

France: A Look Back at 18 Months Of Tax Turmoil

by Patrick Delas

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FEATURED PERSPECTIVES

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Now is a good time to recap the series of tax reforms passed during the last 18 months in France. During that period, the country has been through a presidential election, a general election, two annual budgets (LFs), and no less than seven supplementary budgets (LFRs).

The result is a record €65 billion increase in taxes, which has led to the much-advertised relocation of high-net-worth individuals to neighboring “tax friendly” countries such as Belgium, Switzerland, and the U.K.

Fortunately, the position seems settled from a political perspective because France is “in need of fiscal stability,” according to socialist Budget Minister Jérôme Cahuzac.

Many uncertainties remain, however. This article focuses on these issues from the perspective of U.K. or U.S. residents potentially subject to capital gains tax, wealth tax, and trust reporting and tax obligations on property owned in France.

Capital Gains Tax

Taxing Capital Gains in France

The general rules for taxing capital gains on property remain unchanged. The capital gains of individuals or tax transparent entities defined by article 8 of the Code Général des Impôts (CGI) (for example, Sociétés Civiles Immobilières, or SCIs) are subject to French income tax.¹

There are exemptions for the individual’s main residence or when the sale price is less than €15,000 and for the residence of EU nationals who have been residents of France for two consecutive years before the sale and are still in occupation of the property on January 1 of the year before the sale.

The taxation is on the capital gain calculated by reference to the sale price and the purchase price. The sale costs are deducted from the sale price, and the purchase costs and capital improvements are added to the purchase price.

If the actual purchase costs cannot be established with certainty, a fixed 7.5 percent of the original purchase price may be added. Regarding the costs of capital improvements (additional building works), these may be added to the purchase price with supporting evidence of payment to a professional contractor (paid invoices). If the actual costs of improvements cannot be established with certainty, a fixed 15 percent of the original purchase price may be added. This allowance is, however, only available from the fifth year of ownership.²

The conveyancing *Notaire* is responsible for calculating the capital gain and paying the tax.

If the sale price is above €150,000, a *représentant fiscal accrédité* (tax representative) is appointed by the *Notaire* who will guarantee payment of the tax for three years. The French Revenue has three years to review the position after which a statute of limitation applies.

¹CGI article 150U to 150UD.

²CGI article 150VB.

Taper Relief

According to LFR 2011 of September 19, 2011, since February 1, 2012, relief is available from the fifth year of ownership under the following progressive schedule:

- 2 percent per year from the end of the fifth year;
- 4 percent per year from the end of the 17th year; and
- 8 percent per year after the end of the 24th year.

As a result, total exemption is now only available after 30 years of ownership instead of the previous 15 years. (See Table 1.)

Rates

The resulting net gain is subject to income tax at the following rates:

- French residents: 19 percent;
- other EU residents: 19 percent;
- non-EU residents: 33⅓ percent; and
- residents of “noncooperative states”:³ 50 percent.

Additional Tax

LFR 2012 of December 29, 2012, has introduced an additional tax for capital gains above €50,000. The scale shown in Table 2 applies in order to reduce the “band effect.”

Social Security Contributions

Position Before August 1, 2012

In addition to the above, French residents have been subject since the 1990s to a series of social security contributions (*contribution sociale généralisée* (CSG), *contribution au remboursement de la dette sociale* (CRDS), *prélèvement social* de 3.4 percent, *contribution additionnelle au prélèvement social*, and *contribution additionnelle pour le financement du Revenu de Solidarité Active*) representing an additional 15.5 percent,⁴ making capital gains subject to a 34.5 percent charge in total.

Nonresidents, however, have always been exempt and only subject to the 19 percent tax (EU residents) or 33⅓ percent (non-EU residents).

Position Since August 1, 2012

The socialist government appointed in June 2012 regarded this exemption as “unjustified,” and LFR 2012 now provides that nonresidents should be fully

³Since January 1, 2011: Anguilla, Belize, Brunei, the Cook Islands, Costa Rica, Dominica, Grenada, Guatemala, Liberia, the Marshall Islands, Montserrat, Nauru, Niue, Oman, Panama, the Philippines, Saint Vincent and the Grenadines, and Turks and Caicos.

⁴Since July 1, 2012.

Table 1. Taper Relief

Years of Ownership	Relief
From 0 to 5	0%
6	2%
7	4%
8	6%
9	8%
10	10%
11	12%
12	14%
13	16%
14	18%
15	20%
16	22%
17	24%
18	28%
19	32%
20	36%
21	40%
22	44%
23	48%
24	52%
25	60%
26	68%
27	76%
28	84%
29	92%
30	100%

subject to CSG/CRDS and their capital gains also liable for a 34.5 percent tax in total.

CSG and CRDS were introduced in the 1990s in order to reduce the deficit of the French *sécurité sociale* — which covers parental, illness, maternity, and pension benefits — and their legal nature (tax or social security levy) has never ceased to be debated. The Conseil constitutionnel, and France’s two highest judicial bodies — the Conseil d’Etat and the Cour de cassation — seem to have different views on the issue, which went as far as the European Court of Justice on two

**Table 2. Additional Tax
(Capital gains greater than €50,000)**

Capital Gain (€)	Tax
50,001 to 60,000	2% CG - (60,000 - CG) x 1/20
60,001 to 100,000	2% CG
100,001 to 110,000	3% CG - (110,000 - CG) x 1/10
110,001 to 150,000	3% CG
150,001 to 160,000	4% CG - (160,000 - CG) x 15/100
160,001 to 200,000	4% CG
200,001 to 210,000	5% CG - (210,000 - CG) x 20/100
210,001 to 250,000	5% CG
250,001 to 260,000	6% CG - (260,000 - CG) x 25/100
Above 260,000	6% CG

Note: CG = taxable gain.

occasions. The ECJ initially ruled in *Commission of the European Communities v. France*⁵ that concerning its purpose (funding a national insurance scheme), the CSG/CRDS should be regarded as a social security contribution and not as a tax. However, the decision was apparently overruled by *Philippe Derouin v. Urssaf Paris*,⁶ which implies that the CSG/CRDS is actually a tax subject to income tax treaties. The position is not clear. (See Table 3.)

Impact of Income Tax Treaties

The application of particular French income tax treaties may override a charge to French tax in some circumstances and needs to be carefully considered.⁷

U.K. Position

Under article 2 of the France-U.K. income tax treaty of June 19, 2008 (effective from January 1, 2010):

1. The taxes which are the subject of this Convention are:

....

(b) in the case of France, all taxes imposed on behalf of the State or of its local authorities irrespective of the manner in which they are levied on total income, or on elements of income, including taxes on gains from the alienation of

⁵C-169/98 and C 34/98 (Feb. 15, 2000).

⁶C-103/06 (Apr. 3, 2008).

⁷French tax treaties are available at <http://www.impots.gouv.fr>.

Table 3. Example of Calculation

January 2003: purchase for €1 million. January 2013: sells for €2 million.		
Sale price (2013)		2,000,000
Tax representative + surveys (approx.)	-25,000	
Total		1,975,000
Purchase price (2003)	-1,000,000	
Purchase costs allowance (7.5%)	-75,000	
Building works allowance (15%)	-150,000	
Total	-1,225,000	
Capital gain		750,000
Taper relief		10%
Fixed relief		0
Net taxable gain		675,000
Tax U.K. resident (19% + 6% + 15.5% = 40.5%)		273,375
Tax U.S. resident (33.1/3% + 6% + 15.5% = 54.5%)		370,125

movable or immovable property, taxes on the total amount of wages or salaries paid by enterprises, as well as taxes on capital appreciation; those taxes are in particular:

- (i) the income tax (*l'impôt sur le revenu*);
- (ii) the corporation tax (*l'impôt sur les sociétés*);
- (iii) the social contribution on corporation tax (*la contribution sociale sur l'impôt sur les sociétés*);
- (iv) the tax on salaries (*la taxe sur les salaires*);
- (v) the “*contributions sociales généralisées*”;
- (vi) the “*contributions pour le remboursement de la dette sociale*”;

(Hereinafter referred to as “French tax”).

Under article 14 of the treaty:

1. Gains derived from the alienation of immovable property referred to in Article 6 and situated in a Contracting State *may be taxed in that State*. [Emphasis added.]

Whereas article 24 provides that:

1. Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable

in a territory outside the United Kingdom (which shall not affect the principle hereof):

- a) French tax payable under the laws of France and in accordance with this convention, whether directly or by deduction, on profits, income or chargeable gains from sources within France (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) *shall be allowed as a credit* against any United Kingdom tax computed by reference to the same on profits, income or chargeable gains by reference to which French tax is computed. [Emphasis added.]

However:

2. For the purposes of paragraph 1:

- c) the taxes referred to in clauses (i) to (iv) of subparagraph (b) of paragraph 1 of Article 2 and, in respect of the taxes mentioned in those clauses, in paragraph 2 of Article 2, *shall be considered French tax*. [Emphasis added.]

Therefore, as under most income tax treaties, France retains the right to apply tax to the sale of French situated property under its own domestic rules. If taxation also applies under U.K. domestic rules (that is, the vendor is U.K. domiciled and resident), double taxation is avoided on the basis of a credit available in the U.K. However, only taxes referred to in article 2(1)(b)(i) to (iv) are regarded as “French taxes,” which excludes CSG/CRDS. The position is confirmed by HMRC on its website, resulting in 15.5 percent definitely “lost” to the French Revenue.⁸

U.S. Position

Unlike the France-U.K. treaty, the France-U.S. treaty does not include any specific reference to CSG/CRDS. As for the elimination of double taxation, it operates similarly to article 24 of the U.K. treaty, which states:

In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the principle hereof) the United States shall allow a citizen or a resident of the United States *as a credit* against the United States income tax:

- (i) The French income tax paid by or on behalf of such citizens or resident. [Emphasis added.]

However, article 2 states:

The taxes which are the subject of this Convention are:

- (a) In the case of the United States:

- (i) The Federal income taxes imposed by the Internal Revenue Code (*but excluding social security taxes*). [Emphasis added.]

So the issue is again down to the definition of CSG/CRDS (tax or social security contribution).

In the IRS section of the U.S. Embassy in Paris, the IRS states:

The French CSG and CRDS contributions are not creditable or deductible.

The *contribution sociale généralisée* (CSG) and the *contribution pour le remboursement de la dette sociale* (CRDS) are not creditable or deductible taxes under the Internal Revenue Code or the U.S.-French Income Tax Treaty because they are *social security taxes* that are covered by the U.S.-French totalization agreement. Social Security Amendments of 1977, Pub. L. No. 95-216, 91 Stat. 1540 [section] 317(b)(4).⁹ [Emphasis added.]

Wealth Taxation

Background of the French System of ISF

The wealth tax (*impôt de solidarité sur la fortune*, or ISF) applies each year to individuals whose net wealth on January 1 is above a threshold updated every year.

Nonresidents are only taxed on their French-situated assets (French residents being taxed on their worldwide assets); this also applies to assets held in a trust since LFR 2011 of July 6, 2011, in force since July 31, 2011 (see below).

The taxable base comprises the fair market value of the assets as owned by the *foyer fiscal* (taxpaying household), that is, husband and wife, civil partners, or cohabiting couple. The declaration is made in June or July on a self-assessed basis.

Some assets, such as financial investments (held by nonresidents) or business assets (for residents or nonresidents), are exempt. Liabilities (for example, mortgages) may be deductible with supporting evidence.

Finally, it should be noted that investments in small to medium-size EU businesses or eligible funds may benefit from a rebate corresponding to:

- 50 percent of the amount subscribed (directly or through holding companies) in the capital of certain small to medium-size EU-based companies (as defined by decree) with a maximum of €45,000; and/or
- 50 percent of the amount subscribed in the capital of certain French funds (or other EU countries equivalent): *fonds d'investissement de proximité* (FIP), *fonds communs de placement dans l'innovation* (FCPI), or *fonds communs de placement à risques* (FCPR) with a maximum of €18,000.

⁸See <http://www.hmrc.gov.uk/manuals/dtmanual/dt7252.htm>.

⁹See <http://france.usembassy.gov/irs.html>.

Table 4. ISF Schedule

Net Wealth (€)	Rate
Not exceeding 800,000	0.00%
Between 800,000 and 1,300,000	0.50%
Between 1,300,000 and 2,570,000	0.70%
Between 2,570,000 and 5,000,000	1.00%
Between 5,000,000 and 10,000,000	1.25%
More than 10,000,000	1.50%

Table 5. Example of Calculation for a Net Wealth Worth €5 Million

Net Wealth (€)	Rate
Not exceeding 800,000	0
Between 800,000 and 1,300,000	2,500
Between 1,300,000 and 2,570,000	8,890
Between 2,570,000 and 5,000,000	24,300
Total	35,690

The rebate, which is for a maximum of €45,000 in total, is subject to the retention of the subscribed shares over a five-year period.

LF 2013 of December 20, 2012, now reverts back to the pre-LFR 2011 position but maintains, however, the €1.3 million threshold below which ISF is exempt. (See tables 4 and 5.)

Trusts

LFR 2011 of July 6, 2011, introduced a general tax regime in an attempt to “clarify and put an end to the existing uncertainty as for the tax treatment of trusts.” French case law had since the 1990s been defining a rather coherent taxation framework in terms of ISF and estate duties on lifetime transfers or on death.

Far from covering all types of trusts and possible situations, the approach was pragmatic and practitioners could advise with reasonable certainty that:

- estate duties applied on capital distributed¹⁰; and

¹⁰Cass 1ère, Feb. 20, 1996, Zieseniss.

- ISF did not apply to assets held in a discretionary trust.¹¹

This common law approach is now history, with the amendment of article 750 *ter* CGI, and the introduction of a new article 792-0 *bis* in the Title IV (estate duties) of the CGI, the provisions of which are summarized below.

General Definition of a ‘Trust’

For the purposes of the CGI and therefore for both the capital taxation of assets held in trusts and the taxation of income arising and distributed from trusts, but not otherwise, a trust is defined as:

*l’ensemble des relations juridiques créées dans le droit d’un Etat autre que la France par une personne qui a la qualité de constituant, par acte entre vifs ou à cause de mort, en vue d’y placer des biens ou droits, sous le contrôle d’un administrateur, dans l’intérêt d’un ou de plusieurs bénéficiaires ou pour la réalisation d’un objectif déterminé.*¹²

[“the collection of legal relationships created under the law of a State other than France by a person, acting as *constituant* by inter vivos deed or taking effect on death, which places assets or legal rights under the control of an *administrateur* for the benefit of one or more *bénéficiaires* or for the purpose of a specific objective.”]

In other words, trusts, even though created outside France, are recognized as valid by the French Tax Code; however, this definition is still very unclear. There are of course many forms of trusts — discretionary, fixed, express, and implied. The wide new definition in the CGI does not take into account any of these differences. Similarly, any non-French structure may be found to fall within the definition.

Although the CGI now borrows the terms “trust” and “*constituant*” from the Hague Convention, the French draftsmen have not used the term “trustee” but “*administrateur*.” The term “*administrateur*” would seem to be wider than trustee and should not be regarded as identical. It would seem to include not only trustees, but also executors and administrators of wills and estates.

The term “*constituant*” is defined for the purposes of this part of the CGI as:

*on entend par constituant du trust soit la personne physique qui l’a constitué, soit, lorsqu’il a été constitué par une personne physique agissant à titre professionnel ou par une personne morale, la personne physique qui y a placé des biens et droits.*¹³

¹¹TGI Nanterre, May 4, 2004.

¹²Article 792-0 *bis*.I.-1, inserted by article 14 I. 4° of LFR 2011.

¹³Article 792-0 *bis*.I.-2, inserted by article 14 I. 4° of LFR 2011.

[“the term *constituant* of a trust is either the natural person who has constituted it or if the trust was constituted by a natural person acting as a professional or by a legal entity, then the natural person who has added the assets and legal rights.”]

Also:

*Le bénéficiaire est réputé être un constituant du trust pour l'application du présent II, à raison des biens, droits et produits capitalisés placés dans un trust dont le constituant est décédé à la date de l'entrée en vigueur de la loi n° 2011-900 du 29 juillet 2011 de finances rectificative pour 2011 et à raison de ceux qui sont imposés dans les conditions prévues aux 1 et 2 du même II et de leurs produits capitalisés.*¹⁴

[“The *bénéficiaire* is deemed to be the *constituant* of the trust for the purposes of this clause II, of the assets, legal rights and capitalised income of a trust, the *constituant* of which had died before the date of entry into force of LFR 2011 or by reason of the liabilities under clauses II.1 and II.2 and that capitalised income.”]

The term “*constituant*” is therefore broader than that of settlor and includes the testator and intestator, with or without will or intestacy trusts, and also subsequent *bénéficiaires* who after the death of the original *constituant* themselves die if the rights to trust assets pass on to further *bénéficiaires*. Thus, trust assets are cumulated with the free estate of a *bénéficiaire* of a discretionary, life interest, or relevant property regime trust or an interest in an unadministered estate, by the mechanism of including the *bénéficiaire* in the definition of *constituant*.

Regarding *bénéficiaires*, there is no set definition and it is more likely that they will generally equate with beneficiaries.

LFR 2011 has attempted to establish a body of rules with strict obligations but without necessarily clearly establishing the persons to whom the obligations apply. The consequences can be serious; as described below, an obligation is placed on the *administrateur* to declare the value of the assets held in the trust. If the *administrateur* of a trust does not comply, he may be liable to penalties.

French Gift and Succession Taxes

Under new article 792-0 *bis* II,¹⁵ when French territoriality rules are met, French gift and succession taxes apply to the assets held in the trust.

These taxes will apply to trust assets regardless of their situs if the *constituant* or the *bénéficiaires* are French residents (*bénéficiaires* of the trust are French

residents if at the time of the transmission they have been living in France for at least six of the previous 10 years).

Equally, the taxes will also apply to assets located in France even if the *constituant* and the *bénéficiaires* are resident abroad.

The first test governing the taxation of the trust depends on whether the transmission can be classified as a gift or a succession.

If a transmission can be classified as a gift or a succession, French taxation rules will apply on the net value of assets according to the usual family relationship between the *constituant* and the *bénéficiaires*. This might relate to bare trusts and to estates subject to administration without ongoing will or intestacy trusts.¹⁶

If no such classification can be established (absence of distribution), specific taxation (*sui generis*) rules will apply and the *constituant's* death will constitute the event triggering the application of the *sui generis* taxes:

- If at the date of the *constituant's* death “*la part des biens, droits ou produits capitalisés qui est due à un bénéficiaire est déterminée*” [the share of the assets, legal rights, and capitalized income that belongs to a *bénéficiaire* is determined], the taxation of that part will again be calculated on the usual basis depending on the family relationship between the *bénéficiaire* and the deceased *constituant*.¹⁷ What constitutes determination is uncertain. Does, for example, the presence of a continuing overriding power of appointment mean that the share is not determined?

If at the date of the *constituant's* death the share of the assets, legal rights, and capitalized income that belongs to a *bénéficiaire* is not determined, then:

- *Si une part déterminée des biens, droits ou produits capitalisés est due globalement à des descendants du constituant*¹⁸ [if there is a global transmission of a determined share to *bénéficiaires* who are the descendants of the *constituant*], the inheritance tax rate applicable to that part will be 45 percent.
- Any balance of the trust assets will be subject to the tax rate of 60 percent even for spouses, PACS (Pacte Civil de Solidarité) partners, or family members from a parallel line of the deceased's family, such as a brother, sister, uncle, aunt, niece, nephew, or cousin.¹⁹ The 60 percent rate will also

¹⁶Article 792-0 *bis*.-II.-1, inserted by article 14 I. 4° of LFR 2011.

¹⁷Article 792-0 *bis*.-II.-2.a), inserted by article 14 I. 4° of LFR 2011.

¹⁸Article 792-0 *bis*.-II.-2.b), inserted by article 14 I. 4° of LFR 2011.

¹⁹Article 792-0 *bis*.-II.-2.c), inserted by article 14 I. 4° of LFR 2011.

¹⁴Article 792-0 *bis*.-II.-3, inserted by article 14 I. 4° of LFR 2011.

¹⁵Inserted by article 14 I. 4° of LFR 2011.

apply if the *administrateur* is located in a noncooperative state or territory or for trusts created after May 11, 2011, by a *constituant* who has his tax residence in France.

For the purpose of the second item above, the *administrateur* will be liable for the payment of the tax. If these taxes are not paid and the *administrateur* is located in a noncooperative state, the *bénéficiaires* of the trust will be jointly liable.

Under Article 14 III of the LFR 2011, all of these provisions will apply to gifts and successions taking place after July 31, 2011.

Estate, Gift, and Wealth Tax Treaties

The application of particular French income tax treaties applicable to wealth, gift, and succession taxes and the extent to which these may prevent a charge in particular circumstances would need to be considered in detail if applicable.²⁰

Bulletin BOI-ENR-DMTG-30-20-30-20122016 confirms that the provisions of the relevant treaty should apply to gifts and successions through a trust.²¹

U.K. Position

The 1963 France-U.K.²² estate duty taxation treaty applies to duties on the estate of a deceased person taxed in these countries. It does not apply to lifetime gift tax, but only to tax arising on death.

Under the France-U.K. treaty, it is the domicile of the deceased (that is to say the domicile of the *constituant*) that determines which state has taxing rights on his succession. The question of whether a deceased person was domiciled at the time of his death in any part of France or the U.K. is determined in accordance with the law in force in that territory.²³

Article V(2) of the France-U.K. treaty specifies that when a person was at the time of his death domiciled in “some part of Great Britain,” duty will not be imposed in France on any property not situated in France; and in determining the amount or rate of duty payable on any property that is chargeable in France, any property not situated in France will be disregarded.

Therefore, if the domicile of the *constituant* at the time of his death is in the U.K. according to the provisions of the France-U.K. treaty, then France may not impose duties on the succession even though a *bénéficiaire* has tax residence in France. Some settlors of ex-

cluded property trusts with *bénéficiaires* resident in France may be encouraged to consider whether they have now established a domicile of choice in the U.K.

U.S. Position

The 1978 France-U.S.²⁴ estate tax treaty applies to duties on the estate of deceased persons and lifetime gifts.

Under the France-U.S. treaty, it is the domicile of the donor or the deceased (that is, the *constituant*) and his citizenship that determines which state has taxing rights on his succession.

Articles 5 and 6 of the France-U.S. treaty specify that when a U.S. citizen was at the time of his death domiciled in the United States, duty will only be imposed in France on property situated in France.

ISF

Article 14 of the LFR 2011 provides an irrefutable presumption concerning the trust assets and the patrimony or taxable estate of the *constituant*.

The assets cannot be part of the *bénéficiaires*' patrimony or taxable estate (except after the *constituant*'s death where the beneficiaries become *réputés constituants*). Under the new article 885 G *ter*,²⁵ ISF applies on the net asset value of a trust.

Generally, ISF applies if the *constituant* is French resident for tax purposes, regardless of the location of assets and also if trust assets are located in France, regardless of the *constituant*'s residence for tax purposes.

However, failure to declare imposes a special *prélèvement* of 1.5 percent, which must be paid by the natural person *constituant* or the *beneficiaries* of the trust.²⁶ BOI-PAT-ISF-30-20-30-20121016 of October 16, 2012, confirms that “*beneficiaries* of the trust” extends to beneficiaries who became *réputés constituants* on the original settlors' death.²⁷

French resident *constituant* or *réputés constituants* must pay the special *prélèvement* on worldwide trust assets, regardless of their situs. However, non-French resident *constituants* or *réputés constituants* will only be liable for the *prélèvement* on assets situated in France.

If neither the *constituant* nor any of the *bénéficiaires* are French resident, French financial assets are exempt unless they appear to correspond to the indirect ownership of French immovables assets (Rescrit 2011/37).²⁸

²⁰French tax treaties are available at <http://www.impots.gouv.fr>.

²¹BOI-ENR-DMTG-30 No. 40.

²²Double Taxation Relief (Estate Duty) (France) Order 1963 [S.I. 1963 No. 1319]. The complications regarding Northern Ireland are outside the scope of this article.

²³Article II(3)(a) Double Taxation Relief (Estate Duty) (France) Order 1963.

²⁴Double Taxation Relief (Estate Duty) (France) Order 1963 [S.I. 1963 No. 1319].

²⁵Inserted by article 14 I. 5° of LFR 2011.

²⁶Article 990 J, III, inserted by article 14 I. 6° of LFR 2011.

²⁷BOI-PAT-ISF-30-20-30-20121016 No. 170.

²⁸Available at <http://www.impots.gouv.fr>.

Also, each year the *administrateur* must declare the value of assets in the trust. These new provisions have been applicable since January 1, 2012.

BOI-PAT-ISF-30-20-30-20161016 No. 150 indicates that the *prélèvement* of article 990 J is a penalty and is not covered by income tax treaties.²⁹

Reporting Obligations

Decree 2012-1050 of September 14, 2012, confirms the existence of two separate reporting obligations resulting from article 1649 AB.³⁰

The first reporting obligation under new article 344 G *sexies* of Annexe III CGI is the ongoing obligation to report within a month the creation of any modification of the termination of the trust sanctioned by a 5 percent penalty payable by the *administrateur*.

The second reporting obligation under article 344 G *septies* of Annexe III CGI is the annual obligation to report by August 15 the value of the trust assets on January 1 and payment of ISF or the 1.5 percent *prélèvement*.

The reporting obligation of article 344 G *sexies* is severely sanctioned (5 percent of the trust assets with a minimum of €10,000). Regarding the 1.5 percent *prélèvement*, the *administrateur* is in principle only responsible for collection of the tax from the *constituant*. BOI-PAT-ISF-30-20-30-20161016, however, seems to make *constituant*, *beneficiaries*, and *administrateur* jointly and severally liable for payment of the tax.³¹

The difficulty here is that the *constituant's* personal position is not necessarily known by the *administrateur*, especially in the case of a discretionary trust where the trustee is no longer related to the initial settlor.

The trustee may have appointed a French resident beneficiary who became *réputé constituant* on the settlor's death. The *prélèvement* may then potentially apply to the whole trust assets and not only to assets situated in France.

Conclusion

The new tax legislation is onerous but not surprising in the current economic climate.

Regarding the increase of capital gains tax, the only tangible effect of the measure seems to have been to slow down the property market to a worrying level even if prices remain surprisingly high.³²

Many uncertainties remain, especially regarding the new trust tax and reporting obligations.

The lack of distinction between different types of trusts and estates is likely to cause complications and mismatches of tax as well as difficulties in asserting the identities of a *constituant* and the beneficiaries.

Designed to prevent French residents from using what is widely regarded as an instrument of tax evasion, the statute may only have the effect of preventing individuals from common law jurisdictions from investing in France.

France has been through a turbulent tax period. How settled matters are now is still unclear. ♦

²⁹BOI-PAT-ISF-30-20-30-20161016 No. 150.

³⁰Inserted by article 14 I. 7° of LFR 2011.

³¹BOI-PAT-ISF-30-20-30-20161016 No. 250.

³²See <http://www.paris.notaires.fr/presse/communiqués-mensuel/volumes-et-prix-fin-octobre-2012>.