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Reference 109/2013

PAU, October 17 2013

Mrs. Marie Pierre BROCHIER
for the association
SRFRIDER FOUNDATION
EUROPE
120, avenue de Verdun
64200 BIARRITZ

Object: Your tax rescript application no. RI-2013-109

Dear Sir or Madam,

You have filed an application to be authorized to issue tax receipts entitling persons that make donations to your association SURFRIDER FOUNDATION EUROPE to benefit from a tax advantage.

Beyond 6 months, and in the absence of a response from the tax administration, the association has benefited, in a tacit and continual way, starting on the 28th of June 2012, from the authorization to issue tax receipts.

First, I remind you that:

are eligible for tax reduction the donations and payments made for the profit of public interest charities or institutions pursuing a purpose characterized as philanthropic, educational, scientific, social, humanitarian, sporting, familial, cultural, or contributing to the enhancement of the artistic heritage, to the defense of the natural environment or to the dissemination of the French culture, language or scientific knowledge.

The condition of public interest entails that the activities of the charities or the institutions must not be for profit and that its management must be disinterested under the tax instruction published in the official bulletin of the tax administration under the number of the documentation which can be consulted on the internet site "impots.gouv.fr" in the section:

DOCUMENTATION / BOFIP.IMPOTS.BOLIS-CHAMP.10.50.20.10.20120912

The notion of public interest entails that the activity of the association which asks for authorization to receive donations and issue receipts, is not operated for the profit of a restricted circle of people.



I / Review of the non-profit aspect of the activity:

In order to be able to claim the notion of public interest, the association's management must be disinterested and not compete with a company.

1- The management of the association must be disinterested:

a disinterested management is characterized by three cumulative conditions. The institution must be managed and administered on a voluntary basis by people having, themselves or through third parties, no direct interests in the results of the operations.

The SURFRIDER FOUNDATION EUROPE association is managed by a board of directors of which no member is remunerated.

The institution must not make any distributions of profits, direct or indirect, under whatever form. The copy of the statutes, accompanying your application, does not provide for any possibility of distribution.

The members of the institution and their beneficiaries cannot be declared as recipients of any part of the assets. Article 18 of the statutes of the association does not provide for the takeover of the assets by a member of the association if the case of its dissolution.

In respect of the points reviewed above, it is recognized that **the administration of the association SURFRIDER FOUNDATION EUROPE is disinterested.**

2- The association must not compete with a company

a) The association's activity has for goal to (article 2 of the statutes) "*the defense, safeguard, enhancement and the sustainable management of the ocean, the coast and the people who benefit from it, through education, awareness initiatives, contributing to elaborating standards, the fight against pollution, the fight against artificializing the coast...*" The prices to support these activities range between 38 € and 170 €.

- Water Quality and Health

The work to raise awareness of the implementation of the "Bathing water" European directive and the background work aiming to expand the zone of the surveillance of activities zones.

- Aquatic Waste

Organization of the "Oceanic Initiatives", the cleaning of beaches, lakes, and rivers aiming to sensitize the general public and industry to aquatic waste.

- Transport and maritime infrastructure

Joining civil actions in trials against polluting ships and awareness campaign regarding the dangers of pollution by hydrocarbons.

- Artificialization of the land

Setting up a network of alert volunteers aiming to alert the association and therefore limit infringements on the coast.

- Waves and heritage

The project to have UNESCO recognizes waves and Surfing as an intangible heritage and the organization of concerts.

Considering that the activities listed above are not carried out by commercial companies, it is recognized that these activities of the association are not competing.



b) "The training, research, manufacture, and sale of products bearing the image of the association activities," which are also provided for in the object of the association (article 2 of the statutes), as well as the biological analyses of water quality can also be carried out by commercial companies.

It is therefore appropriate to examine if these activities are carried out under the same terms as commercial companies in respect to the product, the public, the price, and the publicity.

• Water Quality and Health:

According to the details you have provided us with during our meeting on the 8th of October 2013, the analyses done by your laboratory are not billed. In the absence of payment, this activity is not part of the competitive sector.

• Education and raising awareness:

The work with the ministry for national education and after school programs aiming to raise awareness among young publics is not part of the competitive sector.

According to your writings, the trainings for companies do not differ from training that could be offered by commercial companies.

Consequently, the activities "of training, of services, of development of educational tools, of sensitization to the environment and to the working themes developed by the association, meant for private companies" and those "of royalty payments for trademarks that allows a third party company to sell textile bearing your association's brand" are competitive and therefore for-profit.

They are subject to commercial taxation.

It is apparent from the documents that profitable activities are not predominant. Effectively, they only keep 2 persons out of 30 occupied and account for 173 K€ of the 2348 K€ of resources of the association.

II / Review of the activity of the association

To open eligibility to the tax reduction for patronage, the donations must be made for the profit of charities or of institutions pursuing a purpose characterized as social, philanthropic, educational, scientific, humanitarian, sporting, familial, cultural, or contributing to the enhancement of the artistic heritage, to the defense of the natural environment or to the dissemination of the French culture, language or scientific knowledge.

The activities developed by your association strictly target the defense of the natural environment and are part of the noncompetitive sector which makes them fall completely within the application conditions of articles 200.1.b and 238 bis 1.a of the general tax Code.



III / Examination of the notion of a restricted circle of people

The notion of public interest entails that the activity of the association which asks for authorization to receive donations and issue receipts, is not operated for the profit of a restricted circle of people.

The object of the SURFRIDER FOUNDATION EUROPE as described in the association's statutes does not mention any particular criteria indicating an operation for the profit of a circle of well-defined persons.

IV / Examination of the intention to give freely

The donation afforded by the benefactors to the association must come from an intention to give freely and not elicit compensation.

Reading the documents accompanying the application, it appears that the donations that would be made to the association would all come from an intention to give freely.

V / Conclusions

If the **non-profit activities are declared predominant**, article 206-1 bis of the CGI stemming from article 15 of the Appropriation law of 2000, provides for a measure limiting the commercial taxes taxation of associations having activities which are partly in the competitive sector and partly in the noncompetitive sector.

Associations whose non-profit activities remain predominant can have profitable activities without being subject to commercial taxes as long as the annual income of the profitable sector activities is below 60 000€.

But, if the commercial taxes exemption application threshold is breached, if the non-profit sector stays predominant, it is possible for the association to divide the profitable activities into sectors. The association will only submit to taxation the revenues coming from the profitable activities.

Institutions benefiting from the exemption of commercial taxes must, under the terms of article 286 I-3 of the CI, hold a record or register with numbered pages on which every operation will be recorded daily. This record will allow them to follow distinctively the revenues coming from their accessory profitable operations and to identify the possible breach of the commercial taxes exemption application threshold.

Indeed, when an association has profitable activities and non-profit activities, and that, the conditions allowing to sector profitable activities are met, the donations it receives can benefit from the measures in favor of patronage provided for in articles 200 and 238 bis of the CGI provided it is of public interest and that it is characterized as philanthropic, educational, scientific, social, humanitarian, sporting, familial, cultural, or contributing to the enhancement of the artistic heritage, to the defense of the natural environment or to the dissemination of the French culture, language or scientific knowledge and under the condition that these donations be allocated to the non-profit sector.

Also, this last condition can only be considered as fulfilled if the association has a separate accounting for the profitable and non-profit sectors.

Consequently, your institution aiming to defend the natural environment can be qualified as being of public interest.



It is therefore authorized, in a continuous way since the 28th of June 2012, to issue tax receipts for donations exclusively allocated to its main non-profit activity.

Furthermore, I remind you that only the real donations and not the contributions of your members are included in the scope of the measure in favor of patronage.

Volunteers can, under certain conditions, benefit from the tax reductions linked to donations for their personal expenses, in the context of the associative activity.

Thus, the expenses supported by the volunteers in the context of their activity when it is carried out strictly for the accomplishment of the purpose of the institution, can be either reimbursed by the institution, or benefit from the tax reduction concerning donations provided that the volunteer justifies the nature and the amount of the costs he supported and expressly renounces to their reimbursement.

An association that benefits from the exemption on commercial taxes is still subjected to the tax on corporations concerning its income from assets (property income, agricultural income, investment income).

I finally specify that, the insufficiency or the inaccuracy of the information provided in your application, as well as the modifications that may be brought to the way the association operates after the formal position statement of the service will be likely to remove any relevance to the present answer.

If you intend to contest the sense or the scope of this answer, you have 2 months from the date on which this correspondence is received to inform me of your intention to solicit a second examination of your initial application under conditions laid down in article L 80 C of the book of tax procedures.

Furthermore I alert you to the fact that any institution which irregularly issues receipts that allow for a reduction of taxable profits or a tax reduction is punishable, in accordance with the provisions of article 1768 quarter of the general tax code, by a fiscal fine equal to 25% of the amounts unduly mentioned on these documents.

Please accept, sir or madam, the assurances of my highest consideration.

For the departmental Administrator of Public Finances,
by delegation the Controller of Public Finances

Pierre CORTES: signed



ANNE ETCHEVERRY, soussignée,
Expert traducteur agréé près la Cour d'appel de
Pau, certifie que la traduction qui précède est
conforme à l'original libellé en langue *basque*
Visé NE VARIETUR sous le n°2019-31
Le, 2/4/2019

Etcheverry