

Tax Issues of Artist Foundations

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The Art of Giving
Art Law & Philanthropy
L'art de donner
Droit de l'art et philanthropie

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FDA fondation
pour le droit de l'art
art law foundation

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OUTLINE

- In general
- Specific issues
 1. Statuts of the foundation
 2. Artist as founder
 3. Distributions



In general

- Artist Foundations may hold works of arts and other assets
- Purpose may include, *inter alia*, preservation of the artist legacy, promote research or study of his/her work
- Examples : Elysée Museum; Montreux Jazz Festival Artists Foundation – Claude Nobs Foundation, etc.
- *Tax issues* : exemption of the foundation; position of donor and beneficiaries



Status of the foundation

I. Tax exemption ?

1. Public utility purpose

- Include, creating a museum, research center, exhibitions, academy, workshop, etc.
- Potential issues of the circle of beneficiaries

2. Parallel or ancillary economic activity (?) (partial exemption)

3. Disinterest

4. Irrevocability



Status of the foundation

- Ordinary taxation
 - Absent an exemption, the foundation is subject to ordinary profit and capital tax
 - Attributions of funds (art collection) by the founder is exempt (art. 66 par. 1 LIFD)
 - Attributions from third party may be exempt (gifts) (art. 60 lit. a LIFD).
 - Possibility of combining exempt and separate ordinary taxation?



Status of donor and beneficiaries

- For donors, attributions may be characterized as *gifts*
- Distributions to beneficiaries usually are treated as income (controversial exception if «*animus donandi*»)
- Are distributions compatible with tax exemptions ?