ROTTERDAM CONGRESS NATIONAL REPORTS - TAXATION OF CHARITIES

FRANCE

I. General questions:

It is quite recently – having regard to the long history of French taxation – that a general tax treatment of non-profit activities has appeared, and even then looked like a new layer superimposed on older special exemption rules, which remained.
Therefore, and going against the common logic of presenting first the general rule, then the special rules, it seems more explicative to give a wide idea of the special exemption rules (which we will call the charity model) before getting to the general exemption of business taxes for the non-profit entities (the non-profit model).

A. The charity model

It must be clear that this model is purely doctrinal, and even personal, as there is no general charity rule provided for by statutes or construed by the judge. We can only notice that some kind of entities conducting some kind of activities, are offered by the law exemptions for most of the taxes, adding to a sort of systematic exemption. To give an example, a non-profit association (*association à but non-lucratif - loi 1901*) whose activity would be to offer blankets to homeless persons would be exempt from taxes on profit, VAT, local business tax, registration duties on manual gifts, registration duties on other gifts and inheritances (provided that the association had been declared as having a public utility), local urbanism tax (*taxe locale d'équipement)*, and the individuals who would made a gift to this entity would be entitled to a tax relief.
The core activities of the charity model are philanthropic, charitable, educational and scientific activities. Of course, this list has been extended by the legislator in consideration of the public utility of some other activities he comes to promote. We can identify tax policies for veterans (after WW1), for sports and physical activities, for low-rental housing, for environment or for jobless persons, but these extensions were most of the time limited to some taxes only, and with more conditions required regarding the beneficiary.
The second set of conditions for the charity model regards, indeed, the beneficiaries. The basic requirement is that the beneficiary is disinterestedly managed (*gestion désintéressée*). A disinterested management implies that the managers, legal or factual, do not derive a benefit, directly or indirectly, from the results of the entity. Any form of dividend (i.e. distribution of the liquidation surplus to the members) or retribution (a salary, even a token wage; material advantages for the manager or his family) are therefore prohibited. The law sometimes restricts the definition of eligible entities, by specifying a legal form or requiring an administrative approval.
By widening or restricting the requirements regarding the eligible activities and the eligible entities, the legislator may open or close the scope of the tax exemptions for charities, from very open exemptions (e.g., the income tax relief for gift to any charity or entity of public interest dedicated to philanthropy, education, science, social assistance, humanity, sport, family, culture, promotion of artistic patrimony, defence of environment, promotion of French culture, French language or French science) to very closed exemptions (e.g., the exemption of the real estate tax for buildings belonging to an association of war-disabled persons, if this association is recognized as a public-interest organization, when these buildings are used for the hospitalization of the members of the association).

B. The non-profit model (organisation à caractère non lucratif)

The charity model was used for a long time to determine the liability to business taxes of organizations. A disinterested organization, defined mainly by a disinterested managing, was considered as complying to the "non-profit" requirement (*caractère non-lucratif*) for exemption of the taxes on business (taxes on profits, turn-over, or business equipments). The administrative authorities developed at the time the theory of the unicity of the non-profit criterion. For example, to be recognized as a non-profit organization for the exoneration of the business tax implied automatic exemptions of local business tax and VAT. The relation made between "the non-profit" test and disinterested management was very well received by the taxpayers, as the main vehicle for non-business activities is the "non-profit association" provided for by a 1901 act (*association à but non-lucratif de la loi de 1901*), whose main characteristic is a disinterested management. The distinction that had to be made thereafter between a non-profit aim (*but non-lucratif*) and a non-profit activity (*caractère non-lucratif*) would be quite arduous for them to understand.

During the 1970s, judges changed their interpretation of the non-profit requirement. To require only disinterested management enabled unfair competition between associations and commercial societies, infringing the constitutional rights of freedom to conduct a business and tax equality. In 1973, the Conseil d'Etat ruled that disinterested management alone was not enough to depart a non-profit activity from a commercial activity (CE, assembly, 30 November 1973, Association Clinique Saint-Luc). Eventually, with some hesitations, the case law developed a complementary test, the way of conducting the activity, that should be substantially different in a non-profit organization and in a commercial entity (considering the product offered, a price not enabling a profit, the social utility of the activity…).

At the request of the associations, the tax authorities issued in 1998 a new set of rulings as to the liability of "associations 1901 act" to business taxes. This doctrine, that follows closely the existing case law, was extended in 2006 to all private entities (*instruction 4 H-5-06* of 18 December 2006). The administrative doctrine was followed by the tax judge in a leading decision (CE 1st October 1999, n° 170289, section, *Association Jeune France*).

To be considered as a non-profit organization, an entity must, firstly, pass the disinterested management test (see above). A problem frequently met was that this test excluded in theory any kind of remuneration for the members of the association, even if their professional activity was conducted in the association. The tax authorities have taken recently a somewhat more flexible position, in allowing that the disinterested management requirement would be met if the retribution was inferior to 75% of the minimum wage.

Secondly, the non-profit activities of the entity must be significantly preponderant. The test to ascertain if an activity is a non-profit one is, even if not clearly presented as such, a fair competition test. The fair competition may be infringed either directly (the entity is in competition with other commercial entities liable to business taxes) or indirectly (the entity, through the services offered to its members, give them an unfair advantage if they are themselves market competitors).

The tax authorities will, therefore, ascertain the existence of a market competition, having regard to the product offered and the existing market (the size of the area depending of the nature of the product). If no market competition exists, the activity will be considered as a non-profit one.

If a market competition does exist, the tax authorities will consider if the activity is operated "in ways differing from those of a commercial business" (*dans des conditions différentes de celles d'une entreprise commerciale*). Attention will be paid to the kind of product offered, the price asked for, the target audience, and the methods of commercialization. These criterions are known in French language as the "4 P rule" (*Produit, Prix, Public, Publicité*).

The case law and the tax authorities required initially the price to be set with no systematic search of a profit. This requirement was relaxed a bit when the tax authorities admitted that a sound and wise management may require to realize some benefits in order to make up for future needs or to realize an investment. As the French authorities cling to the idea that a common not for profit test should be kept in order to assess liability to all business taxes, they were compelled to follow the CJCE VAT case law (CJCE, 21th March 2002, Kennemer Golf & Country Club), and to accept a new widening of the price criterion. Systematic search of a benefit is no longer incompatible with a business tax exemption for not for profit entities, as long as benefits are subsequently allocated to the non-profit activity of the entity (CE 21 November 2007, n° 291375, *Association Services informatiques et conseils*). This principle of a common test is probably a weak point in the reasoning of tax authorities and tax judges, as the texts providing for business tax, local business tax and VAT were not written with the idea that "non-profit" would come to mean "no risk of an unfair trade competition". Therefore, some small discrepancies exist.

C. A new common (and statutory) exception

Since 2000, a new business tax exemption is entered into force for some non-profit entities (associations "1901 act", association "local law" of Alsace-Moselle, trade unions, foundations recognized as having a public interest, company foundations, congregations; art. 206, 1 bis of the *Code général des impôts*). They keep their right to a complete business tax exemption even if they have a for-profit activity, provided 1) that they are disinterestedly managed; 2) that their non-profit activities are significantly preponderant over their for-profit activities ; 3) that the turn-over of all the for-profit activities does not exceed € 60,000 a (civil) year. The exemption applies to corporation tax (*impôt sur les sociétés*) and, with regard to the corporation tax exemption, to VAT and local business tax.

II. Income tax

A. Non-profit activities

1. General regime

Corporate tax (art. 206 CGI) is based on all legal entities. The standard tax regime, applied to commercial companies and for-profit entities is provided for by § 1. The non-profit entities (*organisations à caractère non-lucratif*) are entitled to the special tax regime of § 5. There is no formal condition for this special tax treatment.

Under art. 206, 5 CGI, only some types of income are liable to corporate tax. These are income from the lease or rental of a real-estate property, income from the exploitation of woods or a farm, and some types of income (but not all) from movable property. Other incomes, such as gifts, subsidies, capital gains, liquidation surpluses, are not taxed (reciprocally, capital losses are not deductible).
The underlying idea is to tax incomes derived from the entity's assets. Therefore, the income derived from exploitation of assets, when this exploitation is an element of the non-profit activity of the entity (e.g. job training of handicapped persons through the exploitation of a farm; low rental of a building to another non-profit entity whose activity is complementary to the one of the first not- for profit entity), is not taxable.

The incomes liable to corporate tax under art. 206, 5 CGI are subject to a reduced tax rate (art. 219 bis CGI) of 24 %. Special tax rates are provided for investment income.

The investment incomes subject to the withholding tax of art. 119 bis CGI are exempt of the corporate tax of art. 206, 5 CGI. These are mainly returns on public bonds issued before 1987 (art. 119 bis, 1 and art. 118 CGI), returns on short-term notes (*bons de caisse*) issued by companies liable to corporate tax (art. 119 bis, 1 and art. 1678 bis CGI), and dividends or attendance fees benefiting to a person established outside France or paid in a non-cooperative State (art. 119 bis, 2 and art. 108 to 117 bis). Most other returns on bonds are subject to a 10 % rate. Other investment incomes, beside dividends, are subject to a 24 % rate.

The tax rate for any kind of dividends is presently of 15 %. Dividends of French companies subject to corporate tax distributed to non-profit entities have been liable to tax only since 2010, for accounting period closed after 31 December 2009 (statute n° 2009-1674 of 30th December 2009). Dividends of French companies exempt of corporate tax, before this date, were taxed in the hands of a non-profit entity at the rate of 10 %. Dividends of foreign companies were taxed at the rate of 24 %. The harmonization of the tax rates on dividends was completed by linking the rate of the corporate tax on dividends for a non-profit entity and the rate of the withholding tax on dividends benefiting to a foreign entity, when this foreign entity is a non-profit entity established in the EU that would have been subject to the corporate tax of art. 206, 5 CGI, had it been established in France (art. 187, 2 CGI).

This change of the tax law was prompted by a decision of the French supreme administrative court, the *Conseil d'Etat*, in February 2009 (CE 13 February 2009, n° 29818, Société Stichting Unilever Pensioenfonds Progress). As a foreign entity, Stichting Unilever Pensioenfonds Progress was subject to a 15 % withholding tax on dividends distributed by a French company (art. 119 bis, 2 CGI), while, being a non-profit entity, it would not have been liable to a tax on these dividends if it had been established in France. This was ruled as a restriction to the freedom of movement of capital, the tax exemption being linked to the non-profit activity, and not to some obligation of general interest imposed only to French-based organizations.

The withholding tax on real estate gains of 33,33 % (art. 244 bis A CGI) was also found on the same grounds to be a restriction to the freedom of movement of capital, a French-established non-profit entity being exempt of corporate tax on this income (Administrative Court of Appeal of Paris, 6 December 2007, n° 06-3370, min. c/ Fondation Stichting Unilever Pensioenfonds Progress; the appeal was not received by the *Conseil d'Etat*, 27 October 2008, n° 313135). This restriction has been supressed by a modification of article 244 bis A (act n° 2009-1674 of 30 December 2009) for transactions made from 1 March 2010 by a non-profit entity established in another Member State or in a State of the European Economic Area having concluded with France a tax treaty including an administrative assistance provision (i.e. Norway and Iceland).

Act n° 2009-1674 of 30 December 2009 also supressed the mandatory flat-rate withholding tax on interests paid to a foreign account (with the only exception of a payment in a non-cooperative State) (art. 125 A, III, CGI), for loans concluded from 1 Mars 2010, eliminating the possibility of a discrimination arising from the gap between the withholding tax rate and the corporate tax rate of 10 % applied to return on bonds for non-profit entities.

Beside European law, a non-profit entities established in a foreign state may also require the benefit of a tax treaty non-discrimination clause . In the *Fondation Stichting Unilever Pensioenfonds Progress* case of 2007, the Court of Appeal decided that the withholding tax on real estate gains was contrary to the non-discrimination clause of article 25 of France-Netherlands tax treaty. The question is quite sensitive because supreme courts of appeal have eventually set their case law against the tax authorities' position, in deciding that a non-discrimination clause on the ground of nationality may be applied to a legal person, the "nationality" being the one of the state of implementation of the registered office. Therefore, while two natural persons having their residence in different states are considered in a different situation precluding the application of the non-discrimination clause, this

does not apply to personal persons. French authorities are presently actively renegociating the non-discrimination clause of their tax treaties to exclude this interpretation.

In those decisions, tax courts have considered that the comparison between the non-profit entities established in France and in a foreign state should be made on the sole ground of the non-profit activity, as the French law does not have other requirements, as social utility, for general tax exemption. No difference has been made in case-law, at the present time, between the European law ground (as interpreted by CJCE Centro di Musicologia Walter Stauffer) and tax-treaty ground. E.g. an association promoting the commerce of wool products has been found as having a for-profit activity, indirectly, through the commercial activity of its for-profit members (see above) (Administrative Court of Appeal of Paris, 9 July 2009, n° 07-2023, *min. c/ Association Secrétariat International de la Laine*), but a trust providing the use of buildings to celebrate the anglican cult (CAA Paris 23 December 2010, *Church of Scotland Trust*) or a public establishment managing a museum in a foreign state (CE 5 July 2010, n° 309693, *Pinacothèque d'Athènes*) have been recognized the non-profit nature of their activity.

To pass the non-profit test, a foreign entity must therefore prove that it is disinterestedly managed and that their non-profit activities are significantly preponderant over their for-profit activities. A foreign entity may ask an administrative certificate to the tax authorities (tax documentation 4-H-2-10, 29 December 2009).

2. Special regime

Some non-profit entities have a special corporate tax regime.

a) Science, education or welfare institutions are exempt of corporate tax on capital income (art. 206, 5 CGI)

b) Social housing bodies have a corporate tax exemption for their activities of public general interest, and their returns on cash investments (art. 207 CGI)

c) Pension funds (*caisses de retraite et de prévoyance*) are allowed to invest on the monetary market or the mortgage credit market. This activity is considered as for-profit *per se* and should be liable to the standard corporate tax. However, art. 219 quarter CGI list some forms of non-profit pension funds which benefit of a special corporate tax at the rate of 10 % for the profits of those investments. Moreover, some types of capital investments (e.g. interests on real estate loans, returns on cash deposits…) which would have been taxed at the rate of 24 % under art. 219 bis CGI benefit of a reduced tax rate of 10 % (art. 219 quarter CGI).

Are entitled to this regime the social security funds (general regime or special regimes), complementary pension funds (subject to an administrative authorization of the labour ministry), social funds for unemployed workers (in some professions) and some types of friendly societies.

d) foundations, when declared of public interest (*reconnue d'utilité publique*) by a Council of State decree (*décret en Conseil d'Etat*) are exempt of corporate tax on their capital income (art. 206, 5 CGI).

e) endowment funds (*fonds de dotation*) whose statutes don't allow to spend the capital endowment are exempt of corporate tax on their capital income (art. 206, 5 CGI).

B. For-profit activities of a non-profit entity

Reminder : the non-profit activities of an entity must be significantly preponderant if this entity is to be qualified as a non-profit one. Therefore, for-profit activities of a non-profit entity are always incidental activities. Remember also that some non-profit entities are granted exemption on commercial activities when the global turn-over of those activities doesn't exceed € 60,000 a year (art. 206, 1 bis).

a) standard taxation of for-profit activities of a non-profit entity

The for-profit activities of a non-profit entity are liable to the normal corporate tax. To limit this liability to the for-profit activities only, administrative authorities allows a non-profit entity to group their for-profit activities in one sector subject to standard corporate tax. This division (*sectorisation*) requires that the for-profit activities are separable, in their nature, of the non-profit activities (but they may be complementary). To constitute its for-profit sector, the non-profit entity must allocate the assets and employees between the two sectors and establish starting balance sheets. A result will be calculated for each sector (applying to the for-profit activities the usual corporate tax rules), and support the appropriate corporate tax. Capital incomes are deemed to be part of the non-profit activity. Losses of one sector may be set off on the results of the other sector.

Another possibility for the non-profit entity is to transfer the for-profit activities to a subsidiary. The non-profit entity must be aware that tax authorities will consider that actively participating to the management of the for-profit subsidiary is a for-profit activity. Active participation can result from being the major shareholder of the subsidiary, or having economic links with the subsidiary, or if the managers of the non-profit entity and of its subsidiary have family relationship. In this situation, tax authorities allow the non-profit entity to create a sector to isolate the (for-profit) management of the shares of the subsidiary.

b) special exemptions

Some activities of non-profit entities are granted a special corporate tax exemption

- activities of trade-unions when related to the study and defence of the rights and collective interests, moral or material, of their members and representatives (art. 207, 1-1° bis CGI)

- fairs, exhibits, sporting events or other public meetings, if those meetings have a real economic advantage for the local territory (*commune* or *region*), when organized by an association "1901 act" along with the local authorities (*communes* or *départements*) (art. 207, 1-5° CGI)

- activities exempt of VAT on the ground of art. 261, 7, 1° CGI, mostly supply of services or goods in connection with six fund-raising events a year (art. 261, 7-1° c CGI) and the supply of sport, cultural, educational services to the members of the entity in connection with an activity VAT- exempt (art. 207, 1-5° bis CGI).

- activities in connection with the public service of higher education and research, when carried on by a public establishment of research, a public establishment of higher education or a research foundation declared of general interest (art. 207, 1-9°, 10°, 11°)

II. Local business tax

The local business tax (*contribution économique territoriale*) is composed of two different taxes, the *cotisation foncière des entreprises* (CFE, art. 1447 CGI), and the *cotisation à la valeur ajoutée des entreprises* (art. 1586 ter CGI). In both taxes, are liable the persons having a professional activity, which, according to the tax authorities and the case law, implies that it is not a non-profit activity.

Furthermore, are expressly exempt of CFE the entities of the article 206, 1 bis (art. 1447, II CGI) and the trade unions (art. 1461, 7°),

III. VAT

The French VAT rules for non-profit entities are a curious mix between different logics, in the whole compatibles.

A distinction was (and still is) made between for-profit and non-profit activities, the first ones being liable to VAT (with exceptions that are not specific to non-profit entities). The tax authorities seem to think the second are not, denying the possibility of an activity not liable to corporate tax but liable to VAT. A difficulty is that the non-profit requirement evolved, introducing some redundancies in the provisions. The rigidity of the disinterested management requirement has brought some mitigation for associations "1901 act", foundations declared of public utility and corporate foundations in allowing them, when their revenue is important, the possibility of remunerating their management (art. 261, 7-1° d).

A second and important distinction is made between "closed" and "open" entities. In the first case, the supply of service is restricted to the members of the entity. Membership is strictly understood and must be actual (e.g. : to have voting rights), durable (not for a day or a week) and personal (not through a family member). An entity may be a member of another entity. The restriction of some exemptions to "closed" entities only has been found compatible with the 6th directive VAT on the basis that Member States were allowed to submit the exemption of VAT to supplementary requirements (art. 13, A-2-a, now art. 133 of the Directive 2006/112/CE) (TA Paris 29 October 1996, n° 93-644, *Association IVI*).

These distinctions were deemed compatible with the VAT directive and the system was kept, sometimes with formulations quite distinct from those of the directive. But new exceptions had to be added to comply with some provisions of the directive. This new layer, on the contrary, does not errand from the vocabulary of the directive.

1. Good or service supplied by a non-profit entity of social or philanthropic nature (art. 261,7-1° b CGI).

The scope of this provision is quite complex to ascertain, owing to the vocabulary used and the reluctance of the tax authorities to commentate it.
First, the entity entitled to the exemption is qualified as a "not for profit charity" (*oeuvre sans but lucrative*), but the text goes on to require disinterested management and that such supply are not usually made by commercial entities to alike prices. These requirements, very close to the present interpretation of the non-profit criterion, are not used in case law and can be considered as redundant.
Secondly, the criterion of the social or philanthropic nature is not clear. Philanthropy, specially, is not directly linkable to the VAT directive.
Nevertheless, this provision is supposed to explain the VAT exemption of the non-profit activities of all the non-profit entities exempt of business taxes, leading to a very wide interpretation of the provision by the tax authorities (e.g. : exemption of the exploitation of a museum by a non-profit and subsidized association, of the organization of events by a tourist office). The tax authorities denied, notably, the possibility for an entity to be exempt of standard corporate tax as a non-profit entity and to be liable to VAT as having an activity which was neither social nor philanthropic.

2. Social, educational, cultural or sportive service supplied to a member of the entity (art. 261, 7-1°a CGI)

Such services are exempt of VAT if the supplying entity is disinterestedly managed and is not acting for profit (which implies, of course, a disinterested management). The tax authorities insist here, for the non-profit test, on the absence of commercial methods such as publicity. Services such as housing, catering or bar-tending are expressly excluded from the exemption.

Art. 261, 7-1° a CGI also exempt the supply of goods to members of the entity, in the limit of 10 % of the total turn-over of the entity. It is not required for the good to be of social, educational, cultural or sportive nature (e.g. caps, flags, tee-shirts…).

The exemption of article 261, 7-1° a is considered by the tax authorities as subsidiary to the more general provision of art. 261, 7-1° b (see above).

3. Services and goods closely linked thereto, supplied to their members, in return of a subscription fixed in accordance with their rules, by non-profit making and disinterestedly-managed organisations with aims of a philosophical, religious, political, patriotic, civic or trade-union nature, provided that this supplying is directly linked to the common defense of moral or material interests of the members (art. 261, 4-9° CGI)

This article follows closely the dispositions of art. 132 (l) of the European directive on the common system of VAT. If the requirement that the exemption is not likely to cause distortion of competition isn't explicitly in the French provision, it appears actually in the non-profit criterion as construed by case-law. Art. 261, 4-9° CGI requires also explicitly the entity to be disinterestedly-managed.

A significant difference could be, however, the transposition of the "common interest" requirement of the directive as a "common defense of interests". The tax authorities consider that a collective advertising campaign is an activity liable to VAT as being an extension of the economic activity of the members and always excluded from the exemption of art. 261,4-9°.

4. Exemption of six charitable or fund-raising events a year (art. 261, 7-1° c CGI)

May benefit of this exemption the entities referred to by art. 261, 7-1° a (not for-profit entities supplying social, educational, cultural or sportive service to their members) and b (entities of social or philanthropic nature and associations "1901 act" or "local law"), by art. 261, 4-9° (organisations with aims of a philosophical, religious, political, patriotic, civic or trade-union nature), as well as social organisms of a local authority or a company. Tax authorities have applied the exemption to political parties, communal tourist offices or festival committees.
To be considered as charitable or fund-raising, the event must not be the object itself of the non-profit entity (e.g. a theatrical performance for a theater association). The exemption is applied not only to the attendance fees, but also to all the operations made during the event.

5. Other goods or services supplied by some non-profit entity when the turn-over of these operations didn't exceed € 60,000 the previous year (art. 261, 7-1° CGI, as completed by the budget act for 2000)

The non-profit entities benefiting of this exemption are explicitly those exempt of the standard corporate tax by art. 206, 1 bis CGI (see above). For small associations "1901 act", the unity of the non-profit criterion is therefore re-established.

The returns of the exempt fund-raising events are not included in the determination of the € 60,000 limit.

(Since VAT rules have been harmonised for all the EU Member States, the rules should be more or less the same. Therefore the national report on VAT should emphasize in what respect national VAT rules deviate from the rules on the VAT directive. Ideally the national report should make a short reference to the general VAT rules in the directive and briefly indicate whether this rule is followed under national law. If that is not the case the deviation should be explained and reported more extensively.

1. What are the **material conditions of special VAT status** (non-profit activities as non-economic activities outside the scope of VAT, scope of exemptions under art. 132 VAT directive in national law)?
2. Are there specific **formal conditions for special VAT status**?
3. Are there any **special rules with respect to the operation of the VAT exemption**? (in particular with the receipt of gifts of contributions by a non-profit-organisation/or to a non-profit organisation by a VAT payer, subject to charge, credit for input tax?, the treatment of mixed activities, i.e. partially chargeable activities and partially exempt or out of scope activities within the same entity)
4. What are the VAT rules for **cross-border services or supply of goods** (cross-border services and exports of goods or intra-community supplies by VAT payers to foreign non-profit organisations, exports or intra-community supplies by domestic non-profit organisations to foreign non-profit-organisations and imports or intra-community acquisitions of services or goods by domestic non-profit organisations). A case of special interest is the choice between administrative services in-house or outsourced, which make a difference in VAT-burden and possible use of VAT-groups when services are produced in a joint venture between several non profit organisations.

IV. Estate taxes

A. Inheritance and donation taxes

1. General regime

The only legal persons (other than public bodies) entitled to receive a legacy or a donation (beside manual gift) are the associations declared of public utility, liturgical associations, congregations, the associations of charity, assistance, or scientific or medical research, the "local law" associations of Alsace-Moselle, and the approved unions of familial associations.

Before 2003, those legal entities had to obtain a state authorisation prior to the acceptation of the donation or the legcy. A statute of 1 August 2003 has replaced it by a declaratory system, but the local state representative (the *préfet*) may forbid the legal entity to accept the donation or legacy if he considers that the legal entity is not one of those entitled to receive a donation or legacy, or that the legal entity is unable to use the said donation or legacy in conformity with its destination. The prior

authorisation system has been kept for the associations or foundations listed as dangerous cult movement (*mouvement sectaire*).

The rate for donation or inheritance tax is 60 %. The foundation or association declared of public utility benefits from a reduced rate (the same that donation or inheritance between siblings) of 35 %, and 45 % for the part in excess of € 24,430.

2. Exemptions

Various exemptions for legal entities are provided by art. 795 CGI. Are exempt :

- art piece, historic monument or object, book, manuscript donated or bequeathed to a private entity if they are to be included in a public collection (art. 795, 1° CGI). Are also exempt the donation or legacy of money dedicated to the acquisition of such objects or the maintenance of the collection (art. 795, 6° CGI)

- donation or legacy made to a public establishment or an entity declared of public utility (*établissement d'utilité publique*) whose revenues are exclusively dedicated to disinterested scientific, cultural or artistic activities (art. 795, 2°). According to tax authorities, a scientific or medical association not declared of public utility being nowadays entitled to receive donations or legacies, will be granted the benefit of this exemption.

- donation or legacy made to a public establishment or an entity declared of public utility whose revenues are dedicated to assistance, defence of the environment, or protection of animals (art. 795, 4°). A prior state authorisation is required. According to tax authorities, an association of charity or assistance not declared of public utility, being nowadays entitled to receive donations or legacies, will be granted the benefit of this exemption. This does not apply to associations of assistance to animals.

- donation or legacy made to a university foundation, a higher education institution or association declared of public utility, a society of free public education declared of public utility and subsidized by the State, an entity declared of public utility having for object to support school or university teaching activities regularly declared (art. 795, 5°)

- donation or legacy made to a social housing institution (art. 795, 7°)

- donation or legacy made to a liturgical association, an union of liturgical associations, or an authorised religious congregation (art. 795, 10°)

- donation or legacy made to a legal entity intended, by the express will of the donator or bequeathing person, to the construction of a war monument (art. 795, 11°)

- donation or legacy made to an endowment fund (art. 795, 14° coming from the Statute 2008-776 of 4 August 2008). The exemption is granted even if the endowment fund doesn't exist yet, if the fund is established in the following year.

- donation, legacy, or any other kind of liberality made to the French Red Cross (art. 1040, I CGI)

3. Manual gifts

The manual gifts are not taxed as such, but the act by which they have been disclosed to the tax authorities is subject to donation tax (on the basis of the value of the gift at the time of the disclosure, or at the time of the donation if the value was more important). This act of disclosure may result from

the free will of the donee or its representative, or be a judicial act including a recognition (art 757 CGI).

In 1997, the association "the Jehovah's Witnesses" was subject to a tax audit and produced its accounts to the tax authorities. The tax authorities considered that this was a "disclosure" of the manual gifts received by the association and applied the donation tax at the rate of 60 %. The Jehovah's Witnesses were not granted the exemption as a liturgical association (art. 795, 10° CGI) as they had not been authorised to receive these donations.

This case, publicized through the decisions of the courts (*Tribunal de grande instance de Nanterre*, 4 July 2000, and *Cour d'appel de Versailles*, 28 February 2002) has raised high concerns among the non-profit associations. The tax authorities and the Government tried to calm down the situation, the first one by issuing a guideline according to which the new case law would not be applied to associations of general interest; the second through the vote of a statute (n° 2003-709 of 1 August 2003, art. 2) exempting of the taxation the manual gifts received by an association of general interest referred to in art. 200 CGI (granting income tax deduction for donors, see under). The tax authorities decided in 2004 that the exemption was also applicable to associations of protection of animals.

This affair received three new developments in 2011. The Court of Appeal of Rennes (2 November 2011, *Association l'Arche de Marie*) decided that a manual gift is subject to tax only if it is effectively "disclosed", meaning an active action from the discloser. This case law will probably be overruled by the *Cour de cassation*, which has already validated disclosure through tax audit. Moreover, a statute of 29 July 2011 (n° 2011-900, art. 9) has modified art. 635 A CGI (compelling to register a manual gift disclosed) including the case of a disclosure "resulting from a procedure of tax audit). And, lastly, CEDH condemned France in the Jehovah's Witnesses case

B. Duty on the money paid by insurance companies in application of insurance contracts in case of death.

If the money paid in the event of the deceased of the assured person is not part of his estate subject to donation tax or inheritance tax, it will be subject to a duty, to be paid by the beneficiary on its part (art 990 I CGI).
However, the beneficiary is not liable to this duty when it is exempted of donation or inheritance tax by application of the article 795 CGI (art. 990 I, third § CGI).

C. 3% tax on real estate held by non-residents.

The "3 % tax" is assessed on the market value of real estate owned in France by non-residents, directly or through interposed entities (art. 990 D CGI). Are exempt of this tax (art. 990 E, 3°-b CGI) :
- the entities managing a pension-fund, or entities declared of public utility, or entities disinterestedly managed (the tax authorities guidelines about art. 990 E, 3°-b mention foreign charities as such);
- which have their statute office in France, or in another Member State, or in a state having concluded with France a convention on mutual administrative assistance in tax matters, or in a state having concluded with France a convention providing equality of treatment with entities that have their statute office in France;
- when the detention of real-estate or real-estate rights is justified by the activity or the financing of the activity of the entity.

D. Trusts

Trusts have been for a long time neglected by French tax law. It was however recognized as an entity through which a real estate could be held in France, and liable therefore to the 3 % tax. As for estate

taxes, a pragmatic distinction was made by tax authorities between revocable and irrevocable trusts. Assets held by a revocable trust were deemed, for taxing purposes, to have been kept by the settlor (e.g. : they were liable to wealth tax). Analysis were less clear for irrevocable trusts.

A statute of 29 July 2011 has created a new article of the Tax Code (*Code general des Impôts*) in order to give a definition of the trust and the main lines of the tax system applied to it. The main purpose of this new system is to enable the taxation (donation or inheritance tax) of the transfer of property realized through a trust that could be qualified as donation or legacy by the French law (art. 792-0 bis CGI), and the taxation (wealth tax or special 0,5 % tax of art. 990 J) of the settlor for the assets given to a trust (art. 885 G ter CGI).

In this second situation, an exemption however exists when the beneficiaries of an irrevocable trust are among those referred to by art. 795 CGI, and with the condition that the trustee must be subject to the law of a state that has concluded with France a convention on mutual administrative assistance in tax matters.

V. Other taxes

A. Local taxes

Special provisions for non-profit entities are to be found mainly in local taxes rules (other than the business local taxes seen above).

1. Land taxes

Land taxes are due by owners of property, either developed (*taxe du foncier bâti*) or undeveloped (*taxe du foncier non bâti*).

Are exempt of tax :
- the buildings bought or built by a liturgical association (*association cultuelle*) and actually used for the celebration of a cult (art. 1382, 4 CGI);
- the buildings belonging to an association of war or work disabled, declared of public utility, when these buildings are used for the hospitalization of the members of the association (art. 1382, 5 CGI). The adjacent gardens are exempt of undeveloped property tax (art. 1394 CGI);
- the hangar used to store lifeboat when belonging to a lifeguard association declared of public utility (art. 1382, 8 CGI);
- the houses acquired by non-profit entities for the purpose to be rent to disadvantaged people (art. 1384 C CGI). The non-profit entity needs an administrative approval on rent intermediation and social housing management. The exemption is for a duration of 15 years.
- the land used for familial gardens, belonging or at the disposition of organisations of familial gardening (art. 1394 CGI)

2. Residence tax (*taxe d'habitation*)

Non-profit entities letting temporarily the use of a residence to disadvantaged persons are entitled to an exemption of residence tax if their statutory object is the housing of such persons and that they have been approved by the state (art. 141, II CGI).

3. Local urbanism tax (*taxe locale d'équipement*)

New constructions are liable of TLE. There is an exemption for buildings to be used for an activity related to care, charity, health, education, culture, science or sport (construed by the tax judge as having to be an activity of public utility) when these buildings are built by or for an association or a foundation declared of public utility, a congregation, an association whose statutory object is exclusively care or charity and whose management is disinterested (art. 1385 C CGI and art. 317 bis, 2 to 4, annex II CGI).
Are also exempt of TLE the buildings built by a liturgical association and intended to be exclusively allocated to a public celebration of a cult.

4. Other local taxes

Are exempt of the tax for creation of offices or research installations in *Île-de-France* the buildings allocated to an association « 1901 act » (that is, according to the ministry of urbanism, declared of public utility) (art. L 520-7 C. urb).

The premises belonging to a foundation or an association declared of public utility, and used for their activity, are exempt of the annual tax on offices, commercial or storage installations in the *Île-de-France* region (art. 231 ter CGI).

B. Various taxes

1. Salary tax

Non-profit entities are liable to the salary tax, in spite of various requests made to the government to be granted exemption. However, two allowances exist.

Association "1901 act", trade unions, foundations declared of public utility, religious congregations and some mutuals, are entitled to a year allowance (art. 1679 A), even if they are not disinterestedly managed.

And the salary tax is not due by non-profit entities for the employees hired for the charitable and fund-raising events exempt of VAT (see above) (art. 231 bis L CGI).

2. Registration fees

The reduced rate of registration fees on the transfer of real estate property is of 0,715 %. Are entitled to it :
- the establishments approved to accommodate beneficiaries of social assistance (art. 1066). The approval must be presented in the five years following the acquisition. The reduced rate can also be applied to an entity buying the real estate property on behalf of an eligible entity, provided that the buyer is itself approved as such (list established by the ministry of finances) and that it made the commitment to sell the property to the eligible entity in the five years)

- the establishments approved to be part of the public policy of social assistance of childhood.

Are entitled to a complete exemption of registration duties :

- sale of real estate property, loans (art. 1084 CGI) or any transfer of assets (art. 1085 CGI) between them by social security funds. Mutuals are not entitled to the exemption. Some kind of pension-funds (*caisses de prévoyance*) if approved could benefit of the exemption.

- the transfer of a real estate property from an entity whose purpose is of general interest towards an entity declared of public utility. The transfer must be made for general interest or good management reasons, without any change of use of the property. These requirements are verified by the state authority which authorize the transfer (art. 1020 and 1039 CGI)

- acquisition of real estate property necessary to its operation by the French Red-Cross (art. 1071 CGI)

- acquisitions made by mutuals of war veterans and war victims, if the exemption is decided by the deliberative authority (*conseil général*) of the *département* (art. 1594 I CGI).

3. Registration duty and sale tax on auctions

The auction sale must take place during one of the six fund-raising events a year, for the sole benefice of the non-profit entity. This implies that the donor of the goods sold acts out of any commercial interest (this is not a publicity)and that the auctioneer does not get any fees.

The sales of pieces of art, antiques or collectible items organized by and for the sole profit of general interest entities of humanitarian assistance or charitable nature are exempt of the sale tax of 1,2 % on auction selling of goods by a person not liable to VAT (art. 733, 2° CGI)

4. Tax on performances

And, eventually, there is an allowance of 760 € on the proceeds subject to the local tax on performances (*taxe sur les spectacles*), for four performances in the year, when the performance is made to the exclusive benefit of a non-profit association (art. 1561, 3°-a CGI)

VI. Deductions of gifts and contributions to a charity in the person of the donor or contributor

A. Income tax deduction for natural persons

Natural persons having their tax residence in France are entitled to an income tax deduction for the gifts made to some non-profit entities (art. 200 CGI). The amount of the deduction is equal to 66 % of the value of the gifts, with a limitation of this value at 20 % of the taxable income. The deduction rate is of 75 % (this deduction being capped at 513 € in 2011) for gifts made to non-profit entities providing free meals or free care to helpless, or contributing to lodge them.
In-kind contributions or waivers of rights (e.g. right of reimbursement of the dispenses paid on behalf of the entity) may be considered as gifts. The deduction provided for by art. 200 CGI is not subject to the tax benefits overall cap rule (art. 200-0 A CGI).

Are eligible the gifts made to :
- a charity, an entity of general interest or an endowment fund, which has a philanthropic, educative, scientific, welfare, humanitarian, sport, familial, cultural nature, or is contributing to the promotion of the cultural heritage, the defence of the environment, or the spreading of the French culture, language and scientific knowledge;

- a foundation or an association declared of public utility, a university foundation, a company foundation for the gifts of the employee of the company (or of the group to which this company belongs) when they have the same activity as above
- a not for-profit institution of higher or artistic education, of general interest;
- a liturgical association (*association cultuelle)*. A liturgical association has only religious activities, mainly the celebration of a cult;
- a disinterestedly managed entity whose main activity is the performance of theatrical, lyrical, musical, choreographic, cinematographic or circus works, or the organization of modern art exhibitions, under the condition that the product of the gift is allocated to this activity;
- a disinterestedly managed endowment fund which reverses the incomes derived from the gift to such entities or to the Heritage Fund (*Fondation du Patrimoine*).

The interpretation of "entity of general interest" is quite comprehensive. According to the tax authorities, it implies that the entity is a non-profit one, that it is disinterestedly managed (there is a redundancy here), and that its activity is not limited to a narrow circle of persons.

According to the tax authorities guidelines, gifts made to an entity which doesn't have at least a part of its activity in France are not eligible to the income tax deduction. Nevertheless, they admit the eligibility of gifts made to a French association organizing and controlling from France humanitarian action abroad. This restrictive interpretation has been confirmed by some tax courts about entities neither acting in nor controlled from France (Administrative Tribunal of Strasbourg 18 January 2005, n° 02-3191, Schmidt; Administrative Court of Appeal of Lyon, 27 April 2010, n° 08-1749, Blum). In the last cited decision, the court ruled out the incompatibility with the European law, the beneficiary entity being established in Switzerland.

Following the CJCE Persche decision (CJCE 27 January 2009, aff. 318/07, gr. ch., Hein Persche), art. 200 CGI has been completed by a 4 bis (2009-1674 act of 30 December 2009, art. 35) giving the right to the income tax deduction for gifts made to an entity established in the EU (or a state of EEA having concluded with France a tax treaty with a clause of administrative cooperation, i.e. Norway and Iceland), when this entity has similar aims and legal characteristics than the French entities provided for by art. 200. According to the tax authorities, this implies at the least that they are of general interest (according to the French meaning in art. 200) and that their activity is one of those determined by article 200. No precision has been given about the place where the activities are carried on, so it may well be that the French tax authorities intend to keep on requiring that a part at least of these activities are carried on in France or for the benefit of French residents.

To guarantee the eligibility of the foreign beneficiary entity, a decree of 28 February 2011 (articles 46 AW bis, ter and quater, Annex III CGI) requires an approval of the tax authorities, which has a three years validity. The tax payer may choose to justify in his tax return the eligibility of the foreign entity, by producing the same documents that those which would have been produced by the foreign entity in support of its application for approval.

B. Corporate tax or income tax deduction for legal entities

Legal entities practicing corporate philanthropy (*mécénat d'entreprise*) are entitled to a tax deduction (art. 238 bis CGI), that is an income tax or corporate tax deduction depending on the taxation regime of the results of the legal entity. The tax deduction of article 238 bis CGI mirrors closely the deduction regime of article 200 CGI seen above.

The deduction is equal to 60 % of the gifts donated, with a capping of the basis at 5 ‰ of the turnover of the legal entity. The conditions for a gift to be eligible are much the same that those put forward by article 200. The contribution may be made in cash or in kind (e.g. : donation of employees time of

work). Eligible entities are the same, with some special-purpose complements (e.g. state companies financing cultural audiovisual programmes). The same rules apply to foreign-based entities.

C. Wealth tax deduction

A gift may also offer a right to a wealth tax deduction of 75 % of the value of the gift, with a capping of the deduction at € 50,000 (art. 885-0 bis A CGI) (nota: if the taxpayer benefits also of the wealth tax deduction for investment in small companies, the total of two deductions is limited at € 45,000). Income tax deduction and wealth tax deduction are not cumulative for a same gift, and a choice has to be made by the taxpayer between the two regimes.

The gift must be made in cash or in negotiable company shares. The beneficiaries must be :
- a general-interest institution of research, or higher education, or artistic education
- a foundation declared of public utility
- one of different kinds of legal entities helping to bring back to work unemployed persons
- the National Agency for Research
- a university foundation
- an association, declared of public utility, helping to finance and sustain newly created enterprises.

D. Inheritance tax allowance

When the inheritor gives, in the six months following the decease, a good inherited to a foundation or an association declared of public utility (or the State, the local authorities…), he is entitled to an allowance on his inheritance tax basis corresponding to the value of the good given (art. 788, III CGI). To be eligible, the foundation or association must be of general interest (according to art. 200 CGI, see above) and being of the nature required by art. 200, 1, b CGI (having a philanthropic, educative, scientific, welfare, humanitarian, sport, familial, cultural nature, or contributing to the promotion of the cultural heritage, the defence of the environment, or the spreading of the French culture, language and scientific knowledge).

The tax authorities interpret the law as enabling a donation to an approved foundation, which will manage the gift, and reverse the money to a general-interest association complying to the requirements of art. 200, 1, b CGI.

The tax authorities have a very clear position on the point that to be eligible the entities must carry their activity in France (with the usual exception of French association having a humanitarian action abroad). No precision has been made at the moment about a European-based beneficiary.