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Updates on the Legislative and Regulatory Environment for Swiss Foundations and Associations

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INTRODUCTION

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PRESENTATION

Prof. Giulia Neri-Castracane

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Vincent Pfammatter

Partner at Walder Wyss, Member of the board of proFonds and Academic Fellow of the GCP

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Philanthropy Lunch

**Legislative and regulatory developments
for Swiss foundations and associations
1 October 2026**

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Agenda

1. Changes in Swiss law in 2025/2026
2. Developments in practice in 2025/2026
3. Legislative projects under discussion
4. Review of selected case law

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Automatic exchange of information (LEAR and OEAR) (01.01.2026)

- Continued exemption for “**qualified public-benefit entities**”, incl. foundations and associations (art. 3 para. 9bis LEAR).
- Conditions to be met under art. 6a para. 1 OEAR, or where the entity concerned is exempt from direct federal tax under art. 56 lit. g or h LFD (art. 6a para. 2 OEAR) → presumption of compliance with the OECD and Federal Council criteria.

Swiss transparency register (LTPM) and AMLA (LBA) – (01.10.2026)

- Exclusion of foundations and associations confirmed from the register
- **Indirect effects:**
 1. Requirement to identify the beneficial owners of a legal entity controlled by foundations/associations (art. 7 and 8 OTPM)
 2. Professional advisers may be subject to the AMLA (excluded: members of the bodies of public-benefit foundations or of operating associations with their seat in Switzerland (art. 2 para. 4^{ter} lit. f LBA), or the creation of a foundation upon death (art. 2 para. 4^{ter} lit. f LBA))

Partial revision of the VAT Act (01.01.2025)

- New art. 18 para. 3 VAT Act: statutory presumption of a “*subsidy or other public-law contribution*” where the public authority expressly designates a payments as such (→ outside the scope of VAT, but reduction of the input tax deduction).
- Clarification of the exclusion for staff lending (art. 21 para. 2 no. 12 VAT Act) to non-profit institutions pursuing objectives relating to the care, social assistance and social security, the protection of children and young people, education and training, as well as ecclesiastical, charitable or public-benefit purposes.

Strengthening Switzerland's role as a host State (2026-2029)

- Federal Decree of 08.12.2025: expenditure ceiling of CHF 122.6 million (covering hosting, infrastructure, partnerships and the governance of new technologies).
- Interest-free loans of CHF 78 million to the Foundation for Buildings for International Organizations - FIPOI (renovation projects for buildings it owns).
- CHF 7.8 million for the external protection of the sites of international organizations.

Agenda

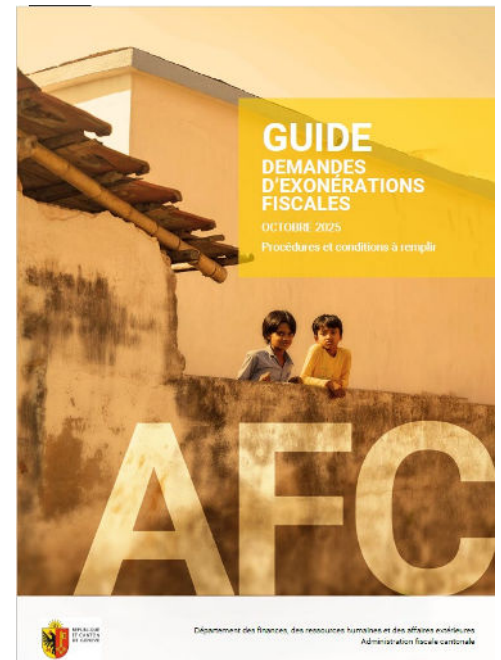
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Foundation activity reports – new guidelines

- Federal level (**ASF**):
 - December 2025: guidelines updated
 - Content of the report:
 - (1) general information on the foundation and its governance (focus on conflicts of interest),
 - (2) activities carried out to achieve the purpose,
 - (3) financial results and outlook, and
 - (4) inventory of assets not recognised in the balance sheet.
- Cantonal level (**As-So**): similar requirements
 - Circular 2026-01: activity report mandatory for classic foundations subject to an ordinary audit
 - Circular 2026-02: “activity summary” (simplified version of the report) for foundations exempted from having an audit body

Geneva: new measures to strengthen its attractiveness as a philanthropy hub

- Objective? To improve accessibility, coordination and legal certainty for foundations and associations with their seat in Geneva.
- **Guide** of the AFC on tax exemptions for associations and foundations (20.11.2025)
 - Clarifications regarding the **remuneration of members of the governing body**: distinction between *qualitatively* and *quantitatively* extraordinary tasks, with a cap of CHF 10,000/year per member (cumulative total)
 - **Support through entrepreneurial financing accepted** (loans, investments), subject to compliance with the *disinterestedness* requirement + a *ruling* request
 - Confirmation that **public-benefit activities carried out abroad** do not preclude exemption, subject to alignment with the Swiss concept of public benefit
- Launch of a **Philanthropy Portal** centralising the relevant procedures (<https://www.ge.ch/dossier/portail-philanthropie>, available in French and English).



Federal Audit Office (CDF): fragmented cantonal practice

- Finding of non-uniform application of **AFC Circular No. 12** (not revised since 1994), in particular as regards the remuneration of members of the governing body and the territorial criterion.
- Exempt foundations placed at the top of the CDF's supervisory agenda (2025-2026): review of assessments in all 26 cantons.
- Growing pressure for harmonisation, with no revision of Circular No. 12 planned.

Swiss Tax Conference (CSI): 2026 revision of the practical information on tax exemption

- **Private schools**: exemption excluded where tuition fees are not reasonably accessible to a broad section of the population (criteria drawn from Federal Supreme Court case law).
- Reminder of the **principle of competitive neutrality** (nursing homes, childcare, privatised infrastructure) to avoid market distortions.
- Clarifications on the **remuneration of board members** (ordinary/extraordinary commitments, dual roles).
- Confirmation: exemption excluded for **organisations with a predominantly political purpose**, subject to the use of political means to achieve the public-benefit purpose

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Family foundations

- Motion 22.4445 (Mr. Thierry Burkart, Dec. 2022), adopted by both Chambers (2023-2024): removal of the prohibition on family maintenance foundations (amendment of art. 335 para. 2 CC). Tax treatment decisive. **No bill to date**; the Federal Council considers that a broader revision of foundation law would be necessary.

Public-benefit status and political activities

- Motion 24.4514 (Mr. Beat Walti, Dec. 2024): revives the debate on the tax exemption of tax-exempt organisations funding or running political campaigns. The Federal Council proposes rejection; **Parliament's vote is still pending**.

Federal supervision of foundations under parliamentary scrutiny

- Interpellation by Mr Raphaël Mahaim 25.4358 (26 Sept. 2025): alleged funding of Israeli settlements by a Swiss foundation; the Federal Council referred to the independence of the ASF and to procedural confidentiality (LTrans). Echoes the interpellation by Mr. Benjamin Roduit 25.3774 (19 June 2025) on the risk of money laundering through foundations; the reply was considered unsatisfactory by its author.

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The association's choice between different exclusion procedures

The Federal Supreme Court dismisses the appeal of a member excluded from an association through the “revocation” procedure rather than the “exclusion” procedure.

- The association is free to choose between two statutory procedures (“revocation” and “exclusion”, both resulting in exclusion within the meaning of art. 72 CC) where the conditions are met, even if one of them offers an additional right of appeal.
- The existence of an alternative, more protective procedure does not make the choice of the other procedure unlawful; the right to be heard must be respected, as it was in this case.

(Federal Supreme Court, 5A_532/2025 of 11 December 2025)

Over-indebtedness and liability of the bodies of an association

The Federal Supreme Court dismisses a liability action against the members of the committee and the audit body of an association.

- No obligation to notify the court in the event of over-indebtedness applied by analogy to associations under the **former law** (before the entry into force, on 1 January 2023, of art. 69d CC)
 - Audit body: duty to notify the committee
 - Committee: obligation to convene and inform the general meeting before filing the balance sheet
 - General meeting: no obligation to notify the court
- The question of an obligation to notify the court in the event of over-indebtedness arising from the general duty of sound management is left open.
- No causal link in the case at hand; over-indebtedness is not a ground for dissolution under art. 77 CC (unlike insolvency).
- Under the **new law**: the provisions of company law (art. 725 et seq. CO) apply by analogy to associations required to apply for registration in the commercial register.

Tax exemption and political activities

The Federal Supreme Court upholds an association's appeal against a decision refusing tax exemption on the grounds that its activity predominantly benefited the inhabitants of one municipality and shaped public opinion.

- The protection of the landscape and of heritage benefits an open circle of beneficiaries extending beyond the association's members and the inhabitants of the municipality concerned.
- Political means (e.g. taking positions in public debate and influencing the construction projects of public authorities) are indispensable democratic tools for pursuing a public-benefit purpose (such as the protection of the landscape or of heritage). Recourse to such means precludes the granting or maintenance of an exemption only where the political activity is predominant. That was not the case here.

(Federal Supreme Court, 9C_316/2025 of 23 April 2026)

Tax-exempt association carrying out a commercial activity in another canton

The Cantonal Court of Valais dismisses the appeal of a tax-exempt association domiciled in Geneva against a refusal of exemption in the Canton of Valais for the taxes relating to the hotel it operates there.

- A tax exemption granted by one canton (here Geneva) does not bind the tax authorities of another canton (here Valais). Each has autonomous jurisdiction to examine whether the exemption conditions are met.
- Allocating the hotel's income to a public-benefit purpose does not alter the commercial nature of the activity, in particular in light of the principle of competitive neutrality (the *disinterestedness* condition is not met).

(Cantonal Court of Valais, F1 24 118 of 5 May 2026)

Amendment of a foundation's statutes and use of its capital

The Federal Supreme Court dismisses a foundation's appeal against the refusal to approve the amendment to its statutes allowing the use of its capital.

- An amendment to the statutes within the meaning of art. 85 CC requires an absolute necessity to preserve the assets or maintain the purpose of the foundation; it is not enough that it improves the foundation's organisation.
- Since the consumption of capital was already permitted under the foundation's existing statutes and accepted by the supervisory authority, adding an express clause is neither necessary nor urgent.
- The question of the "consumable-capital foundation" and of the conditions for conversion remains open.

(Federal Supreme Court, 5A_80/2025 of 28 August 2025)

Legal characterisation of contributions made to a foundation

The Federal Supreme Court dismisses the AFC's appeal against the characterisation as a donation of contributions paid to a foundation in return for certain benefits.

- The distinction between a donation (art. 3 lit. i LTVA) and taxable consideration (art. 3 lit. f LTVA) depends on the donor's perspective, not on the objective value of the benefits received (VIP invitations, mentions on the website).
- Benefits that are customary in fundraising aimed at wealthy donors, as well as the mention of partnerships on a website, remain compatible with the absence of consideration and with the VAT exemption (art. 21 para. 2 no. 27 LTVA).
- The benefits granted in this case by the foundation (invitations to VIP events, a seat on the advisory committee, investor trips at their own expense, access to the newsletter or a mention on the foundation's website) were held to be compatible.

(Federal Supreme Court, 9C_570/2025, 9C_571/2025 of 17 December 2025)

Retroactive revocation of a tax exemption and protection of good faith

The Federal Supreme Court upholds a foundation's appeal against the retroactive revocation of its tax exemption as from the date of its incorporation.

- Although a tax exemption may be reviewed in each tax period, its retroactive revocation remains limited by the principle of good faith (art. 5 para. 3 and art. 9 of the Federal Constitution)
- Good faith protects the taxpayer's legitimate expectations, i.e. where the taxpayer could not have detected the error and took irreversible steps in reliance on it.
- A tax authority that delays opening review proceedings (here more than four years) although it is aware of the facts justifying a different assessment must bear the consequences of that delay.
- Revocation of the tax exemption can take effect only as from the opening of the audit proceedings, save in cases of abuse.

(Federal Supreme Court, 9C_153/2025 of 14 January 2026)

Thank you!

Q&A

For further details, see: Neri-Castracane Giulia/Pfammatter Vincent/Andrade Sara/Liccardo Laurie, Swiss foundation and association law – 2025/2026 Legal Update, in RSDA 6/2026 (forthcoming).



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UPDATE ON THE ACTIVITIES OF THE GCP, CAGI and the MIA

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GCP - EVENTS TO COME

COMPLET - October 2026 | 2pm – 6pm | *Semaine de la démocratie* | *Parcours immersif "A la découverte de la Genève démocratique : Philanthropie, Démocratie et Institutions internationales"* | in collaboration with OCEI, IHEID and SwissFoundations

10 December 2026 | 12pm – 2pm | Philanthropy Lunch | AI, Governance and Philanthropy | In collaboration with Geneva AI Governance Institute (GAIGI) | Uni-Dufour, room 408



GCP - EVENTS TO COME

SAVE-THE-DATE 2027

- 4 February 2027 | 6 pm – 8 pm | International Conference | **Impact Investing: can we reconcile values and value?** | Campus Biotech
- 27 – 28 May 2027 | Public Conference | **The reach of benevolent emotions**
- 1 – 2 July 2027 | ERNOP Conference 2027 | **United in Diversity – Collaborative futures for philanthropy** | Campus Biotech



GCP - PUBLICATIONS



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English



GCP - PUBLICATIONS



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EVENTS TO COME

Afterwork

IApéro: Sharing lessons and experiences in responsible AI

Tuesday 13 October 2026 – SDG Solution Space

- Update from Canton of Geneva on 2027 AI Summit preparations
- NGO testimonies: practical examples of working with AI
- Apéritif & networking

Scan for programme and registration:



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Buy discounted tickets for cultural events



PROFONDS - EVENTS TO COME

2026

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Mardi, 17 novembre 2026

kultur & kongresshaus (kuk), Aarau



Vers le programme et les inscriptions



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MIA - EVENTS TO COME

SEASON 2026/2027 – 3 thematic cycles:

👉 SEPT. – DEC 26

Toolkit for non-profit organisations

The basics of running a successful non-profit association

👉 JAN. – MAR 27

Communication and fundraising

Two key challenges for raising awareness of your project and ensuring its long-term viability

👉 APR. – JUNE 27

Institutional and non-profit sector partnerships

Connecting with key players in the Geneva ecosystem

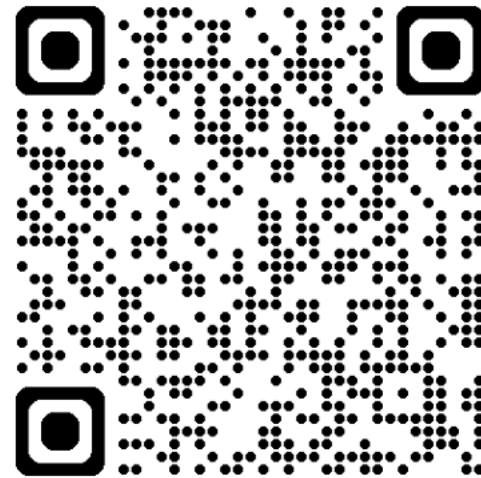
MIA - EVENTS TO COME

October 2026

- **6 October 2026 | 6 pm – 8 pm | Public Conference | Semaine de la démocratie – Asile et préjugés : l'information au coeur du débat démocratique** | Maison internationale des associations
- **8 October 2026 | 12 pm – 6pm | Public Event | Semaine de la santé mentale – Open Podcast à la MIA** | Maison internationale des associations
- **13 October 2026 | 12.15 pm – 13.15 pm | Public Workshop | Sensibilisation sur la cybersécurité** | Maison internationale des associations
- **27 October 2026 | 12.15 pm – 13.15 pm | Public Workshop | B.A.-BA de la comptabilité pour une association** | Maison internationale des associations
- **13 October 2026 | 12.15 pm – 13.15 pm | Public Workshop | Règles de bases en ressources humaines pour une association** | Maison internationale des associations

EVALUATION

Please take a few minutes to complete the evaluation survey:





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