

AMF Position Criteria applicable to "philanthropic" collective investments – DOC-2012-15

Reference texts: Articles 314-80 and 319-16 of the AMF General Regulation

A "philanthropic" collective investment is a vehicle that undertakes to pay a gift directly or indirectly to one or more predetermined organisations (hereinafter "Beneficiaries"), in accordance with the methods defined by its regulatory documents.

To qualify as a "philanthropic" collective investment, the vehicle must comply with the specific regulations presented in this Position.

1. The nature of the beneficiaries

In accordance with Articles 314-80 and 319-16 of the AMF General Regulation, gifts may be made to organisations that meet at least one of the following criteria:

- the organisation holds a valid administrative ruling attesting that it falls under the category of associations whose purpose is exclusively assistance, charity, scientific or medical research, or a religious association;
- the organisation holds a valid tax ruling attesting that it is eligible for the tax regime specified under Article 200 or 238 bis of the French General Tax Code providing tax reductions for gifts;
- the organisation is a religious congregation that has been legally recognised by decree rendered after clearance by the Conseil d'Etat in compliance with Article 13 of the Law of 1 July 1901 on Association Agreements.

2. Methods for making a gift

The methods for making gifts are defined freely by the asset management company, within the limit authorised by the regulations and accounting principles applicable to collective investments (including a portion of fixed or variable management fees or the distributable amounts, and therefore the capital gains realised, as defined under Article L 214-17-2 of the French Monetary and Financial Code for UCITS and Article L 214-24-51 of the same code for retail investment funds)¹.

The asset management company must also ensure, prior to the authorisation of the collective investment (or when it is created, if it is not authorised), that the methods used for making a gift give rise, or not, to a tax break benefitting all or some of the unitholders or shareholders, or the asset management company.

If an asset management company uses different methods for making a gift and notes the granting of a tax break linked to that gift, the asset management company must prove to the AMF, prior to the authorisation of the collective investment (or when it is created, if the authorisation is not necessary), that those methods effectively enable unitholders and shareholders in the collective investment to benefit from the tax break offered.

A "philanthropic" collective investment is not dependant on the existence of a tax break, as the gift alone satisfies this condition.

3. Sharing information with unitholders

The asset management company must inform the unitholders or shareholders of the charitable organisation's identity and of the possibility for the donor being considered by the tax authorities (either the unitholder or shareholder, or an intermediary such as the asset management company) to benefit, or not, from tax breaks for gifts made by the collective investment. Furthermore, if the chosen mechanism for making a gift can enable someone other than the unitholder or shareholder to benefit from a potential tax break (such as the asset management company, for example, when it pays out a portion of the management fees that it earned), that information should also be shared with investors, under the same conditions. This information must be mentioned in the information document for investors in the collective

¹ Historically, the only method authorised under the AMF General Regulation was the distribution of a portion of the "income" to unitholders or shareholders



investment (KIID or prospectus, as applicable), periodic reports and promotional documents, as well as on the websites of the asset management company and the distributors of the collective investment.

4. Methods for calculating the gift

The method for calculating the amounts to be paid as a gift must be determined in a sufficiently precise and sustainable way and must not enable the asset management company to significantly affect the amount to be paid. Moreover, this method must be indicated in the information document for investors in the collective investment in question.