



# EFC LEGAL AND FISCAL COUNTRY PROFILE

*The operating environment for  
foundations*

## FRANCE – 2014

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***The operating environment for foundations***

***Drafted by Isabelle Combes, Fondation de France***

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## I. Legal framework for foundations

### **1. Does the jurisdiction have a basic legal definition of a foundation (Description where applicable)? What different legal types of foundation exist (autonomous, non-autonomous without legal personality, civil law, public law, church law, corporate foundations, enterprise foundations)?**

The first law on foundations (*Loi 87-571 sur le développement du mécénat – LDM*), enacted on 23 July 1987, covers public utility organisations in general and state-approved foundations of public utility (*fondations reconnues d'utilité publique*). This law was modified on 4 July 1990 by introducing the so-called corporate foundations (*fondations d'entreprise*). Pursuant to amendments to Articles 19-20, one or more private or public corporations, cooperatives or mutual benefit companies can set up corporate foundations to pursue public benefit purposes.

Art. 18 LDM defines foundations as the legal act through which one or more individuals or legal entities decide irrevocably to allocate property, rights or resources for a non-profit-making activity of public interest ("*La fondation est l'acte par lequel une ou plusieurs personnes physiques ou morales décident l'affectation irrévocable de biens, droits, ressources à la réalisation d'une oeuvre d'intérêt général et à but non lucratif*").

A new law to promote private giving in France was enacted on 1 August 2003 and published on 2 August 2003 (*Loi relative au mécénat, aux associations et aux fondations, n°709, 1er Août 2003*). This law provides for new measures to promote private giving in France. Proposals regarding the simplification of the public utility approval and the creation and operation of public utility foundations had already been put into practice in the first half of 2003. On 2 April 2003, the Highest Court/*Conseil d'Etat* approved a new version of the Model Statute for Public Utility Foundations (*Modèle de statuts des Fondations reconnues d'utilité publique*), which is an important resource for public utility foundations.

The term foundation is legally protected and can only be used by those foundations that are public utility foundations (*fondations reconnues d'utilité publique*), corporate foundations (*fondations d'entreprise*) or non-autonomous foundations (*fondations abritées*) under the aegis of a few public utility foundations (such as the Fondation de France). The Institut de France, which is not a foundation, has also received a special authorisation by the *Conseil d'Etat* to host non-autonomous foundations.

According to Law no. 2003-709, time-limited foundations can be set up, which are allowed to spend down their endowment (*fondations à capital consommable*). In addition, it is possible to set up a foundation whose activities depend on yearly donations (*fondations de flux*).

Law No. 2006-450 enacted on 18 April, 2006 implemented a new category of foundation: foundations for scientific cooperation (*fondations de coopération scientifique*) which may take the form of either a public utility foundation or of an autonomous foundation whose endowment is allocated to a public utility foundation in charge of managing it.

Recently, Law no. 2007-1199 (enacted on 10 August 2007) implemented two new categories of foundation : 1) university foundations (*fondations universitaires*), which are non-autonomous foundations created by universities and other public institutions of a scientific, cultural or professional character to perform non-profit public utility purposes within the framework of the higher education public service; 2) partnership foundations (*fondations partenariales*) which are autonomous foundations created by universities and other public institutions of a scientific, cultural or professional character either alone or together with enterprises.

Finally, Law no. 2008-776 (enacted on 4 August 2008) implemented a new legal tool - "endowment funds" (*fonds de dotation*). Based on the Anglo-Saxon model of an endowment fund, such funds provide an opportunity to establish funds through a simpler process than that which is currently required for foundations of public utility.

## 2. What purposes can foundations pursue?

Foundations, as well as endowment funds, must pursue a public benefit purpose. Private purpose foundations, such as family foundations, are not allowed in France. The bylaws of a foundation define its purpose.

## 3. What are the requirements for the setting up of a foundation (procedure, registration, approval)? What application documents are required? Are there any other specific criteria for registration?

To establish a public utility foundation, the founder must seek authorisation (*reconnaissance d'utilité publique*) via a decree issued by the French Ministry of the Interior (*Ministère de l'Intérieur*). The founder can establish the foundation through private deed *inter vivos* (during the founder's life) or through a will. The documents are then filed with the Bureau of Associations and Foundations, which will consult the various Ministries relevant to the contemplated foundation's objectives, as well as the Highest Court (*Conseil d'Etat*). The Bureau also drafts the decree to be executed by the French Interior Minister (*Ministre de l'Intérieur*). The foundation gets its legal personality only once the decree is signed and published in the French Official Gazette (*Journal Officiel*). The foundation's statutes must be based on the Model Statute (available at: [http://www.centre-francais-fondations.org/fondations-fonds-de-dotation/les-formes-de-fonds-fondations/synopsis-par-type-de-fonds-ou-fondation/documentation-par-statut-juridique/en-savoir-plus-sur-les-fondations-reconnues-dutilite-publique/modele-de-statuts-types-de-fondation-rup-avec-conseil-administration-2012/at\\_download/file](http://www.centre-francais-fondations.org/fondations-fonds-de-dotation/les-formes-de-fonds-fondations/synopsis-par-type-de-fonds-ou-fondation/documentation-par-statut-juridique/en-savoir-plus-sur-les-fondations-reconnues-dutilite-publique/modele-de-statuts-types-de-fondation-rup-avec-conseil-administration-2012/at_download/file))

The public utility approval process has been simplified by the 2003 reform. While before this law, it could take up to 18 months for a public utility foundation to be authorised via decree, the procedure has been shortened to a maximum of 4-6 months.

Public utility foundations have full legal capacity. They can receive legacies and gifts, whereas corporate foundations cannot receive donations other than those made by the founding corporation, its employees or the employees of a company related to the founding corporation. They cannot receive legacies.

Corporate foundations receive legal personality either through an authorisation by the *Préfet* (representative of the state at local level) or if the administration does not object within four months of the date on which the authorisation request was filed. Corporate foundations are only established for a limited period of time, a minimum 5 years, which can be extended for at least 3 years. A minimum endowment of €150,000 is required, which must be spent over a maximum period of five years. Corporate foundations have limited legal capacity, as they can only own buildings to be directly used for their operations.

Non-autonomous foundations are created by private contract between the host public utility foundation and the founder. Non-autonomous foundations have no legal capacity. They have their own board that decides on operations, but the host institution administers the assets. The legal and fiscal regime of the host foundation applies to non-autonomous foundations under its aegis.

The establishment process for endowment funds is considerably easier, as they are set up immediately after having filed a declaration with the *Prefet* and having published such declaration in the Official Gazette.

## 4. Is State approval required? (approval by a State Supervisory Authority with/without discretion? Registration with a state authority or court? Notarisation by a Notary public? )

To establish a public utility foundation, the founder must seek authorisation (*reconnaissance d'utilité publique*) via a decree issued by the French Ministry of the Interior (*Ministère de l'Intérieur*). The

public utility approval process has been simplified by the 2003 reform. While before this law, it could take up to 18 months for a public utility foundation to be authorised via decree, the procedure has now been shortened to a maximum of 4-6 months.

The creation of a corporate foundation needs an authorisation by the *Préfet* (representative of the state at local level); however it is regarded as officially created if the *Prefet* does not object within four months of the date on which the authorisation request was filed.

The establishment process for endowment funds is considerably easier, as they are set up immediately after having filed a declaration with the *Prefet* and having published such declaration in the Official Gazette.

## **5. Do foundations have to register? If yes, in what register?**

No. Irrespective of their nature (corporation foundations, public utility foundations or non-autonomous foundations) foundations are not required to register.

It may be requested that endowment funds register in a specific register dedicated to associations (decrees are still unpublished).

### a) If foundations are registered, what information is kept at the register?

n/a

### b) If foundations are registered, is the register publicly available?

n/a

## **6. Is a minimum founding capital required? Is the foundation required to maintain these assets or any other specified asset level throughout its lifetime?**

The endowment of a public utility foundation is the constituent element of the foundation, which leads to independence and duration. Although the law does not require a minimum endowment, in practice a minimum capital of €1.5 million seems to be requested by the state authorities to grant public utility status. The initial endowment can be transferred within the first ten years of the date of the State approval according to Art. 18 Section 1 LDM<sup>1</sup>. The foundation shall build up the endowment with approximately 10% of the annual income of the foundation.

As of 2003, time-limited foundations can be set up, which are allowed to spend down their endowment. In this case, no minimum endowment is requested by law or in practice.

Finally, it is possible to set up a foundation with no endowment, the activities of which depend only on yearly donations (*fondations de flux*).

No minimum capital is required for endowment funds.

## **7. What governance requirements are set out in the law?**

### a) Is it mandatory to have a supervisory board?

No. According to the new Model Statutes, foundations may freely decide on their internal structure. They can choose between having either a supervisory board (*conseil de surveillance*) and an

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<sup>1</sup> Art. 18 was modified by Law no. 2003-709 (before it was only five years)

executive board (*directoire*), or just a managing board (*conseil d'administration*). As the new Model Statute has only been in force since 2003, most French foundations have a managing board.

b) What are the requirements concerning board members? Is a minimum/maximum number of board members specified? What are the rules concerning appointment of board members? And their resignation/removal?

The board of a public utility foundation must consist of at least three categories of members:

- Representatives of the founders, who cannot exceed one-third of the board,
- Qualified members, who cannot exceed one-third of the board, and
- Either a representative of the State appointed by the Ministry of the Interior, or members by right, including at least one representative of the Ministry<sup>2</sup>.

Moreover, it is also possible for the bylaws to provide for representatives of the foundation's employees to participate on the board. In this case, a representative of the employees is appointed by the employees themselves.

With respect to corporate foundations, their board must consist of at least two employees of the founding corporation. Not more than two-thirds of the members of the governing board can represent the founder. The other board members must have some expertise in the field of the foundation.

The bylaws may freely decide on the appointment and renewal rules applicable to board members and the conditions of their dismissal as well as the term of their mission, which should preferably not exceed 4 years and should be renewed only once (pursuant to the Model Statute). Except for the founder himself and the members by right, the board members may be dismissed for fair reasons. Board decisions are taken with a simple majority, unless the bylaws provide otherwise (a majority of three-quarters of the members for amending the by-laws, for example). A meeting of the board can be called by the president or by at least one-quarter of the board members. The board shall convene at least twice a year (every 6 months, as provided by the Model Statute).

c) What are the duties and what are the rights of board members, as specified by national legislation?

The board is in charge of the management of the foundation and rules on all important decisions: the budget, clearance of the annual accounts, modification of the bylaws, acceptance or refusal of gifts and legacies, etc. The president of the board is the legal representative of the foundation. Remuneration of board members is not allowed.

Regarding endowment funds, the only requirement is that the board must consist of at least 3 members, the first ones being appointed by the founders.

d) What are the rights of founders? Can fundamental decisions, such as change of purpose, be made at the discretion of the founder? What are the legal requirements in such circumstances?

Only the board of public-utility foundations has the capacity to decide on any change to be made to the by-laws; the founders have no right to that extent.

The by-laws can be modified only after two deliberations of the board of directors (or of the supervisory board) taken in two months of interval and in the majority of three quarters of the members in exercise.

e) What are the rights of beneficiaries (e.g. right of information)?

The beneficiaries have no specific rights, unless a general right of information as for any third party to the foundation.

f) What rules are in place to ensure against conflict of interest? What is the legal definition of a conflict of interest under your legislation? How is self-dealing prohibited?

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<sup>2</sup> Before 2003 one third of the governing board had to be representatives of public authorities.

Agreements passed directly or through a third party between a foundation or an endowment fund and a member of the board, as well as agreements signed by a foundation or an endowment fund with another legal entity a manager, member of the board, Chief Executive Officer, or a shareholder having a fraction of the voting rights over 10 % of which is simultaneously a member of the board of the foundation are regarded as “regulated” agreements subject to a specific process of approval (French commercial code, art. L. 612-5).

Under this process, the statutory auditor of the foundation or, in his absence, the legal representative of the foundation, must establish a report on such regulated agreements which should contain the following information:

- A list of all regulated agreements signed by the foundation,
- The name of the members of the board and of any other persons concerned by such regulated agreements,
- The name of any persons or entities with which a regulated agreement (convention) has been concluded.

g) Can staff (director and/or officers) participate in decision making? How and to what extent?

It varies from a foundation to another, depending on what has been provided to that respect in the by-laws.

**8. Who can represent a foundation towards third parties? Is this specified in law or is it up to the statutes of the organisation?**

The president of the board represents the foundations towards third parties. The by-laws may authorise him to delegate his powers to the general manager.

The president of the board represents the endowment funds towards third parties.

a) Do the director and officers have powers of representation?

Directors and officers may have powers of representation only if the by-laws of the foundation provide so and the board of directors has authorized that powers of attorney be granted to them.

**9. Liability of the foundation and its organs**

Whatever their nature, foundations have a civil liability for damages they generate to third parties. Board members can be held civilly and criminally liable.

The same rules apply to endowment funds.

a) What is the general standard of diligence for board members? Does your country differentiate between voluntary (unpaid) and paid board members?

Fault and negligence are the general standard of diligence. Yes, France does distinguish between voluntary and paid board members - when unpaid, the liability of a board member is assessed in a less strict manner.

b) Is there a “business judgment rule”, giving a board member a “safe harbour”, if she/he (1) acts on an informed basis; (2) acts in good faith, (3) acts in the best interests of the corporation, (4) does not act out of self-interest (duty of loyalty concept plays a role here), and (5) is not wasteful?

No

**c) What is the liability the directors and officers?**

The directors, who are members of the board, can be held civilly and criminally liable for their personal fault or negligence.

Officers, who are employees of the foundation, are civilly liable to the foundation for serious offences; they may also be criminally liable for personal infractions committed while performing their job.

**d) Can the founder modify the standard of diligence for board members in the foundation's statutes?**

No

**e) Can board members be held **civilly** and/or **criminally** liable in the following cases?**

|   | Yes                              | Probably yes                              | Unclear | Probably no                          | No |
|---|----------------------------------|---|---------|--------------------------------------|----|
| The foundation distributes money for a purpose which is a public benefit purpose but not accepted in the foundation's statutes.   | Civilly liable to the foundation |   |         |                                      |    |
| The foundation loses its status of a tax benefit foundation (because one requirement in tax law was not fulfilled).               | Civilly liable to the foundation |   |         |                                      |    |
| The foundation loses money because a board member has acquired some stocks in a company which unexpectedly went bankrupt.         |                                  |   |         | Probably no, if no intentional fault |    |
| The foundation sells immovable property to the spouse of a board member. The board member was unaware that the price was too low. |                                  | Probably civilly liable to the foundation |         |                                      |    |
| The foundation sells immovable property to a third person. The board member was unaware that the price was too low.               |                                  | Probably civilly liable to the foundation |         |                                      |    |

**10. Are economic activities<sup>3</sup> allowed (related/unrelated)? If so, is there a ceiling/limit on economic activities (related/unrelated)?**

Foundations can engage in commercial activities. Commercial activities are allowed within the framework of the foundation, provided they support the public benefit purpose of the foundation.

Endowment funds can also engage in commercial activities under the same conditions.

**11. Are foundations permitted to be major shareholders?**

Since the enactment of a law dated 15 July 2005, a foundation is entitled to hold the majority of the shares in a commercial company provided such ownership is in line with the purpose of the foundation, based on the so-called "principle of speciality" (*principe de spécialité*). However, the

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<sup>3</sup> For the purposes of this profile economic activity can be understood as "trade or business activity involving the sale of goods and services". "Related" economic activity is in itself related to and supports the pursuance of the public benefit purpose of the foundation. According to the above, normal asset administration by foundations (including investment in bonds, shares, real estate) would not be considered as economic activity.

bylaws of the foundation may restrict or prohibit major shareholding<sup>4</sup>; moreover, due to potential adverse tax consequences, foundations do not currently make use of such a possibility in practice.

**12. Are there any rules/limitations in civil and/or in tax law regarding foundations' asset management? What, if any, types of investment are prohibited?**

Unlike corporate foundations and associations that can only own real estate if directly used for their operations, public utility foundations as well as endowment funds do not face such restrictions. They can receive legacies and donations, while corporate foundations can only receive contributions from the founding corporation, and from the employees of the founding corporation and of any related companies.

Financial advantage cannot be granted by the foundation to the founder or his/her relatives.

**13. Are foundations legally allowed to allocate grant funds towards furthering their public benefit purpose/programmes which (can) also generate income? (recoverable grants; low interest loans; equities)**

The French Monetary and Financial Code (*Code monétaire et financier*) prohibits entities other than banks or financial institutions to grant loans on a regular basis. Therefore, foundations and endowment funds are only entitled to allocate loans within their public benefit purpose, subject to specific conditions; as a consequence, they notably can only grant no-interest or very low-interest loans.

**14. What are the requirements for an amendment of statutes/amendment of foundations purpose?**

According to Arts. 13 and 15 of the Model Statute, any amendment to the bylaws must follow a strict and complex procedure and has to be approved by French public authorities.

As for endowment funds, any amendment to the bylaws must be declared to the *Prefet* and published in an Official Gazette.

**15. What are requirements with regard to reporting, accountability, auditing?**

Art. 16 of the Model Statute requires that all public utility foundations file an annual report and financial statements with both the competent *Prefet* and the Ministry of the Interior. Other ministries may also ask for an annual report.

Corporate foundations and endowment funds must file their annual report and financial statements with the administrative authorities.

Public utility foundations and corporate foundations must also appoint an auditor, plus a substitute. The same rule applies to endowment funds when their annual income exceeds €10,000.

a) What type(s) of report must be produced?

- annual financial report
- annual activity report
- public benefit/activity report,
- tax report/tax return,
- other reports e.g. on 1% schemes)

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<sup>4</sup> This is the case of Fondation de France.

Art. 16 of the Model Statute require that all public utility foundations file an annual report including details of their finances and activities, as well as financial statements with both the competent *Prefet* and the Ministry of the Interior. Other ministries may also ask for an annual report.

Corporate foundations and endowment funds must file their annual report and financial statements with the administrative authorities.

Finally, foundations making public fundraising must also made publicly available a special report (the so-called earmarking of funds account ("*compte d'emploi des ressources*") which details all the funds raised from the public and the use of such funds.

b) Must all/any of the reports produced by the foundation be submitted to the supervisory authorities? If so, to which authorities (e.g. foundation authority, tax authority)?

The above referred reports must be filed with the *Prefet* and the Ministry of Interior.

c) Are the reports checked/reviewed? By whom (supervisory/tax authorities)?

They may be reviewed by the supervisory authorities, as well as the tax authorities within the framework of a standard tax audit. In practice, such controls do not seem to be very frequent.

d) Do any or all of the reports and/or accounts of foundations need to be made publicly available? If so, which reports and where (website, upon request)

Yes. These reports must be published each year on the web site of the Official Gazette (*Journal Officiel*).

e) What are the legal requirements concerning external audit? Is external audit required by law for all foundations?

Public utility foundations and corporate foundations must appoint an auditor, plus a substitute. The same rule applies to endowment funds when their annual income exceeds €10,000.

Foundations are also subject to audits made by the *Cour des Comptes*, a special court having jurisdiction to audit the account of public entities and of entities making public fundraising.

f) By whom should audits be undertaken? Do requirements/guidelines exist regarding international and national auditing agencies and standards?

The auditors of foundations (as well as auditors of any commercial company) are chosen from a list established by local Courts of Appeal, of individuals and audit companies sworn by the auditors' professional organisation.

## **16. Supervision (which authority – what measures / sanctions?)**

The Ministry of the Interior and the *Prefet* (the sole *Prefet* in the case of endowment funds) exercise the supervision once a foundation is set up.

Until 31 December 2005, donations and legacies to foundations had to be approved by the state. However, the process is now easier since the adoption of Law No. 2004-1343 dated 9 December 2004 and Ordinance no. 2005-856 dated 28 July 2005, which have eliminated the need for state approval. As of 1 January 2006, donations and legacies can be freely accepted by foundations, the state authorities having the right to object only if they believe that a foundation would not be able to use a gift or legacy in accordance with its statutory objectives. Please note that gift and legacies made to endowment funds are not subject to this control.

Yearly reports have to be sent to the *Prefet* and the relevant ministries. Otherwise, in addition to fiscal sanctions, the public utility status of the foundation may be withdrawn, which leads automatically to its dissolution.

The supervision of corporate foundations is less strict: the state is not represented on the board of the foundation. Yearly accounts have to be sent only to the *Préfet*.

Non-autonomous foundations do not come under state supervision. They are overseen by the public utility foundation managing them.

a) Does the supervisory authority comprise of a public administrative body, a public independent body, a combination of a governmental body and a court, or a public body and an independent body?

As indicated above, the French supervisory authority for foundations is made of both governmental body (the *Prefet* and the Ministry of Interior) and a special court (the *Cour des Comptes*).

b) What is the extent of the supervision? Does the body review reports and make inquiries? Are public benefit organisations subject to inspection?

The *Cour des Comptes* has full jurisdiction to audit the reports and accounts of the foundations, as well as their use of the funds raised from the public or derived from legacies and gifts made to them.

All public benefit organisations are subject to this inspection provided either they raise funds from the public, or they receive gifts and donations giving right to a tax credit for their donors.

c) Is approval from the authority required for certain decisions of the Board of Directors?

Decisions of the board of directors stating on (i) modification of the by-laws, (ii) sale of any real or financial assets which are part of the foundation's capital, (iii) creation of a mortgage and (iv) loans, are subject to a formal approval of the *Prefet* or the Ministry of Interior

d) Is it mandatory to have a state supervisory official on the board?

The board of a public utility foundation must mandatorily contain either a representative of the State appointed by the Ministry of the Interior, or members by right, including at least one representative of the Ministry<sup>5</sup>.

e) What enforcement measures are in place (including compliance measures and sanctions for non-compliance) concerning registrations, governance, reporting, and public benefit status?

None, except for the cancellation of the public-benefit status with respect to public utility foundations.

## **17. When and how does a foundation dissolve?**

According to Art. 14 of the Model Statute, the managing board or the supervisory board may decide upon dissolution of a foundation. The foundation has to be dissolved if its public utility status is withdrawn, or if its endowment becomes insufficient (less than 10% of the initial endowment, such a rule being not applicable to time-limited foundations). The foundation also has to be dissolved if its endowment is not transferred to the foundation by the promised date. The Ministry of the Interior, as well as the representative of the government appointed to the board, will have to approve any dissolution of the foundation.

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<sup>5</sup> Before 2003 one third of the governing board had to be representatives of public authorities.

The statutes should provide requirements for the dissolution of the foundation. Assets can be transferred to organisations that pursue the same aims as those of the dissolved foundation.

An endowment funds can be dissolved (i) upon arrival of the term fixed in its by-laws in the case where it has a limited duration, (ii) upon decision of its board, (iii) once its endowment has been fully spent or (iv) upon judicial decision.

**18. Under what conditions does the civil law in your country recognise a foreign foundation?**

From a French legal standpoint, foreign foundations may benefit from a limited legal capacity in France provided they have legal personality under the law of their country of incorporation. Pursuant to such limited capacity, they may enter into contracts, purchase and own assets, be party to a legal action, and organise events in France. As a consequence, if a foreign foundation intends to perform its statutory purpose in France, it should then either create a foundation under French law, or seek special authorisation (recognition of public utility status) via a decree issued by the French Ministry of the Interior, after having received the approval of the *Conseil d'Etat* (French supreme administrative court).

**19. Does the civil law in your country allow a foundation to conduct (some or all) activities (grant-making, operating, asset administration, fundraising) abroad? Is there any limitation?**

French foundations are currently authorised to perform their activities abroad. However, French tax law denies the application of income and corporation tax reductions to gifts made to foundations which do not conduct the main part of their activities in France. As an exception to that principle, French foundations collecting funds and organising humanitarian missions abroad, as well as French foundations collecting funds to promote French language, culture and scientific knowledge outside France are deemed to be performing their activities in France in that sense.

**II. Tax treatment of the foundation**

**1. What are the requirements to receive tax exemptions (pursuing public benefit purposes, non-distribution constraint, being resident in the country?). Is there a special approval process for receiving tax exemption? If so does the process have to be repeated every year?**

A favourable tax regime applies as soon as a public utility foundation is established, irrespective of the location of its activities. No special application is needed to receive tax exemption. The same rule applies to endowment funds.

**2. What are reporting/proof requirements to claim tax exemptions? What does the foundation have to submit to the authorities (statutes, financial reports, activity reports, other?)**

No special application is needed to receive tax exemption.

**3. Is specific reporting required for the use of state funds?**

Foundations receiving state funds exceeding €23,000 are required to sign a convention with the State, such convention defining the conditions of use of the funds received as well as the rules of reporting.

In addition, the *Cour des Comptes* has full jurisdiction to audit the reports and accounts of foundations receiving state funds, funds from local authorities as well as European funds

**4. Is there an obligation to report on donors and beneficiaries?**

Foundations making public fundraising must make publicly available a special report (the so-called "earmarking of funds account" ("*compte d'emploi des ressources*") detailing all the funds raised from the public and the use of such funds.

**5. Are there specific accounting rules for foundations?**

Yes. The accounting regulation CRC 99-01, as amended by the opinion no. 2009-01 issued by the National council for accountancy (*Conseil national de la Comptabilité*) contains specific accounting rules for associations and foundations, including particular regulations relating to registration of gifts, donations and legacies.

**6. Is there a statutory definition in the civil law (foundation law, trust law) of your country what a public benefit purpose (charitable purpose) is? If yes, please give us the definition.**

In France, there is no definition of public benefit purpose in civil law.

**7. Is there a statutory definition in the tax law of your country of what a public benefit purpose is? If yes, please give us the definition.**

In France, under tax law, the public benefit purpose condition is regarded as fulfilled when (i) the activity of the foundation is a non-for-profit one, (ii) the management of the foundation is non-profit-minded, (iii) no advantage is obtained for the founders and (iv) the foundation's activities do not benefit a limited group of persons.

**8. Please indicate whether the following purposes would or would not be accepted for tax privileges in your country:**

| Public benefit purpose*   | Accepted in tax law (for tax privileges) |              |             |    |
|---|--|--------------|-------------|----|
|   | Yes                                      | Probably yes | Probably no | No |
| Arts, culture or historical preservation  | X  |              |             |    |
| Environmental protection  | X  |              |             |    |
| Civil or human rights   | X  |              |             |    |
| Elimination of discrimination based on gender, race, ethnicity, religion, disability, sexual orientation or any other legally prescribed form of discrimination |  | X            |             |    |
| Social welfare, including prevention or relief of poverty   | X  |              |             |    |
| Humanitarian or disaster relief   | X  |              |             |    |
| Development aid and development cooperation   |  |              |             | X  |
| Assistance to refugees or immigrants  | X  |              |             |    |
| Protection of, and support for, children, youth or elderly  | X  |              |             |    |
| Assistance to, or protection of, people with disabilities   | X  |              |             |    |
| Protection of animals   | X  |              |             |    |
| Science, research and innovation  | X  |              |             |    |
| Education and training  | X  |              |             |    |

|  |   |  |   |   |
|--|---|--|---|---|
| <b>European and international understanding</b>  |   |  | X |   |
| <b>Health, well-being and medical care</b>   | X |  |   |   |
| <b>Consumer protection</b>   |   |  |   | X |
| <b>Assistance to, or protection of vulnerable and disadvantaged persons</b>                      | X |  |   |   |
| <b>Amateur sports</b>  | X |  |   |   |
| <b>Infrastructure support for public benefit purpose organisations</b>                           |   |  |   | X |
| <b>Other – please list other purposes accepted in tax law for tax privileges in your country</b> |   |  |   |   |

\* **Note:** A favourable tax regime applies as soon as a public utility foundation is established. In France, under tax law, the public benefits purpose condition is regarded as fulfilled when (I) the activity of the foundation is a non-for-profit one, (II) the management of the foundation is non-profit-minded, (III) no advantage is obtained for the founders and (IV) the foundation's activities do not benefit a limited group of persons.

## 9. Support of “the public at large”

a) Do the activities of a tax-exempt foundation generally have to benefit “the public at large”?

In France, under tax law, the public benefit purpose condition is regarded as fulfilled when (i) the activity of the foundation is a non-for-profit one, (ii) the management of the foundation is non-profit-minded, (iii) no advantage is obtained for the founders and (iv) the foundation's activities do not benefit a limited group of persons

b) If yes, can a tax-exempt foundation support a small number of disadvantaged/ underprivileged individuals?

See above. The “limited /restricted group” notion is not a reference to a small number of persons, but rather to a restrictive definition of beneficiaries. Therefore, a foundation could support persons who suffer from a rare disease (since anybody could potentially be affected by such disease), whereas it could not support veterans or former students of such or such school.

Examples: Do the following purposes promote the public at large?

|   | Yes | Probably yes | Unclear | Probably no | No |
|---|-----|--------------|---------|-------------|----|
| For benefit of the inhabitants of a city with 1,000,000 inhabitants |     |              | X       |             |    |
| For benefit of the inhabitants of a village with 10,000 inhabitants |     |              | X       |             |    |
| For benefit of the employees of a company                           |     |              |         |             | X  |
| For benefit of the members of a family                              |     |              |         |             | X  |
| For benefit of the students of a university                         |     |              |         | X           |    |
| Award for the best student of a university                          |     |              |         |             | X  |

## 10. Non-Distribution Constraint

a) Does a **tax-exempt** foundation generally have to follow a “non-distribution constraint”<sup>6</sup> which forbids any financial support of the foundation board, staff, etc.?

No, from a legal standpoint. However, such prohibitions or limitations are frequently included in the by-laws of French foundations

b) What happens with the foundation's assets in case of dissolution?

French civil law provides that, in such a situation, the foundation's assets must be devolved by the board to another foundation. A similar rule applies to endowment funds.

## 11. “Altruistic” Element

a) Is remuneration of board members allowed in **civil law** and in **tax law**? If remuneration is allowed, are there any limits in **civil law** and/or in **tax law**?

No, board members can benefit from a refund of their business expenses only if provided by the foundation's internal regulations.

b) Does **tax law** allow a donor/funder to receive some type of benefit in return for a donation? (e.g. postcards, free tickets for a concert)

Yes. However, the tax reduction regime is denied to the donor/funder if the benefit granted in return for the donation exceeds a certain limit, which is equal to 25% of the amount of the gift with a ceiling of €60 for individuals and 25% of the amount of the donation for companies.

c) Is there a maximum amount that can be spent on office/administration costs in **civil law** and in **tax law**?

No

If yes, how are “administration costs” defined? Please indicate which of the following types of expenditures would/would not be considered as “administration costs”:

- Personnel costs (staff salaries/payroll costs): administration costs
- Board remuneration: not allowed
- Costs of external audit: administration costs
- Other legal/accounting costs: administration costs
- General office overheads (rent/mortgage payments, utilities, office materials, computers, telecommunications, postage): administration costs
- Insurance: administration costs

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<sup>6</sup> For the purposes of this profile, a non-distribution constraint implies that any transactions/benefits to third parties going beyond reasonable compensation for services rendered are prohibited (such as unreasonable board remuneration or excessive payments to service deliverers) except where transactions/benefits provided are part of the direct promotion of the public benefit purpose.

- Publicity and promotion of the foundation (e.g. website, printed promotional materials): they are not considered as administration costs
- Asset administration costs: administration costs
- In the case of an operating foundation – costs related to programmes/institutions run by the foundation: mission-related costs
- Costs related to fundraising: they are not considered as administration costs

## 12. Hybrid Structures (elements of private benefit in public benefit foundations)

a) Does the **civil law** of your country accept the following provisions/activities of a public benefit foundation?

|   | Yes  | Probably yes | Unclear | Probably no | No   |
|---|--|--------------|---------|-------------|--|
| The founder restricts the use of the endowment by specifying that the foundation is required to maintain the founder, his spouse and descendants.   |  |              |         |             | X  |
| The founder retains a beneficial reversionary interest in the capital of a property or other asset for his own continuing use.  | Yes, provided that the reversionary interest is limited to a specific length of time or to the life of the founder and the interest reverts to the foundation at the expiration of this period<br>Yes, provided that the foundation can freely decide not to renew the lease upon its expiration |              |         |             |  |
| The gift is of only the <i>freehold reversion</i> (residuary interest) in a residence that is subject to an existing lease (for a term of years, or even for life) in favor of the founder (or another member of her/his family) as tenant. | Yes, provided that the foundation can freely decide not to renew the lease upon its expiration   |              |         |             |  |
| A foundation distributes a (small) part of its income to the founder or his family.   |  |              |         |             | No, since it would then not be of public benefit |

b) Does the **tax law** of your country accept the following provisions/activities of a tax-exempt foundation?

|   | Yes  | Probably yes | Unclear | Probably no | No |
|---|--|--------------|---------|-------------|----|
| The founder restricts the use of the endowment by specifying that the foundation is required to maintain the founder, his spouse and descendants. |  |              |         |             | X  |
| The founder retains a beneficial <i>reversionary</i> interest in the capital of a property or other asset to retain for its own continuing use.   | Yes, provided that the reversionary interest is limited to a specific length of time or to the life of |              |         |             |    |

|   |   |  |  |  |  |
|---|---|--|--|--|--|
|   | the founder and the interest reverts to the foundation at the expiration of this period   |  |  |  |  |
| The gift is of only the <i>freehold reversion</i> (residuary interest) in a residence that is subject to an existing lease (for a term of years, or even for life) in favor of the founder (or another member of her/his family) as tenant. | Yes, provided the foundation can freely decide not to renew the lease upon its expiration |  |  |  |  |
| A foundation distributes a (small) part of its income to the founder or his family.   |   |  |  |  | No, since it would then not be of public benefit |

### 13. Distributions and Timely Disbursement

a) Are foundations allowed to spend down their capital?

Yes, in the case where the foundation is set up for a limited period of time.

Endowment funds are normally not allowed to spend down their capital, unless it is authorized by their by-laws. However, if such a provision is included in the bylaws, the endowment fund becomes liable to corporation tax.

b) Are they allowed to be set up for a limited period of time only? If so, is there a minimum length of time for which the foundation must exist?

Yes

c) Does the **civil law** and/or the **tax law** of your country require a foundation to spend its income (or a certain amount of the income) within a certain period of time, e.g. within the next financial year? If so, is there a specific amount/percentage of the income that must be spent within this time? Which resources would be considered as income? E.g. would donations/contributions designated as being for building up the endowment be included in /excluded from the income to be spent? What expenditures would count towards the disbursement of income (e.g. would administration costs be included/excluded?)?

No

d) Does the **civil law** and/or the **tax law** of your country require a foundation to spend a percentage of its overall assets in the form of a "pay-out rule"?

No

Example: Does the **civil law** of your country accept the following activities of a public benefit foundation?

|   | Yes | Probably yes | Unclear | Probably no | No |
|---|-----|--------------|---------|-------------|----|
| A foundation accumulates its income for 5 years, only in the 6 <sup>th</sup> year are there distributions for the public benefit purpose of the foundation. |     |              | X       |             |    |

Example: Does the **tax law** of your country accept the following activities of a public benefit foundation?

|   | Yes | Probably yes | Unclear | Probably no | No |
|---|-----|--------------|---------|-------------|----|
| A foundation accumulates its income for 5 years, only in the 6 <sup>th</sup> year are there distributions for the public benefit purpose of the foundation. |     |              | X       |             |    |

#### **14. Does activity abroad put the tax-exempt status at risk?**

Generally no, but tax benefits for donors are not granted if the foundations do not conduct the main part of their activities in France. As an exception to that principle, French foundations collecting funds and organising humanitarian missions abroad, as well as French foundations collecting funds to promote French language, culture and scientific knowledge outside France are deemed to be performing their activities in France in that sense, and those acting in favour of environmental protection.

Further to the publication of a controversial draft administrative circular (see III, 4 below) discussions are still in process with the French tax authorities in order to both extend and better define the nature of activities that French foundations may perform abroad without having adverse tax consequences for their donors.

#### **15. Are there any civil and/or tax law rules regulating cross-border grants by a foundation? If yes, please provide a description of the requirements the foundation must fulfil in such cases.**

There is no civil regulation. With respect to tax law, the French tax authorities consider that cross-border grants delivered by a French foundation must respect the above-referred exceptions for activities abroad (i.e. humanitarian missions, environmental protection, and promotion of French language, culture and scientific knowledge).

#### **16. Income tax treatment**

Income derived from non-profit activities as well as capital gains or income derived from ancillary economic activities is tax-exempt. Royalties and rental income derived from commercial or furnished premises are subject to corporate income tax at the standard rate (33.33%).

If foreign foundations establish an autonomous branch in France, the same tax regime applies. If a foreign foundation is active in France and can prove its non-profit character, it is exempt from tax. Subsidies from the State or public bodies are exempt from corporate income tax provided they have been granted to the concerned foundation in absence of any direct compensation being required. Their liability or non-liability to VAT depends on whether they are allocated to finance taxable or non-taxable activities of the foundation.

The same rules apply to endowment funds; but in the case where an endowment funds is entitled by its by-laws to spend down its capital, income derived from investment of its capital becomes taxable.

#### **How are the following types of income treated for income tax purposes?**

##### Grants and donations

Grant and donations received by foundations are tax exempt.

##### Investment income (asset administration)

Since 1 January 2005, most investment income (dividends, interest, rental income derived from unfurnished premises) is tax-exempt.

Public-benefit foundations do not pay withholding tax in France. A 15% withholding tax applies to French non-profit organisations, except public-benefit foundations and endowment funds. This withholding tax at a rate of 15% is also levied on dividends paid to comparable foreign organisations as of 2010.

- Interest from fixed rate bonds

Public-utility foundations, as well as endowment funds whose by-laws do not allow their capital to be consumed, are tax exempt with respect to income derived from their estate, including interest and dividends. All other PBOs are taxable with respect to interest from fixed-rate bonds at reduced rates of 10 % or 24% (interest from fixed-rates bonds issued prior to 1<sup>st</sup> January 1987 are tax exempt).

- Equities

Public-utility foundations, as well as endowment funds whose by-laws do not allow their capital to be consumed, are tax exempt with respect to dividends

- Income from leasing of a property that belongs to the foundation

Public-utility foundations, as well as endowment funds whose by-laws do not allow their capital to be consumed, are tax exempt with respect to income derived from their estate, including income derived from the leasing of a property belonging to them. All other PBOs are taxable with respect to rental income at a reduced rate of 24%.

Economic activities related/unrelated)

Economic activities of public utility foundations that are directly linked to the purpose of the foundation are usually exempt from corporate tax. Profits derived from an unrelated commercial activity are regularly taxed at the normal corporate income tax rate. The distinction between non-profit character and profit-making activity is not always very clear. According to the fiscal guidelines introduced in 1998 and 1999 (*Instructions du 15 septembre 1998 - Bulletin Officiel des Impôts 4 H-5-98 et 16 février 1999 - Bulletin Officiel des Impôts OI 4 H-1-99*), tax exemption from standard rates is granted if (i) the organisation's management does not have a financial interest in the organisation, (ii) the organisation does not compete with the private sector, and (iii) activities are not conducted in the same way as commercial corporations.

- Income from running a hospital/museum/opera

Ancillary economic activities of PBOs that are directly linked to the public benefit purpose of organisation are exempt from corporate tax up to a ceiling of 60,000 euros exclusive of VAT.

- Income from producing/selling books (e.g. art books sold by a cultural foundation)

Ancillary economic activities of PBOs that are directly linked to the public benefit purpose of organisation are exempt from corporate tax up to a ceiling of 60,000 euros exclusive of VAT.

- Income from running a bookshop inside a museum/opera run by the foundation

Ancillary economic activities of PBOs that are directly linked to the public benefit purpose of organisation are exempt from corporate tax up to a ceiling of 60,000 euros exclusive of VAT.

- Income from running a café in the hospital/museum run by the foundation

This is regarded as an unrelated economic activity, which is fully taxable.

- Income from selling T-shirts (activity not related to the pursuance of the public benefit purpose)

This is regarded as an unrelated economic activity, which is fully taxable.

- Income from intellectual property (e.g. royalties and licence fees)

This should be regarded as passive income derived from the foundation's estate, and should thus be exempt from company tax, but subject to VAT at a reduced rate.

Income deriving from grant expenditure towards public benefit purpose/programme activities (such as loans, guarantees, equities)?

The French Monetary and Financial Code (*Code monétaire et financier*) prohibits entities other than banks or financial institutions to grant loans on a regular basis. Therefore, foundations and endowment funds are only entitled to allocate loans within their public benefit purpose, subject to specific conditions; as a consequence, they notably can only grant no-interest or very low-interest loans. In such cases, income derived from such loans is tax exempt as far as it is regarded as directly linked to the purpose of the foundation.

Is major shareholding considered as an economic activity and taxed accordingly?

Major shareholding is normally not regarded as an economic activity but as simple administration of assets. However, if a foundation is actively involved in the operational management of a company, the shareholding would then be considered a taxable economic activity, which could entail a corporate tax burden for the foundation if not considered an ancillary activity.

**17. Are capital gains subject to tax? If so, are they taxed as income or liable to a separate tax?**

n/a

**18. Does any kind of value added tax (VAT) refund scheme for the irrecoverable VAT costs of public-benefit foundations exist in your country?**

As long as they do not perform economic activities, foundations and endowment funds are not subject to VAT.

**19. Is capital tax levied on the value of assets, where applicable?**

There is no capital tax applicable to legal entities in France.

**20. Are there taxes on the transfer of assets by foundations?**

Sales of real estate or shares by a foundation are subject to transfer taxes (*droits d'enregistrement*) which are usually borne by the purchaser. The transfer of assets from a foundation to a public utility foundation is exempt from transfer tax, irrespective of the nature of the assets transferred (Article 1039 of the French Tax Code).

**21. Are there any other taxes to which public-benefit foundations are subject there (e.g. real property tax)?**

Foundations and endowment funds are liable to property tax on any immovable property they own on 1 January of each year.

**22. Can a foreign foundation get the same tax benefits as a national foundation according to the wording of the tax law in your country? If yes, under what conditions – if they have to fulfil exactly the same requirements as local based public benefit foundations, please refer to above but indicate which documents need to be provided and translated:**

- Statutes (translation required)
- Last annual financial report (translation required)
- Documents providing evidence that income was actually spent for public benefit purposes (within the French meaning ),

Yes, but only if it performs its activities on French territory and is regarded as having a public benefit purpose in France.

All of the above listed documents must be provided, as well as information on the nature of their non-profit activities performed in France.

**23. Does your country apply withholding tax to the income from local investments held by domestic and/or foreign-based foundations? If so, can domestic or foreign-based foundations reclaim all or part of the withholding tax under domestic law?**

Most tax treaties signed by France do not cover French foundations, which are thus usually not regarded as “residents of France” for the application of such treaties. Therefore, income derived by a French foundation from foreign investment is normally subject to any applicable foreign withholding tax, unless provisions of the foreign applicable domestic law exempt them from such withholding tax.

**III. Tax treatment of donors of public benefit foundations**

**1. System of tax credit<sup>7</sup> or tax deduction<sup>8</sup>?**

French resident taxpayers, regardless of their nationality, benefit from a tax credit in relation to gifts made to foundations. The beneficiary foundation, irrespective of the location of its head office in France or abroad, must however conduct part of its activities in France or benefit the national community; to that extent, a French foundation collecting funds and organising from France humanitarian missions abroad is deemed to be performing its activities in France in this sense. The foundation must provide the donor with a receipt; such a receipt must be enclosed with the donor’s tax return in order for him to enjoy a tax credit.

Any type of donation can be made to a foundation: cash, shares, securities, real estate, in-kind donations, etc.

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<sup>7</sup> For the purposes of this profile tax credit can be defined as an amount that can be deducted from the actual tax to be paid (reduction in amount of tax paid)

<sup>8</sup> For the purposes of this profile tax deduction can be defined as a reduction in the gross amount on which tax is calculated (reduction in taxable income/tax base)

## 2. Tax treatment of individual donors

### a) What tax relief is provided for individual donors? Is there a minimum and/or a ceiling to a contribution on which tax incentives can be claimed?

Individuals making gifts to public utility foundations, to foundations under the aegis of a public utility foundation or to endowment funds, as well as employees contributing to the corporate foundation set up by their company, benefit from a tax reduction equal to 66% of the value of their gift (75% for gifts made to foundations and other organisations which supply free meals to persons in difficult situations), up to 20% of the donor's taxable income, according to Art. 200-1 CGI. When the amount of the gift exceeds this threshold, the excess is carried forward over the next 5 years.

In addition, since 1 January 2008, individual donors may opt to benefit from a wealth tax reduction with respect to gifts of cash and/or listed shares made to public-benefit foundations. The wealth tax reduction is equal to 75% of the value of the gift, but is limited to €50,000. Please note that if the donor opts for the wealth tax reduction, he cannot benefit from the income tax reduction with respect to the same gift. This tax advantage has not been extended to gifts made to endowment funds.

### b) Which assets qualify for tax deductibility?

Any kind of assets qualify for personal income tax deductibility, i.e. cash, shares whether listed or not, real property, intellectual rights, etc. With respect to wealth tax deductibility, only cash and listed shares qualify.

## 3. Tax treatment of corporate donors

### a) What tax relief is provided for corporate donors? Is there a minimum and/or a ceiling to a contribution on which tax incentives can be claimed?

Corporate donors can benefit from a tax reduction equal to 60% of the donations to public utility foundations and to endowment funds up to 0.5% of their annual turnover according to Art. 238 bis CGI. Should there be no profits in the following years, the deduction can be carried forward over the next five years. The deduction may also be carried forward over the following five years, if the donations are beyond the 0.5% limit. The founding company can also benefit from a tax credit with respect to gifts made to a corporate foundation it has set up.

### b) Which assets qualify for tax deductibility?

Any kind of assets qualify for tax deductibility, i.e. cash, shares whether listed or not, real property, intellectual rights, as well as gift in kind and even skill-based sponsorship.

## 4. Tax treatment of donations to non-resident public-benefit foundations – do donors get the same tax incentive?

In December 2009, the amending law to the 2009 budget law was adopted, including provisions in order to remove discrimination against foreign charities (associations and foundations). Under this legal provision, French tax residents making gifts to public benefit organizations established in the EEA that are comparable to French public benefit organizations will be given the same tax

advantages as those granted to French tax resident making gift to French non-profit organizations (see 1.1 hereto above), subject to the following conditions :

- The foreign organization is established in a country which has signed a tax treaty with France containing a clause for assistance against tax fraud or evasion and the foreign organization has obtained a specific agreement from the French tax authorities
- In the case where the organization has not got this agreement, the donors may still benefit from the tax advantages provided that they file evidences that the organization is comparable to a French tax exempt organization.

A draft administrative circular issued by the French authorities on 28 February 2011, specified that in order for a donation to qualify for tax relief, the EEA recipient organization should perform the greater part of its activities in France.

In front of the strong mobilization of the French philanthropic sector, the tax authorities did not publish the draft circular, and discussions are currently in progress with the Prime Minister's services to handle all the questions connected to the territoriality of the activities of PBOs.

## **5. Other frameworks such as percentage law systems**

n/a

## **6. What are the requirements that the donor must fulfil/ information they must provide in order to claim tax benefits?**

What information do donors have to provide to their tax authority in order receive tax incentives for their donation (e.g. submitting details on the organisation they support: statutes, annual financial report, documents providing evidence for certain tax law requirements e.g. that income was actually spent for public benefit purposes?)?

The donor, whether an individual or a corporation, must file together with its annual tax return a form delivered by the foundation certifying the nature and the date of the gift it received as well as the amount of such gift - no other information is required.

## **7. Are there any different or additional requirements to be fulfilled when a donor is giving to a foreign-based foundation?**

What information do donors to foreign-based organisations have to provide in order receive tax incentives for their donation (e.g. Statutes (translation required?)? Annual financial report (translation required?)? Documents providing evidence for certain tax law requirements e.g. that income was actually spent for public benefit purposes?)?

Due to on-going discussions of the French authorities, this information is pending.

#### **IV. Tax treatment of the beneficiary (receiving a grant or other benefit from a foundation)**

##### **1. Individuals**

Individuals receiving funds from a foundation are exempt from paying tax on them if such funds are granted as assistance of an exceptional nature. However, if such funds are granted in exchange for compensation (such as the provision of certain services), they are subject to individual income tax at standard rates.

Prizes granted by a foundation are normally taxable; however, literary, artistic and scientific prizes are tax-exempt provided they are allocated by an independent jury and have been granted for at least 3 years.

##### **2. Legal entities**

Subsidies granted by a foundation to non-profit entities are tax-exempt if they are used for the purpose of tax-exempt activities by the beneficiary entities.

Otherwise, the beneficiaries are subject to corporate income tax.

##### **3. Are there any different or additional requirements that must be fulfilled by a beneficiary receiving funding from abroad?**

None.

#### **V. Gift and inheritance tax**

##### **1. Does gift and inheritance tax/transfer tax exist in your country and if yes who has to pay the tax in the case of a donation/legacy to a public-benefit organisation (the donor or the recipient organisation)?**

Gift and inheritance taxes exist in France, and are to be paid by the recipient organisation.

##### **2. What are the tax rates? Is there a preferential system for PBO's? Which PBO's qualify? Is there a difference according to the region or the legal status of the PBO?**

Gift and legacies to public-utility foundations are subject to gift/inheritance tax at the following rates:

35% for that part of the gift/legacy between 0 and € 24,069,

45% over € 24,069,

Gift and legacies made to other foundations are taxed at 60%.

However, public utility foundations whose resources are exclusively spent for assistance, environment, animal protection, scientific, cultural or artistic purposes are exempt from inheritance and gift tax. Special donations like goods of historical value, books, and paintings are also exempt from this tax.

##### **3. Is there a threshold (non-taxable amount) from gift and inheritance tax for donations/legacies to public-benefit organisations?**

No

##### **4. Is there a legal part of the estate that is reserved for certain protected heirs and which a donor cannot give to third parties?**

The descendants of a deceased benefit from a heritage reserve, fixed in:

- 50 % in the presence of a child,

- 2/3 in the presence of 2 children,
  - 3/4 in the presence of 3 children or more.
- The surviving spouse is also entitled to a reserve of 1/4.

## **5. What is the tax treatment (inheritance and gift tax) of legacies to non-resident public benefit foundations?**

Donations made to non-resident public-benefit foundations are subject to French gift taxes, unless provided otherwise by a tax treaty. Up to now, France has signed treaties regarding succession and/or gift duties **and** containing a specific provision relating to non-profit organisations only with the following countries: Austria, Finland, Italy, Spain, Sweden, U.S.A. and Switzerland (only with respect to some “cantons”)

## **VI. Trends and developments**

### **1. Are there current discussions about the question of whether cross-border activities of foundations or other non-profit organisations and their donors are protected by the fundamental freedoms of the EC Treaty? Have there been any changes to your country’s legislation, resulting from the Persche, Stauffer, Missionswerk or other relevant ECJ judgments, or are changes being discussed?**

In December 2009, the amending law to the 2009 budget law was adopted, including provisions in order to remove discrimination against foreign charities (associations and foundations). Under this new legal provision, French tax residents making gifts to public benefit organisations established in the EEA that are comparable to French public benefit organisations will be given the same tax advantages as those granted to French tax resident making a gift to French non-profit organisations (see III hereto below), subject to the following conditions :

- The foreign organisation is established in a country which has signed a tax treaty with France containing a clause for assistance against tax fraud or evasion and the foreign organisation has obtained a specific agreement from the French tax authorities
- In the case where the organisation has not got this agreement, the donors may still benefit from the tax advantages provided that they file evidence that the organisation is comparable to a French tax exempt organisation

### **2. Has the fight against terrorism and financial crime led to the introduction in recent years of new laws / rules affecting the foundation sector (e.g. implementation of EU Anti Money Laundering Directive, or reactions to recommendations of the Financial Action Task Force)?**

#### **a) Is there a specific national/regional anti-terrorism act (legislation) in your country, (which one and date of entry into force or adoption)?**

Yes. Law no. 2006-64 dated 23 January 2006 relating to the struggle against terrorism and dealing with security and border controls issues; Law no. 2007-297 dated 5 March 2007 relating to crime prevention ; Ordinance no. 2009-104 dated 30 January 2009 relating to the prevention of use of the financial system for money laundering and terrorism financing.

#### **b) If so, has this law introduced new legal and regulatory requirements for foundations (please describe)?**

Not directly. The 2009 Ordinance provides that barristers (*avocats*), notaries and auditors advising clients in relation with the creation or the management of endowments funds are liable to specific

obligations of declaration with a special committee for financial inquiry, in the cases where they suspect that the funds used may come from money laundering operations or may participate to terrorism financing.

c) Has the foundation supervisory authority introduced new regulatory/oversight requirements to comply with counter terrorism measures/law?

No, except for the above referred ordinance.

d) Has the foundation supervisory / regulatory authority(ies) introduced guidance tools to assist foundations to comply with counterterrorism measures/law?

No

e) If so, did the foundation supervisory authority engage in a consultation with the foundation sector on counter terrorism measures/ does it plan such a consultation?

n/a

### **3. Are there any other recent trends or developments affecting the legal and fiscal environment for public benefit foundations in your country?**

n/a

### **4. Public fundraising**

Are there any specific laws that regulate fundraising and do they affect foundations?

Yes, Law no. 91-772 dated 7 August 1991 regulates public fundraising made by organisations in order to support scientific, social, family, humanitarian, philanthropic, educational, sports, cultural or environmental actions, irrespective of the nature of the organisation concerned. Therefore, the provisions of this law fully apply to foundations provided they are authorised to make public fundraising (which is not the case for corporate foundations).

#### **Useful contacts**

Centre Français des Fondations  
40 avenue Hoche 75008 Paris - France  
Phone: +33.1.44.21.31.06  
Fax: +33.1.44.21.31.01  
E-mail: [ccf@fdf.org](mailto:ccf@fdf.org)  
Web: <http://www.centre-francais-fondations.org>  
Fondation de France  
40 avenue Hoche 75008 Paris - France  
Tel: +33.1.44 21.31 00  
Fax: +33.1.44 21.31 01  
Web: <http://www.fdf.org>

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- Law no. 2003-709 dated 1 August 1 2003 (Loi relative au mécénat, aux associations et aux fondations)
- Law no. 2004-1343 dated 9 December 2004 (Loi de simplification du droit)
- Law no. 2006-450 dated 18 April 2006 (Loi de programme pour la recherche)
- Law no. 2007-1199 dated 10 August 2007 (Loi relative aux libertés et responsabilités des universités)
- Law no. 2007-1223 dated 21 August 2007 (Loi en faveur du travail, de l'emploi et du pouvoir d'achat)
- Law no. 2008-776 dated 4 August 2008 (Loi de modernisation de l'économie)

### **About the EFC Legal and Fiscal Country profiles**

This profile is part of a series of profiles of the legal and fiscal environments for foundations in 42 different countries across the wider Europe, as well as some countries in other world regions. The aim of these profiles is to paint a picture of the current operating environment for foundations in these countries to better understand the legislative landscape foundations inhabit. The profiles are produced in collaboration with foundations, legal experts, and associations in each country. Each profile is written by the national-level expert. A comparative overview of the country profiles from wider Europe can be downloaded from the EFC website: “Comparative Highlights of Foundation Laws: The Operating Environment for Foundations in Europe.”

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### **About the European Foundation Centre**

The European Foundation Centre, founded in 1989, is an international membership association representing public-benefit foundations and corporate funders active in philanthropy in Europe, and beyond. The EFC develops and pursues activities in line with its four key objectives: creating an enabling legal and fiscal environment; documenting the foundation landscape; building the capacity of foundation professionals; and promoting collaboration, both among foundations and between foundations and other actors. Emphasising transparency and best practice, all members sign up to and uphold the EFC Principles of Good Practice.