

Endowments *inter vivos* are effected by means of a gift. To become effective, the gift must be certified by a notary according to the general rules governing gifts.

If a foundation is established *causa mortis*, the testator bequeaths particular assets to the foundation to be established for public utility purposes. The assets, rights and funds are transferred to the foundation exclusively for public utility purposes and without the aim of profit-making²³. The definition of “public utility” is very broad and includes philanthropic, educational, scientific, social, humanitarian, sport- or family-related or environmental purposes. However, when the purpose of the foundation benefits solely the family of the founder or where it is political or religious in nature (in the sense of serving a political party or religion), it can no longer be deemed a public utility purpose.

The organisational structure of public utility foundations consists of an administrative board (*conseil d'administration*) or a supervisory board (*conseil de surveillance*) working together with a board of directors (*directoire*). The foundation statutes need to be approved by the Ministry of the Interior. In addition to these bodies, a foundation needs to have sufficient funds to pursue its purpose. The recognition of the foundation is established by means of a decree by the *Conseil d'Etat* and published in the *Journal Officiel*²⁴.

5.3. Types of foundations

5.3.1. Public Utility foundation (fondation reconnue d'utilité publique)

Given their public utility, these foundations may claim public subsidies. Subject to approval by the regulatory authorities, the foundation can receive endowments as long as these are made without consideration. The foundation becomes a legal person upon publication of its establishment.

In principle, foundations benefit from the same tax advantages as organisations with non-profit purpose or public utility associations.

Private persons may deduct 66% of their donations to public utility foundations from income tax, but not more than 20% of their taxable income. Companies can deduct 60% of their donations, but not more than 5‰ of their revenues. Excess amounts can be carried forward for five financial years, if applicable.

To the French tax authorities, not the registered seat, but the place where the foundation carries out its activities is relevant. These have to be performed in France, at least partly. The same rule applies to donations to foundations based abroad that carry out a small part of their activities in favour of a limited number of persons in France. Here, the tax deductibility depends on whether the foundation is recognised as a public utility foundation under the

²³ Cf. *ibid*, p. 888.

²⁴ Cf. *ibid*. p. 897 et seq.

rules of the country where it is based; moreover, its activities have to be carried out in France (at least partly). This poses a problem with regard to EU law, because donations to foundations based in another European Union Member State receive a less favourable tax treatment than donations to foundations carrying out activities in France.

Under French tax law a usufructuary is subject to wealth tax on the total of his or her assets. A temporary transfer of a usufruct to an institution serving the common interest results in a reduction of the wealth tax payable, because the value of the property can be deducted from the assessment basis for the wealth tax during the period for which the usufruct is transferred.

Heirs and donees may endow a public utility association, a public utility foundation, the State or regional and local authorities with a part of the assets received by them. The value of the assets donated is not subject to estate tax. However, a gift tax deduction cannot be cumulated with an income tax deduction. As regards donations to foundations based abroad, an application for a tax exemption can be made at the Ministry of Finance provided that such exemption is laid down in a double taxation agreement²⁵.

The assets of the foundation are subject to a reduced corporate tax rate. Pursuant to the Finance Act 2005, income referred to in Art. 219 realised by public utility foundations is entirely exempt from corporate tax. To be eligible for tax exemption, the foundation must pursue a non-profit purpose. Income from rent and lease, agriculture and forestry or securities is subject to a tax rate of 10% instead of the standard rate of 33%, whereas income realised in the framework of a business activity is subject to the standard corporate tax rate. Public utility foundations benefit from the reduced corporate tax rate and a tax allowance in the amount of EUR 50,000.

Income from a business activity poses some problems from a tax law perspective even if the business activity is carried out in pursuit of the foundation purpose, as it can result in a change in the legal status of the foundation. Foundations with income from a business activity are in principle subject to trade tax, corporate income tax and value-added tax. They may claim a tax allowance in the amount of EUR 60,000 provided that the foundation is managed without consideration and that the non-business activity clearly outweighs the business activity.

Gifts and legacies for the benefit of a foundation, with the exception of gifts from hand to hand (*don manuel*), are subject to a register fee in the amount of 35% for the portion of the gift or legacy under and up to EUR 23,000; any exceeding amount is subject to a 45% register fee.

²⁵ Cf. European Tax Handbook (2006), p. 251 et seq.