I. Summary

A. Types of Organizations

France recognizes two primary legal forms for not-for-profit, non-governmental organizations (“NGOs”): associations and foundations. Associations may be of private or public benefit. There are two categories of public benefit associations: (1) those of “general interest” and (2) those of “public utility.”

Foundations similarly consist of two forms: foundations “recognized of public utility” (hereinafter public utility foundations) and corporate foundations. They are subject to different regulatory regimes, and only commercial entities may found a corporate foundation. Both foundations forms, however, must serve the public benefit.
Other French NGOs, which are outside the scope of this Note due to their limited interaction with U.S. grantmakers, include trade unions, religious organizations, and political parties.

**B. Tax laws**

Generally, NGOs can receive donations, grants, and 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.

With the exception of corporate foundations, donations to NGOs possessing general interest or public utility status entitle donors to tax credits. For qualifying donations, legal entities can receive tax credits up to 0.5% of their annual turnover, and individuals can receive tax credits up to 20% of their taxable income.

So-called “contractual donations” are subject to a special levy. A contractual donation is generally a donation such as a grant or conditional gift that imposes certain obligations on the recipient. Only certain organizations may receive contractual donations, and of those organizations, only certain ones are exempted 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”);
- Tax Code
- Instruction of the Ministry of Taxation, September 15, 1998 (“Instruction of 1998”);
- Instruction of the Ministry of Taxation, April 9, 2004 (“Instruction of 2004”);
- Model Charters for Public Utility Associations and Foundations, *Conseil d’Etat*;
- Law of February 4, 1901 on Administrative Control over Donations;
- Order of the Ministry of Economics, Finance, and Industry of December 30, 1983 on Tax Exemptions (“Customs Order”);
- Regulation (EEC) No. 918/83 of 28 March 1983 on the Common Regime of Customs Duties;
- Education Code;
III. Relevant Legal Forms

A. General Legal Forms [1]

Associations

Associations may be established by two or more persons for any legal activity besides the “sharing of profits” (Article 1, Associations Law). In order to acquire legal personality, an association must notify [2] 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) below), associations may seek general interest status or public utility status.

Foundations

There are two general categories of foundations: public utility foundations and corporate foundations. All foundations must serve the public benefit; private interest foundations are not permitted.

1. Public Utility Foundations (Fondations reconnues d’utilité publique)

Public utility foundations may be established by one or more persons. The minimum endowment is €760,000, [4] which can be contributed in installments over a period of five years. In addition, it must receive approval from the Conseil d’Etat (France’s highest administrative court), after receiving authorization from the Ministry of Interior. Any amendments to a public utility foundation’s charter as well as any decision to dissolve the entity and distribute its assets must be first approved by the Conseil d’Etat.

2. Corporate Foundations (Fondations d’entreprise)

Only commercial entities (public or private companies, mutual societies, cooperatives, etc.) may be founders of corporate foundations (Article 19, Law on Philanthropy Development). A corporate foundation’s purposes must be of “general interest,” and it is ineligible to receive the status of a public utility organization. Corporate foundations must be established for a minimal period of three years (Article 19-1, Law on Philanthropy Development). They may not receive a legacy or any donations from the general public; only individuals who are employees of the founder commercial entity are eligible to make donations (Instruction of 2004).

B. Public Benefit Status

There are two forms of public benefit status: (1) general interest status, which makes the organization's donors eligible for tax benefits, and (2) public utility status, which entitles
the organization to the benefits of general interest status plus additional tax and fiscal preferences. Public utility status subjects the organization to certain requirements, including stricter controls over the use of the organization’s funds during its existence and the distribution of assets upon dissolution.

1. General Interest Status

General interest status allows donors to receive a credit for their donations to the organization. The status does not subject the organization to any special rules regarding its operation, management, or dissolution.

Activities that qualify as “general interest” include philanthropic, educational, scientific, social, humanitarian, sporting, family, and cultural activities, as well as activities aimed at the promotion of artistic heritage, the promotion of the defense of natural 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 these activities must be of a not-for-profit nature (Tax Adm. Doc. 5 B-3311 n° 11 of July 20, 1994 and Tax Adm. Doc. 4 C-712 n° 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 in compliance 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 activities of general interest; and
- 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). Both forms of foundations by law can only engage in public benefit activities. 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):

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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; 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 cannot be allocated 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 (Instruction of 1998).

**B. Proprietary Interest**

As a general rule, an organization can become 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 the organization’s operations or assets (Article 261.7.1 d, Tax Code, and Instruction of 1998). 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*).

However, there are certain exceptions. Members of declared associations and general interest associations may retain ownership claims, 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). Therefore, grantmakers should review the governing documents of these types of associations in order to ensure that U.S. legal requirements are met.

**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 only to a government agency or an NGO authorized to receive contractual donations (which are primarily organizations serving the public benefit; see Section V(D) below) in accordance with the association’s governing documents, or, if the documents are silent on this issue, pursuant to a decision of the general assembly (Article 15, Implementation Decree of the Associations Law). Similarly, the assets of a dissolved public utility association may be transferred only 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

The assets of a corporate foundation may be distributed after its dissolution only to a government agency or public utility organization with similar purposes (Article 19-12, Law on Philanthropy Development). A public utility foundation is permitted to 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. The Conseil d’Etat has indicated that it is theoretically possible (though highly unlikely) that assets could even 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. Both types of foundations must carry out activities of benefit to the general public.

2. Economic Activities

Associations and foundations may directly or indirectly engage in any commercial activity, and there generally is no distinction between related and unrelated economic activities. 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 to any extent. A special category of associations can provide direct financial support to a political party or to an election campaign. These political associations are established for only a limited period of time and can engage only in these stipulated activities. 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). Given the relative breadth of permissible political activities by NGOs in France, a U.S. grantmaker undertaking an equivalency determination should review the governing documents and activities of a prospective grantee to ensure that requirements of U.S. law are satisfied.
**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**

The general principle under French law is that all associations, corporate foundations, and public utility foundations are exempt from commercial taxes, *i.e.* the corporate income tax, turnover tax, and the professional tax (special rules apply to VAT).

In addition, earnings from economic activities are exempt from tax, provided that they are not distributed and that other features are present to distinguish the organization from a commercial enterprise (Instruction of 1998). 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 is found that the NGO does compete with the commercial sector, an additional inquiry concludes that the NGO does not conduct its activities along lines similar to those of the commercial sector (Instruction of 1998).

An NGO with annual revenue below € 60,000 can receive tax-exempt status only if (1) not-for-profit activities are its predominant activities, and (2) it does not distribute any income or assets to any private interests (Article 206,1bis, Tax Code).
**B. Tax Credit for Charitable Contributions**

Legal entities are eligible for a tax credit, up to a maximum of 0.5% of annual turnover, for 60% of the value of their donations to general interest associations, public utility associations, and public utility foundations. Excess amounts may be reported and credited against the tax due on a carry-forward basis for the subsequent five years.

Individuals are eligible for a tax credit, up to a maximum of 20% of taxable income, for 66% of the value of their donations to public utility organizations, associations of general interest, and religious organizations authorized to receive “contractual donations.” Employees of the commercial entity founder of a corporate foundation are eligible for this tax credit for donations to the corporate foundation. [14] Donations to certain charitable organizations serving the needy are eligible for a tax credit of 75% up to a maximum of €470, [15] over which amount donations are eligible for a 66% credit, up to a maximum of 20% of taxable income. As with legal entities, excess amounts may be reported and credited against the individual's tax due on a carry-forward basis for the subsequent five years (Article 200, Tax Code).

**Tax on Contractual Donations (“Registration Fees” – Droits d’enregistrement)**

Under French law, “simple donations” are treated differently than “contractual donations,” which also include those made by will. [16] Most NGOs are allowed to receive simple donations, as well as “contractual donations” given by a public utility organization. [17] However, only the following organizations are entitled to receive, upon administrative approval, 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 carrying out exclusively medical or scientific research, or charitable assistance (to the needy) (Article 6, Associations Law);
- associations financing electoral campaigns; and
- associations financing political parties. [18]

Public utility foundations, such as the Fondation de France, are entitled to receive contractual donations on behalf of associations that do not themselves qualify to receive contractual donations. In such a case, the recipient organization holds individual accounts for the other organizations. Contributors can use these accounts to submit donations, including contractual donations, that the intended beneficiary would otherwise not be able to receive.

While simple donations are exempt from taxes, contractual donations are subject to registration fees [19] unless the donations are granted to:
a public utility organization whose revenue is exclusively allocated to scientific, cultural or artistic, environmental or charitable purposes, or animal protection;
associations whose the revenue is exclusively allocated to scientific and medical research;
state-subsidized public utility organizations carrying out activities of higher education and popular education;
religious organizations; and
associations for the purpose of building commemorative war monuments (Article 795, 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, some of which are relevant to NGOs, including medicine and pharmaceutical products, equipment for handicapped individuals, and the provision of housing and food at elderly care facilities (Article 279, Tax Code). The following activities of relevance to the NGO sector are exempt from VAT:

- Services with a social or philanthropic character provided to any person, as long as the price charged by the organization has been accredited by the state and does not distort competition in the market. “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;
- Care for the elderly in hospices;
- Expenses for hospitalization in health care organizations;
- Services by social, cultural, educational, sports, philosophical, religious, political, patriotic, civic organizations, and professional unions when these services are provided to their members; and
- Six fund-raising events per year.

However, if an NGO allocates goods or services to both for-profit and not-for-profit activities, any VAT exemption to which it is entitled is calculated as a pro rata ratio of the organization’s turnover from its VAT-exempt and non-exempt activities (Article 212, Appendix 2, Tax Code).

D. Import Duties

Certain goods imported by organizations that have been granted the status of “charitable or philanthropic organizations” by the French Customs Authorities are exempt from customs duties and taxes (Articles 43-47 and 51-57 Order of the Ministry of Finance, Economy and Industry of December 30, 1983). These consist of:
Basic necessities such as food, medicine, clothing and bed linens to be distributed free of charge;
Goods received free of charge, of a value not exceeding €12,200 per year, to be used for fundraising at occasional charity events for the benefit of needy persons;
Equipment and office materials sent free of charge for the purpose of meeting operating needs or for carrying out charitable or philanthropic aims of organizations in a value not exceeding €6,100 per year;
Goods for distribution to or to be made available free of charge to victims of disasters in the EU; and
Goods imported for free circulation by disaster-relief agencies in order to meet their needs during the period of their activity.

Other categories of goods exempt from customs are:

- Imports by scientific, educational or cultural organizations of educational, scientific and cultural materials, as well as scientific instruments and apparatuses for their use;
- Cultural goods listed in appendix II of EEC Regulation No. 918/83 imported by public utility organizations and other organizations accredited by the customs authorities; and
- Imports by certain organizations accredited by the customs administration whose main activity is the education of the blind or the handicapped or assistance to blind or handicapped people (EEC Regulation No. 918/83).

No goods imported under these exemptions (with the exception of paragraph No.3 above) can be lent, rented, or transferred without imposing liability for payment of import duties.

**E. Double Tax Treaties**

Two double tax treaties are in effect between the United States and the French Republic:

1. **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);**


Article 10 of the convention regarding estates, inheritances, and gifts contains a provision exempting from the U.S. federal gift tax and estate tax transfers to French organizations if the transfer would be tax-exempt if the recipient organization were a U.S. entity.
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] The Ministry of Interior cannot deny the notification, but it may subsequently appeal to a court for dissolution or nullification of the association if it believes its objectives or activities are illegal.

[3] Informal associations (i.e., those operating without the creation of a legal entity) are not analyzed 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.”

[4] This requirement is not stipulated by statutory law but is practiced by the Conseil d’État.

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

[6] Directors 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. Such remuneration must be provided for in the charter of the NGO. An NGO may remunerate one board member if its gross income exceeds an average of Euro 200,000 over the past three fiscal years, two board members if its income exceeds an average of Euro 500,000 over the past three fiscal years, and up to three board members if its gross income exceeds an average of Euro 1,000,000 over the past three fiscal years.

[7] However, the recovery of contributions to an association’s capital as well as membership dues is not possible for public utility associations.

[8] Since assets distributed in conjunction with liquidation are considered to be a contractual donation, the assets may be passed on only to an organization allowed by law to receive contractual donations (See Section V.D. below).
[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] For example, if the association’s lobbying efforts would result in a policy that would directly or indirectly bring personal advantage to a director of the association, this 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] As only founders may make contributions to corporate foundations, contributions to these are deemed to be contributions to the foundation’s endowment and not treated as donations. Separate rules govern the tax treatment of these contributions to the endowments of corporate foundations and are beyond the scope of this Note.


[16] The donor of a simple donation does not make the donation contingent upon the 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 € 23,000 transferred and 45% for amount above 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.