

CONTENTS**Update on the French reporting obligations for Trustees****Update on the French reporting obligations for Trustees**

The French tax authorities released in late December a Ruling^[1] which provides details on the reporting obligations for trustees created by article 14 of the Modified Finance Law (the tax Bill) which entered into force on the 31st July 2011 and which was incorporated into the French tax code (FTC) under article 1649 AB.

The details on the reporting obligations for trustees which transpire from the Ruling seem to vary the scope of the rules introduced by the tax Bill and their usual interpretation made by professionals until now.

Instead of matching the date by which all disclosure obligations had to be made from the 1st January 2012, some reporting obligation for Trustees in relation to the setting up of any trust, their modifications or terminations should in fact apply from the 31st July 2011.

1. The new reporting obligations for Trustees

Subject to conditions, the tax Bill introduced two new reporting obligations for trustees, which are independent of each other and under which they will have to file tax returns:

- A one-off disclosure of information on the establishment, modification or termination and on the terms and conditions of the trust for which they are the administrators;
- An annual disclosure of the market value on the 1st January of each year of the assets, rights or products capitalized or held within the trust.

Trustees who are subject to these reporting obligations are those involved with a trust in which the settlor or at least one of the beneficiaries, is a French tax resident (under art. 4 B of the FTC) or when the trust holds French based assets.

The question of how these obligations should apply and which trusts (or bodies) are concerned remain essential since the non-filing compliance is sanctioned by a € 10,000 fine or, if higher, by a fine equal to 5 % of the value of the assets, rights or products capitalized or held within the trust.

2. The information coming out from the Ruling

Even if the Ruling sheds some light on the new legislation as indicated above, it still does not address adequately some queries raised by professionals in relation to the exact scope and contents of the tax Bill.

This is due to come later in a long-awaited documentation and tax Decree which will be published by the French tax authorities in the near future. This will give guidelines and directions to professionals as to how the authorities wish to implement the new rules and how the legislation should apply.

For the time being, we are in the opinion that the view taken by the French tax authorities in the Ruling outlines an interpretation of the new Trust legislation which might be contrary to the purpose of the tax Bill itself.

2.1. Legal entities to which the new reporting obligations apply

In the Ruling, the French tax authorities specify that the reporting requirements relate to all trusts that meet the broad definition of "trust" given under article 792-0 bis of the FTC.

Nevertheless, the Ministry of Finances' branch involved with the Ruling has expressed the view verbally that it intends to include also within this broad definition of trust any other legal bodies, such as non-charitable Foundations used for private purposes (e.g. Foundations set-up under Liechtenstein or Panama Law for example). Nevertheless, on this issue, it will be necessary to wait for the tax Bill implementing Decree and the subsequent tax guidelines which should be published in March according to our information, to see if the Ministry of Finances' view of the extent to which the new Law applies, is confirmed.

Until such confirmation is made and as a precaution, we would strongly recommend to administrators of bodies such as Foundations to consider that, according to the French tax authorities, the provisions laid out under section 1649 of AB of the FTC will apply.

2.2. Trusts existing since the 31st July 2011 should be affected by the one-off Trustees' reporting duty of disclosure

On the basis of a strict reading of the Law, the new rules seemed to apply from 1st January 2012 only to any trust created, modified, or terminated as of that date. Accordingly, the trusts created, modified or terminated before that date, were due to remain outside the scope of the new Law with no obligation to be reported.

The tax authorities were asked to confirm this.

According to the Ruling, the French authorities took instead an aggressive stance by stating that:

- The trustees of trusts^[2] which existed on the 31st July 2011, are required to disclose the existence and content of the Trust's terms and conditions.
- Trusts created, modified, or terminated as from July 31st, 2011 (date of entry into force of the tax Bill) should be reported.
- The trusts, whose settlor and all beneficiaries are all non-French tax residents but with assets located in France exclusively composed of financial investments, will be subject to the reporting obligations, to the extent that such financial investments were placed into the trust upon its formation or during its subsequent amendments^[3]

The French authorities seem to have adopted here a much broader interpretation of the scope of the Law and the date by which it should start applying. In our opinion, it is contrary to the Law itself. As the legislation did not specify any date of entry into force of the disclosure requirements. The lack of clarity in the Law tends to allow the opinion that the reporting obligation would be due for the first time from the 1st January 2012 and therefore only to events occurring after that date. The Ruling outlines the authorities' intentions to catch those who took this view and restructured the assets held within Trusts before the 1st January 2012.

At this stage, it is necessary to wait for the subsequent guidelines documentation and

Decree which will be issued by the tax authorities to see whether the contents of the Ruling is confirmed on this point or alternatively seek arbitration through the Court.

Financial investments

The definition of **financial investments** retained by the Ruling is the same as the one in respect to French wealth tax mentioned under article 885 L of the FTC. Pursuant to the tax authorities guidelines (DB 7 S 346) financial investments include all financial income arising from French source and paid to an individual except capital gains. Amongst others, this covers shareholders' current accounts held in a company or legal entity having its registered office or effective place of management in France, notes or securities of similar nature, bonds, stocks and shares issued by a company or a legal entity having its registered office or effective place of management in France, life insurance or capitalization contracts subscribed with insurance companies established in France

The practical view

We could say that the only Trusts with no reporting obligations at this stage until further clarification is made, are:

- Trusts having both non-French resident settlors and beneficiaries and also only financial investments at any time between the 31st July 2011 and the 31st December 2011. Nevertheless, any disposal of French financial investments during this interim period should re-establish the Trustees' reporting duty.
- Trusts without a French-resident settlor or beneficiary on the 31st December 2011 and no French assets other than financial (because restructuring had been carried on during the interim period) but only to the extent that the exemption will apply for 2013 only, but filing a disclosure will remain necessary for 2012.

2.3. The contents of the annual Trustees' reporting obligation are confirmed

The administration has confirmed the strict reading of article 1649 AB § 2 which distinguishes between two situations, depending on whether the settlor of the trust or at least one beneficiary is or not a French tax resident:

- When the settlor of the trust or at least one of the beneficiaries is a French tax resident, all the assets and rights held by the trust, irrespective of their location, must be reported, even if those assets or rights are exempt from French wealth tax.
- However, when the settlor of the trust and the beneficiaries are all non-French tax residents, only the assets and rights held by the trust and located in France and which do not meet the definition of financial investments, must be reported even if these are outside the scope of the French Wealth tax.

The French tax authorities state also that the following assets shall never qualify as financial investments exempt from disclosure:

- Shares representing a participation allowing the exercise of a certain influence within the company (in practice, shares representing at least 10% of the share capital of a company);
- Shares or stocks held by non-French tax residents in a French or foreign company or legal vehicle in which the assets are predominantly real estate or rights in real estate located within French territory (limited to the ratio of the value of those assets out of the total assets of the company) under article 885 L § 2 of the FTC;
- Shares or stocks held directly or indirectly of which over 50% is held by non-French tax residents through legal entities or structures owning real estate or rights on real estate located in France (under article 885 L § 2 of the FTC)

2.4. Trusts which remain exempt from reporting obligations

Finally, the French tax administration confirms that administrators of certain trusts,

which are subject to the law of a State or territory which signed a treaty on administrative assistance against tax fraud and tax evasion, shall be exempt from these reporting requirements.

The following are relevant to this exemption:

- Trusts set up in order to manage retirement rights acquired as a consequence of the Trust beneficiaries' occupation in the context of a retirement plan set up by a company or a group of companies;
- Trusts set up by a company or a group of companies for their own account and where no individual could be regarded as the economic settlor of the Trust (in accordance with article 792-0 bis I 2° of the FTC).

Specific attention should be made to trusts where employees contributing to the trust through an Employee Benefits trust for example might eventually qualify as settlor in accordance with article 792-0 bis I 2° of the FTC.

2.5. Comments from the Authors of this Information Note

The Service addressing voluntary disclosures of undisclosed foreign assets confirms us that individuals concerned by a trust or a non-charitable private foundation who come forward by voluntarily disclosing that structure and foreign accounts, will exempt the trustees or administrators of their reporting obligations for 2012.

[1] Tax Administrative Ruling n° 2011/37 dated from 23rd December 2011

[2] Whose settlor, or at least one of the beneficiaries, is a French tax resident (under the internal tax rules or by application of the Double tax treaties) or which includes assets or rights located in France (in accordance to article 750 ter of the FTC).

[3] The disclosure duty or exemption apply notwithstanding gift or succession duties might be also be due (in accordance to article 792-0 bis of the FTC) in case French financial investments are held in a trust.