

France

Charity formation and legal framework

Three specific legal forms of NPO exist in France – associations, foundations and endowment funds – each of them with their own separate legal framework.

An **association** can be broadly defined as non-profit making organisation formed via an agreement between two or more persons who carry out activities on a permanent basis in pursuit of the furtherance of a non-profit purpose. Associations can be either non-registered (i.e. a de facto association) or registered, and in the second case, can be of public utility. Non-recognised associations are not treated as legal entities and are effectively collectively owned by their members. However, if the organisation requires a bank account, collects membership fees, arranges fundraising, or if the members undertake any legal action or buy or sell on its behalf, then it must be declared and recognised.

Recognition and hence legal personality are acquired by registering with a local authority (the Prefecture or Sous-Prefecture) and issuing a declaration of the association's creation in the Official Journal. Recognised associations have restricted legal capacity, meaning that they can receive gifts and legacies only if they have one of the following as an exclusive charitable purpose: the pursuit of scientific or medical research, the provision of aid and welfare services, or if the organisation is a cultural or family association or affiliated to a federation recognised as a public utility. An association which is registered can receive cash donations if it is simply recognized as 'being of public interest' (which differs from the notion of 'official approval'), i.e. that it has a non-profit purpose and does not carry out its activity to the benefit of a 'limited circle of members'. An association with a legal personality can also apply for (discretionary) recognition as an organisation of public utility, a status which gives the organisation greater capacity to receive gifts and inheritances.

A **foundation** is created by the irrevocable assignment of property or rights for a non-profit purpose of public benefit, and will usually takes the form of a public utility foundation, a corporate foundation, or a non-autonomous foundation under the aegis of a few public utility foundations (such as the Fondation de France). Foundations share the same capacity to receive lifetime gifts and legacies as public utility associations. If foreign foundations choose to establish an autonomous branch in France, the same tax regime applies as for an 'indigenous' entity. A foreign foundation which works actively in France and is able to prove its non-profit character will receive exemption from corporate income tax or pay a reduced rate.

An **endowment fund** is a non profit legal entity submitted to private law. It receives and manages, by capitalising, goods and rights of any nature, which are brought into it for free and irrevocably. The endowment fund uses the income produced by the capitalisation for the realisation of a work or a mission of general interest. It may also distribute this income to support a non profit legal entity which carries a work or a mission of general interest.

Endowment funds share the same capacity to receive lifetime gifts and legacies as public utility associations and foundations.

Taxation issues

- No corporate tax is due where the activities carried out by an organisation are of a non profit-making nature; i.e. if they meet the following criteria :
- a disinterested management i.e. legal representatives are unpaid unless otherwise specified by law;
- the activity carried out must not compete with the activities of other profit making entities;
- or, if presumed competitive, the product must be specific, and rather aimed at a disadvantaged public, with prices clearly lower than those on the market and without any advertising (cf. tax directive December 18, 2006 ; Bulletin officiel des impôts 4H-05-06);

Non-profits with ancillary lucrative activities may remain exempt from taxes on business activities (i.e. VAT, corporate income tax etc.) as long as they meet certain criteria. Income on activities including rental income, agricultural income or income from passive investment is subject to a lower rate corporate income tax of 24%, 15 % or 10% dependent on the precise nature of the income; the exception to this rule are the state-approved foundations, which remain exempt from this taxation at a reduced rate.

Donor reliefs

As of January 1, 2003, the tax deductibility of donations made by companies to foundations and NPOs was increased to 60% of the donation paid, up to a maximum of 0.5% of their sales, in order to encourage charitable giving. Individual taxpayers resident in France can also claim a tax cut on donations and membership subscriptions (within certain limits) to non-profits recognised as 'being of public interest', equal to 66% of the amount(s) paid. This may not exceed 20% of the individual's annual taxable income, although the excess can be carried forward for up to 5 years.

Generally a beneficiary needs to be an organisation pursuing a public interest and carrying out its activities in France, with the conditions for public interest being defined as disinterested management, non profit-making activities, and no advantages for members. Previously, donations which were made to foreign organisations (i.e. whose registered office is not in France), or were only made in favour of a restricted group of persons (i.e. not in the public interest) were attracted no tax relief for the donor.

If the donations may still not be attributed to a restricted group of persons, French tax provisions have been modified by the law n°2009-1674 of December the 30th 2009. Under the revised provisions of French law, donations and payments made to entities whose registered office is located in the European Union may allow the donor to benefit from an important tax cut.

In order for the donor to obtain tax relief, the donation must necessarily be granted to a non-profit organization or a charity having its registered office and administrative activities in the European Union, but the said donation can then be used abroad (for example, in the scope of humanitarian, ecological or other development programmes) or may even be given to foreign organizations carrying out activities 'in the public interest'.

As a civil law jurisdiction, France has statutory restrictions in place on testamentary disposition which seek to provide for family and dependants through forced heirship laws. This means that a fixed proportion of an estate must, by law, be left for certain family members and dependants of the deceased, reducing the pool of available assets which a donor might choose to leave to a charitable cause in a legacy.

Cross-border gifts

In addition to the new French provisions regarding the “euro-donor”; through the Fondation de France, donors can still utilise the Transnational Giving Europe network to receive the same tax relief when making a gift to an overseas charity as they would when donating to national charitable organisations within France. By the same token, international donors can obtain tax relief in their home country when making gifts to French charities, facilitating and encouraging cross-border giving across Europe by making it more tax-efficient.

Summary modified and vetted by Mr Xavier Delsol of Lawyer Office DELSOL AVOCATS.

[**xdelsol@delsolavocats.com**](mailto:xdelsol@delsolavocats.com)

[**www.delsolavocats.com**](http://www.delsolavocats.com)

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Philanthropy Impact: www.philanthropy-impact.org

Philanthropy Impact (incorporates EAPG, Philanthropy UK and the Philanthropy Advisors Forum). It was launched on 3 December 2012.