
- Instruction of the Ministry of Taxation, April 9, 2009 “4C-3-09”;
- Instruction of the Ministry of Taxation, June 25, 2009 “7G-6-09”;
- Model Charters for Public Utility Associations and Foundations, *Conseil d’Etat*;
- Law of February 4, 1901 on Administrative Control over Donations;
- Opinion of the *Conseil d’Etat* of June 13, 1978, No. 322894;
- Order of the Ministry of Economics, Finance, and Industry of December 30, 1983 on Tax Exemptions (“Customs Order”);
- Regulation (EEC) No. 918/83 of March 28, 1983 on the Common Regime of Customs Duties;
- Education Code;
- Tax Adm. Doc. 5 B-3311 No. 11 of July 20, 1994 and Tax Adm. Doc. 4 C-712 No. 11 ;
- European Council Directive n°132/2009.

## III. Relevant Legal Forms

### A. General Legal Forms [\[1\]](#)

#### Associations [\[2\]](#)

Two or more persons may create an association for any legal activity besides the “sharing of profits” (Article 1, Associations Law). To acquire legal personality, an association must notify the relevant prefecture (territorial sub-division of the central government) of

its existence. [3] As discussed in the section on Public Benefit Status (Section III (B)), associations may seek general interest or public utility status.

There are now approximately 1,200,000 registered associations in France.

## **Foundations**

According to the July 23, 1987 Development of Philanthropy Act, as modified by the July 4, 1990 Corporate Foundations Act, “a foundation is the deed by which one or several persons decide to assign irrevocably some goods, rights, or resources to the fulfillment of a public interest and not-for-profit purpose.”

Foundations must have their own patrimony; an attribute that distinguishes them from associations, which are simply groupings of individuals or legal entities with a common goal. As all foundations must serve a public benefit, private interest foundations are not permitted.

The Development of Philanthropy Act and Corporate Foundations Act define three primary types of foundations:

- Public Utility Foundations;
- Sheltered Foundations; and
- Corporate Foundations.

Five other types of foundations are less common. These foundations were recently created by law, and the publication of related decrees that would govern them is pending.

- Research Foundations,
- Partnership Foundations,
- University Foundations,
- Scientific Cooperation Foundations and,
- Hospital Foundations.

In addition, Law N°2008-776 of August 4, 2008 created “endowment funds.”

The January 4, 2002 Act on the Museums of France, the August 1, 2003 Act on Philanthropy, Associations and Foundations, and the *Conseil d'Etat's* (the highest administrative court) implementation of standard by-laws for public utility foundations have all contributed to a more flexible process for creating and administering foundations.

### **1. Public Utility Foundations (*Fondations reconnues d'utilité publique*)**

One or more persons or legal entities may create a public utility foundation. Foreigners may also create a public utility foundation; their legal capacity to do so will depend on the domestic law of their country of origin and not French law.

French law requires a public utility foundation to have an endowment sufficient to fulfil its purpose. [\[4\]](#)

This endowment may be created by a donation or legacy, and contributions to the endowment may be made in instalments over a five-year period.

The law also requires that foundations be not-for-profit and apply their assets in a manner that serves the general interest. The concept of general interest refers to benefits conferred upon an entire community, on issues concerning public health, environment, philanthropy, and others (for more details see section B.1 below). To qualify for recognition as a public utility, foundations must receive approval from the *Conseil d'Etat* and the Ministry of the Interior. Once the *Conseil d'Etat* has reviewed the application, it sends an opinion to the Prime Minister, who publishes a Decree recognizing the organization as a public utility. A public utility foundation must receive approval from the *Conseil d'Etat* before amending its charter or dissolving and distributing its assets.

There are approximately 1,500 public utility foundations.

## **2. Sheltered Foundations (*Fondations abritées or sous égide*)**

A sheltered foundation is a foundation that operates under the aegis of a public utility foundation. Also referred to as a “non-autonomous” foundation, sheltered foundations do not have their own legal status; instead they are hosted by another institution. Sheltered foundations have the advantage of being exempt from minimum endowment requirements and annual funding commitments required by law. Sheltered foundations, however, have to depend on their host institution to manage their assets. A sheltered foundation has its own board that includes a minority of representatives from the host institution, and makes decisions concerning grants and operations. Two institutions are able to host non-autonomous foundations in France: *The Fondation de France* and the *Institut de France*, but many others have been set up – approximately thirty to date.

## **3. Corporate Foundations (*Fondations d'entreprise*)**

Commercial entities, including public or private companies, mutual societies, cooperatives, and others, are the only institutions that may found a corporate foundation (Article 19, Law on Philanthropy Development). A corporate foundation must have a general interest objective and is ineligible for status as a public utility organization.

Corporate foundations must be established for a minimum period of five years (Article 19-1, Law on Philanthropy Development). The founders may extend this period for an additional minimum period of three years, but it is unclear if a second extension is permitted. To create a corporate foundation, the charter must contain a multi-annual action program designed to achieve a public benefit purpose, and the founders have to contribute to the endowment in instalments that correspond with the program (“*plan d'action pluriannuel*”). Corporate foundations must indicate in a fixed decree the amount

of funding, which must be greater than €150,000, dedicated to their long term program (Decree September 30, 1991, Article 7, modified decree July 11, 2002). The founders may contribute the amounts to the foundation in instalments made over a period of five years.

If there is more than one founder, individual contributions do not need to be equal.

Employees of the founding commercial entity are the only eligible donors to a corporate foundation, which is prohibited from receiving a legacy or any donations from the general public (Instruction of 2004).

There are approximately 270 corporate foundations.

#### **4. Research Foundations (*Fondations de recherche*)**

As of the writing of this Note, the legal and tax framework for research foundations is not yet codified.

Research foundations are governed by the rules applicable to public utility foundations with certain specificities. A research foundation's purpose can include:

- leading scientific research,
- promoting scientific research,
- enhancing scientific research,
- broadcasting scientific information, and
- broadcasting technologies.

These foundations are financed with public funds which can represent up to 50 % of their endowment.

#### **5. Partnership Foundations (*Fondations partenariales*)**

Partnership foundations were implemented by Law N°2007-1199 of August 10, 2007 on Rights and Responsibilities of Universities. Article L 719-13 of the Education Code states that public institutions with scientific, cultural, and professional purposes can create, in order to fulfil one or several activities of general interest in compliance with the purpose of the institution, a not-for-profit making legal entity called a partnership foundation.

Those foundations are subject to the rules governing corporate foundations, but they have a broader legal capacity as they can receive legacies and donations.

#### **6. University Foundations (*Fondations universitaires*)**

University foundations were also implemented by Law N°2007-1199 of August 10, 2007 on Rights and Responsibilities of Universities and Decree N° 2008-326 of April 7, 2007 on University Foundations' General Functioning Rules. Article L 719-12 of the Education Code states that public institutions with scientific, cultural, and professional purposes can create within their entity one or several university foundations which do not have legal personality, by setting up an endowment dedicated to the fulfillment of general interest and not-for-profit making activities in compliance with the public service assignment.

The above-referenced article also mentions that university foundations are subject to the rules governing public utility foundations. In fact, university foundations function as sheltered foundations. They cannot acquire legal personality. Instead, they pursue their purpose through the founding public institution. University foundations can receive legacies and donations. Authorization is not required from the Ministry of the Interior or from the *Conseil d'Etat* to create such foundations.

### **7. Scientific Cooperation Foundations (*Fondations de coopération scientifique*)**

Law N°2006-450 of April 18, 2006 on Research, provides for the creation of new public institution categories and notably the creation of scientific cooperation foundations in order to set up research and higher education centers.

Article L 344-11 of the research code states that scientific cooperation foundations are governed by the regulations governing public utility foundations.

### **8. Hospital Foundations**

The "Hospital" Law of July 21, 2009 created a new type of foundation which facilitates the establishment of links between hospitals and industry to advance common research projects.

Article L6141-7-3 of the Public Health Code "PHC" states that Hospital Foundations can be created by public health institutions to further general interest and not-for-profit purposes that contribute to the research missions mentioned in article L6112-1 of the PHC.

Those foundations are subject to the rules governing public utility foundations. However, it is important to note that the implementing texts have not yet been issued.

### **9. Endowment funds (*fonds de dotation*)**

The endowment fund was established by Law N°2008-776 of August 4, 2008 on the Modernization of the Economy, but related executive decrees are still pending.

An endowment fund is a not-for-profit legal entity that receives and manages, by capitalization, assets and rights of any kind that are contributed to it freely and irrevocably.

The endowment fund directly pursues a mission of general interest or finances structures that have missions of general interest and can have a fixed or indefinite term.

Founders can be one or more private individuals or legal entities. There is no minimum amount required and no prior administrative authorization needed for the creation of an endowment fund.

An endowment fund can be created as easily as an association. There are no standard models of by-laws to be complied with and no imposed governance. The endowment fund is managed by a board of directors comprised of at least three members.

The endowment fund can receive legacies and donations but cannot receive public funds except as otherwise provided by specific authorization.

Endowment funds benefit from the attractive tax regime applicable to Public Utility Foundations apart from the 2007 Law on Work, Employment and Purchasing Power or “TEPA Law” provisions (See Section V below for more information).

As of October 2011, over 600 endowment funds have been set up in a wide variety of sectors (environment, culture, social issues, etc.) over an approximately two-year period.

## **B. Public Benefit Status**

French law recognizes two forms of public benefit status: (1) general interest, in which the organization's donors are eligible for tax benefits, and (2) public utility, which entitles the organization to the benefits of general interest status as well as additional tax and fiscal preferences. Organizations with public utility status are subject to requirements, such as stricter controls over the use of the organization's funds and over the distribution of assets upon dissolution.

### **1. General Interest Status**

Donors that provide support to organizations with general interest status are able to receive a tax credit for their donations. Organizations with general interest status are not subject to any special rules regarding their operation, management, or dissolution. Activities that qualify as general interest include philanthropic, educational, scientific, social, humanitarian, sporting, family, [\[5\]](#) and cultural activities, as well as activities aimed at the promotion of artistic heritage, the promotion of the defense of the environment, and the promotion of French culture, language, and scientific knowledge (Articles 200 and 238bis, Tax Code).

In order to receive general interest status, an organization must engage primarily in at least one of the above activities. The services must be provided to a large, undefined group of individuals in France, and be not-for-profit in nature (Tax Adm. Doc. 5 B-3311 No. 11 of July 20, 1994 and Tax Adm. Doc. 4 C-712 No.11).

## 2. Public Utility Status

Public utility status is conferred upon associations and foundations pursuant to a decision of the *Conseil d'Etat*. In order to be recognized as a public utility organization, an organization must:

- Adopt statutes that comply with the model statutes provided by the *Conseil d'Etat* (which contain requirements and restrictions regarding internal structure, use of funds, and distribution of assets upon dissolution);
- Engage primarily in general interest activities;
- Satisfy other requirements regarding the financial viability and size of the organization.

# IV. Specific Questions Regarding Local Law

## A. Inurement

An association is permitted by law to pursue any purpose “other than the sharing of profits” ([Article 1, Associations Law](#)). By law, foundations may only engage in public benefit activities. In addition, the Tax Code explicitly forbids all insiders, including board members, managers, employees, and other third parties, from having a financial interest in any not-for-profit organization. Financial disinterestedness is characterized under French law by the following ([Article 261, 7.1 \(d\), Tax Code](#)):

- The management and administration of the organization are carried out on a voluntary basis by those having no direct or indirect interest in its operations; [\[6\]](#)
- Profits are not distributed either directly or indirectly, but used only for the statutory purposes of the organization; and
- In the event of dissolution, members of an organization or their successors may not receive any part of the assets, except for the right to recover their contributions.

NGOs are also prohibited from making excessive payments for goods or services of any kind, including payment of excessive salaries to managers and employees, and excessive benefits to members, managers, or their families (Tax Instruction of 2006).

## B. Proprietary Interest

As a general rule, an organization is exempt from certain taxes only if all individuals having ties to it, including board members, management, employees and third parties, have no direct or indirect interest in its operations or assets (Article 261, 7.1 d, Tax Code, and Instruction of 2006). It is also generally accepted that founders of corporate foundations, as well as founders and donors of public utility foundations and public utility associations, may not maintain any property interests or rights of reversion for any contributed property, since this would violate their fundamental requirement to serve the public benefit ([Model Charters for Public Utility Associations and Foundations, Conseil d'Etat](#) {in [French](#)}).

There are certain exceptions, however. Members of declared associations and general interest associations may retain an ownership interest in their donation; and if permitted by the organization's governing documents, over any contributions to the association's endowment capital and any membership dues paid ([Article 15, Implementation Decree of the Associations Law](#)). [7]

## C. Dissolution

### Associations

Upon the dissolution of a declared or general interest association, the contributions of members, including dues may be returned to these members. All other assets may be transferred to a government agency or an NGO authorized to receive contractual donations, which are generally organizations that provide a public benefit in accordance with the association's governing documents or pursuant to a decision of the general assembly ([Article 15, Implementation Decree of the Associations Law](#)). [8] Similarly, a dissolved public utility association may transfer its assets to government agencies, public utility organizations with similar purposes, or associations whose purposes are exclusively charitable or related to scientific or medical research ([Model Charter for Public Utility Associations, Conseil d'Etat](#)).

### Foundations

Upon dissolution, a corporate foundation may only distribute its assets to a government agency or public utility organization with similar purposes (Article 19-12, Law on Philanthropy Development). A public utility foundation may distribute its assets upon dissolution to government agencies, public utility organizations with similar purposes, or associations whose purposes are exclusively charitable or related to scientific or medical research ([Model Charter for Public Utility Foundations, Conseil d'Etat](#)). The *Conseil d'Etat* must approve any plan for distribution of assets of a dissolved public utility foundation. [9] The *Conseil d'Etat* has indicated that it is theoretically possible, though

highly unlikely, that assets could be distributed to a for-profit legal entity, provided its primary objectives are similar to those of the liquidated foundation.

## **D. Activities**

### **1. General Activities**

Associations may engage in any activities except those contrary to law, morals, or the integrity of the territory or the republic. All types of foundations must carry out activities that benefit the general public.

### **2. Economic Activities**

Associations and foundations may engage directly or indirectly in any commercial activity, and generally there is no distinction between related and unrelated economic activities. [\[10\]](#) In order to remain an NGO and receive concomitant tax benefits, however, an organization's economic activities should not be its "predominant" activity (Instruction of 1998).

## **E. Political Activities**

Declared associations and general interest associations may engage in political activities. [\[11\]](#) A special category of associations may provide direct financial support to a political party or an election campaign. Such political associations are established for a limited period of time and are restricted to engaging in these stipulated activities only. [\[12\]](#) Public utility associations and public utility foundations may not engage *primarily* in political activities (Opinion of the *Conseil d'Etat* of June 13, 1978, No. 322894).

## **F. Discrimination**

Article L. 111-1 of the Education Code provides that the "acquisition of general education and of a recognized qualification is granted to all youth regardless of their social, cultural or geographic origin."

## **G. Control of Organization**

Nothing in French law prevents a French NGO from being controlled by another organization. A French association or foundation might be established and controlled (but not owned) by a for-profit entity; this situation would generate additional IRS scrutiny. A

French association or foundation, likewise, could be controlled but not owned by an American grantor charity; this situation would have to be disclosed in the affidavit.

## V. Tax Laws

The following section discusses relevant tax legislation, recognizing that taxes may affect the amount of the grant actually flowing to the grantee.

### A. Tax Exemptions

French law generally exempts all associations, corporate foundations, and public utility foundations from commercial taxes such as the corporate income tax, turnover tax, and the professional tax; special rules apply to VAT. Similarly, earnings from economic activities are exempt from taxes, provided that they are not distributed as profits and that other features are present to distinguish the organization from a commercial enterprise (Tax Instruction of 2006). [\[13\]](#) Specifically, under Article 261,7.1° of the Tax Code, an NGO with annual revenue exceeding € 60,000 is eligible for tax-exempt status if:

- 1) Management does not have a financial interest in the NGO (the “disinterestedness” factor); and
- 2) The NGO does not compete with the commercial sector; or, if it does, an inquiry concludes that the NGO does not conduct its activities in the same manner as those in the commercial sector (Tax Instruction of 2006). The not-for-profit nature of the activity will depend on its compliance with the “four “P” rule” defined in the 1998 Tax Instruction:
  - 1) the [P]roduct offered satisfies a need not met by the private sector;
  - 2) the [P]ublic is unable to afford the product offered by the private sector;
  - 3) the [P]ricing is lower than in the private sector; and
  - 4) the [P]romotion of a public interest mission may not use advertising or marketing tools in the same manner as corporations.

An NGO with annual revenue below € 60,000 qualifies for tax-exempt status only if (1) its principle activities are not-for-profit; and (2) it does not distribute any income or assets to any private interests (Article 206,1bis, Tax Code).

### B. Tax Credits for Charitable Contributions

Legal entities are eligible for tax credits for donations to general interest associations, public utility associations, and public utility foundations. Tax credits are calculated at

60% of the value of the donation, and a legal entity's total tax credits for one year may not exceed 0.5% of their annual turnover. Excess amounts may be reported to the tax authorities, and credited against tax due on a carry-forward basis for the subsequent five years.

Individuals are eligible for tax credits for donations to public utility organizations, associations of general interest, and religious organizations authorized to receive contractual donations. Tax credits are calculated at 66% of the value of the donation, and an individual's total tax credits for one year may not exceed 20% of their taxable income. Employees of a commercial entity that make a donation to a corporate foundation founded by their employer are eligible for this tax credit. [\[14\]](#)

Individuals are also eligible for tax credits for donations to certain charitable organizations that serve the needy. Such tax credits are calculated at 75% of the value of the donation, not to exceed €521. [\[15\]](#) Donations over this amount are eligible for a tax credit calculated at 66% of the donation and not to exceed 20% of the individual's annual income. As is the case with legal entities, individuals may report excess amounts to the tax authorities, which will be credited against their taxes on a carry-forward basis for the following five years.

Law N° 2007-1223 of August 21, 2007 in favor of Work, Employment and Purchasing Power ("TEPA Law") established a tax credit on property tax for those taxpayers who make donations to public utility foundations (cash or full ownership of listed companies' shares). The tax credit is calculated at 75% of the donation, with a limit of €50,000.

#### *Tax on Contractual Donations ("Registration Fees" – Droits d'enregistrement)*

French law treats simple donations differently than contractual donations, which include gifts made by will. [\[16\]](#) Most NGOs may receive simple donations and contractual donations given by public utility organizations. [\[17\]](#) The law, however, restricts which organizations are entitled to receive contractual donations given by entities other than public utility organizations:

- Public utility organizations (Article 10, Associations Law; Model Charter for Foundations, *Conseil d'Etat*);
- Religious organizations;
- Accredited federations of family associations;
- Associations engaged in medical or scientific research, or charitable assistance for the needy (Article 6, Associations Law);
- Associations that finance electoral campaigns;
- Associations financing political parties ; [\[18\]](#)
- Endowment funds.

In order to receive contractual donations, these organizations must receive prior administrative approval.

Public utility foundations, such as the *Fondation de France*, are able to receive contractual donations on behalf of associations that do not otherwise qualify to receive contractual donations. To do so, the public utility foundation maintains an account for the recipient organization.

Contributors are able to use these accounts to make donations, including contractual donations, which the beneficiary would otherwise be unable to receive.

Simple donations are tax-exempt. Contractual donations, however, are subject to registration fees [\[19\]](#) unless the donations are granted to:

- Public utility organizations whose revenue is exclusively allocated to scientific, cultural or artistic, environmental or charitable purposes, or animal protection;
- Associations whose revenue is exclusively allocated to scientific and medical research;
- State-subsidized public utility organizations engaged in higher education and popular education activities;
- Religious organizations; and
- Associations for the purpose of building commemorative war monuments (Article 795, Tax Code).
- Endowment funds (Article 795, 14°, Tax Code).

## **C. Value Added and Turnover Taxes**

The standard VAT rate is 19.6%. A reduced rate of 5.5% is applied to certain goods and services, including medicine and pharmaceutical products, equipment for handicapped individuals, the provision of housing and food at elderly care facilities, and others relevant to NGOs (Article 279, Tax Code). [\[20\]](#) The following activities are exempt from VAT:

- Services with a social or philanthropic character provided to any person, as long as the price has been accredited by the state and does not distort market prices. “Social and philanthropic activities” are described by the tax authorities as including activities related to childhood, social tourism, shelter, and socio-education;
- Services and goods related to the activities of organizations whose main goals are primary, secondary, superior, university, or professional education;
- Hospice care for the elderly;
- Hospitalization expenses for health care organizations;
- Services that social, cultural, educational, sports, philosophical, religious, political, patriotic, and civic organizations, as well as professional unions, provide for their members; and
- Six fund-raising events per year.

If an NGO uses its assets to further for-profit and not-for-profit activities, however, any VAT exemptions to which it is entitled are calculated as a *pro rata* ratio of the

organization's income from its VAT-exempt and non-exempt activities (Article 212, Appendix 2, Tax Code).

## **D. Import Duties**

Certain goods imported by organizations with “charitable or philanthropic organization” status granted by the French Customs Authorities are exempt from customs duties and taxes (Article 50 *octies*, Tax Code, Appendix IV). The goods that qualify include:

- Basic necessities such as food, medicine, clothing, and bed linens distributed free of charge;
- Goods, not to exceed €13,000 in value per year, received free of charge and used for fundraising at occasional charity events that benefit needy persons;
- Donated equipment and office materials, not to exceed €6,000 per year, that will serve an organization's operational needs, or charitable or philanthropic objectives;
- Goods for distribution to or to be made available free of charge to victims of disasters in the EU; and
- Goods imported by disaster-relief agencies to be donated to victims of disasters during the period of the organization's activity.

Other categories of goods exempt from customs include:

- Educational, scientific, and cultural materials, as well as scientific instruments imported by scientific, educational, or cultural organizations;
- Cultural goods listed in appendix I of European Council Directive imported by public utility organizations and others accredited by the customs authority; and
- Imports by organizations accredited by the customs administration that provide education and assistance for the blind or handicapped (Article 48 European Council Directive No. 2009/132).

Goods imported under these exemptions, with the exception of those destined for accredited organizations that provide education to the blind and handicapped, which are lent out, rented, or transferred will be subject to import duties.

## **E. Double Tax Treaties**

The United States and the French Republic have signed two double tax treaties:

1. The Convention Between The United States Of America And The French Republic For The Avoidance Of Double Taxation And The Prevention Of Fiscal Evasion With Respect To Taxes On Estates, Inheritances, And Gifts (November

24, 1978); and

2. The Convention Between The Government Of The United States Of America And The Government of the French Republic For The Avoidance Of Double Taxation And The Prevention Of Fiscal Evasion With Respect To Taxes On Income and Capital (August 31, 1994).

Article 10 of the convention on estates, inheritances, and gifts provides entities transferring funds to a French organization an exemption from the U.S. federal gift tax and estate tax if the recipient would otherwise qualify as tax-exempt U.S. organization.

## **F. Donations to not-for-profit organizations in the European Union and European Economic Area**

In order to comply with community case law, France has extended the patronage system to donations made in favor of organisations that pursue the same objectives and present characteristics similar to eligible French organizations, if their headquarters are located in a Member State of the EU, in Iceland, or in Norway (law no. 2009-1674 of 30 December 2009).

France has thus waived the criterion of establishment in France that restricted the benefit of the patronage regime solely to donations made in favor of an organization established in France.

The benefit of the patronage regime for donations made to organizations whose headquarters are located outside of France is subject to obtaining an approval. A decree and order dated 28 February 2011, published in the French Official Journal dated 2 March, specifies the conditions for this procedure and the filing requirements that are the responsibility of the donors.

### **Conditions of the approval procedure**

The approval request, submitted in French on plain paper in compliance with a template attached to the regulatory text, must also include the supporting documents, the list of which is fixed by decree, attesting that the organization pursues objectives and presents characteristics similar to organizations whose headquarters are located in France and which meet the conditions set out in articles 200, 238 *bis* and 885-0 *V bis* of the French Tax Code. Approval renewal requests are submitted under the same conditions.

Approvals granted for an initial request concern the period included between the date of its notification and 31 December of the third year following this date.

Renewal requests must be submitted no later than 30 June of the last year covered by the approval. In the event of renewal, the approval is granted for a period of three years

running as from the next 1 January. In the event of refusal of approval, the approval in progress produces its effects until its expiration.

The list of approved organizations is published on the French Tax Authority's web site. This list is updated upon every approval decision.

The approval decision is notified to the organization and the grounds for refusal must be provided.

The approval may be withdrawn by substantiated decision if it is established that the organization, in whole or in part, no longer pursues objectives or no longer presents characteristics similar to organizations whose headquarters are located in France. .

## VI. Knowledgeable Contacts

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## Footnotes

[1] This Note does not address the legal issues regarding the establishment of associations and foundations in the regions of Alsace and Moselle, which are governed by a German-derived civil code. However, all other legislation, including that concerning NGO operations and taxation, is in force in these two regions.

[2] Informal associations (i.e., those operating without the creation of a legal entity) are not covered in this Note. Associations that exist as a separate legal entity are technically called “declared associations” under French law, but for purposes of this Note they are simply referred to as “associations.”

[3] The Ministry of Interior cannot deny the notification, but it may appeal to a court for dissolution or nullification of an association if it believes its objectives or activities are illegal.

[4] This requirement is not stipulated by statutory law but is practiced by the *Conseil d'Etat*. There is no minimum endowment amount required. In practice, however, the amount of € 1 million is often cited as a minimum amount necessary to guarantee a stable and steady stream of income to a public utility foundation through its investment.

However, the French Tax Authorities currently require that this amount be brought up to EUR 2 million.

[5] Family activities refer to the creation and operation of family associations to provide assistance to private schools.

[6] Directors or board members are prohibited from receiving a salary. However, they are allowed to receive remuneration up to three times the ceiling established in article L. 241-3 of the Social Security Code per year per board member. The organization's charter must explicitly permit remuneration. An NGO may remunerate one board member if its gross income exceeds an average of € 200,000 over the past three fiscal years, two board members if its income exceeds an average of € 500,000 over the past three fiscal years, and up to three board members if its gross income exceeds an average of € 1,000,000.

[7] The recovery of contributions to an association's capital as well as membership dues, however, is prohibited for public utility associations.

[8] Since assets distributed in conjunction with liquidation are considered a contractual donation, the assets may only be passed on to an organization allowed by law to receive contractual donations (See Section V.B. above).

[9] As a general rule, the *Conseil d'Etat* is reluctant to approve the termination of public utility foundations and consents to termination only as a last resort.

[10] The extent to which an NGO's economic activities are related to its primary purposes becomes relevant only in cases where there are concerns that the NGO's economic activities are unfairly competing with the commercial sector.

[11] An association may not engage in lobbying efforts for policies that would directly or indirectly benefit a director of that association; to do so would violate the financial disinterestedness requirement of the organization's management.

[12] Political associations may receive contributions only from individuals.

[13] These factors include: whether the activities, objectives, and management methods are typical of commercial enterprises; whether the requisite "financial disinterestedness" exists for the organization's board and management; and whether the NGO is in competition with the commercial sector.

[14] The 2003 law on donations to associations and foundations established that corporate foundations may receive donations from employees of the corporate founder and employees of the corporations that belong to the same group as the corporate founder (Law No. 2003-709 of August 1, 2003, Article 1). Prior to its enactment, French law forbade donations and legacies to corporate foundations. To the extent that donations from the previously defined employees are allowed, the tax code extends to them the benefit of the tax credit granted by § 200 of the French Tax Code. Separate rules govern the tax treatment of contributions to the endowments of corporate foundations and are beyond the scope of this Note.

[15] This figure changes annually. For example, the threshold amount was € 513 for an individual's 2010 annual income, €510 for 2009.

[16] A simple donation may not contain contingencies on performance of specified activities. A contractual donation is generally any transfer of property to an NGO embodied in a written form. Generally, contractual donations impose certain conditions or obligations on the recipient, but this is not a necessary component. They also must generally be notarized, although the possibility exists that any written commitment to make a donation will be treated as a contractual donation.

[17] As discussed above, corporate foundations may receive donations only from employees of their founding corporation.

[18] Neither associations financing electoral campaigns nor associations financing political parties may receive contributions from any sources besides individuals.

[19] The rate of the registration fee is 35% for the first €24,430 transferred and 45% for amounts exceeding € 24,430 for contractual donations to public utility organizations. The rate is 60% for contractual donations to other associations (Article 777 of the Tax Code).

[20] A third rate of 2.1% applies to a narrow range of goods and services