

FRANCE

French trust reporting obligations: expected decree finally published

Decree n° 2012-1050 of September 14, 2012 published on September 15, 2012 finally details the reporting obligations applicable to trustees introduced by LFR 2011-900 of July 29, 2011.

The Decree, by adding three articles to Annexe III of CGI ("French Tax Code"), confirms two separate reporting obligations. The first one is for the information of the French Revenue whenever settlors, beneficiaries or trust assets are situated in France. The second one is for the assessment and payment of the 0.50 percent *prélèvement* of Article 900 J CGI with reference to Wealth tax (ISF).

Ongoing reporting obligation (Article 344 G sexies Annexe III CGI)

The constitution, modification or extinction of a trust should be declared **within a month** to the *Service des impôts des entreprises étrangères*, 10 rue du Centre 93465 Noisy Le Grand Cedex France. The decree indicates that the declaration should be made on *papier libre* ("blank paper"). CERFA form n° 14805*01 has been since published on www.impots.gouv.fr but its use is not obligatory.

The declaration should include the following information:

- the name and address of the trust;
- full details of the settlors (or fiscal settlors), trustees and beneficiaries including their dates and places of birth (or death) and addresses;
- the nature of the trust (revocable, discretionary, etc.) with full details of its terms and conditions including principles of distribution of the trust assets and income;
- "consistency" of the assets settled or distributed at the date of the event triggering the declaration (constitution, modification or extinction) with full details of the beneficiary for each and every asset; and
- modification of the trust including any amendment to its terms and conditions, change or death of any settlor, trustee or beneficiary, additional settlement or distribution and generally any event the nature of which may affect the "economy" of the trust.

Annual declaration (Article 344 G septies Annexe III CGI)

For the purpose of assessment and payment of the *prélèvement* of Article 990 J CGI (0.50 percent), an annual declaration (again on blank paper or using a CERFA form n° 14807*01) should be sent annually by June 15 of each year.

The declaration again should include:

- the name and address of the trust;
- full details of the settlors (or fiscal settlors), trustees and beneficiaries including their dates and places of birth (or death) and addresses;
- unless the declaration of Article 344 G sexies was previously lodged: nature of the trust (revocable, discretionary, etc.) with full details of its terms and

conditions including principles of distribution of the trust assets and income;

- if one of the settlors or beneficiaries is a French resident: inventory of the trust worldwide assets with their value as of January 1; and
- if none of the settlors or beneficiaries is a French resident: inventory of the trust French assets with their value as of January 1 (with the exception of financial assets).

The declaration should be sent together with payment of the 0.50 percent *prélèvement* due unless the trust assets were included in the settlor's or beneficiary's ISF (as applicable).

Deadlines

The declaration of Article 344 G sexies should be sent before December 31, 2012 for any constitution, modification or extinction until September 14, 2012. After that date, any constitution, modification or extinction should be declared within a month.

The declaration of Article 344 G septies should be sent before September 30, 2012 for this year.

The Decree therefore confirms the existence of two separate reporting obligations, the first remaining applicable even if the trustee is exempt from the second, for example if the trust no longer had a settlor, beneficiary or assets in France on January 1, 2012.

The combination of these two articles and of reporting deadlines for the first year raises questions. What covers the notion of "consistency" (*consistance*) referred to in Article 344 G sexies which seems to be distinct from the notion of a "detailed inventory and market value" referred to in Article 344 G septies. Is a detailed inventory without valuation sufficient in this respect?

It appears that by sending a detailed inventory and market value of the trust assets under Article 344 G septies, the trustee will have fulfilled his obligations under Article 344 G sexies. Equally, in terms of deadline, a complete declaration under Article 344 G septies by September 30 should have satisfied the reporting obligation of Article 344 G sexies by December 31 if the "economy" of the trust is not varied between the date of the declaration and December 31, 2012. The existence of two separate CERFA forms however suggests that a further declaration will be required by the end of the year.

Sanctions remain severe (5 percent of the trust assets with a minimum of EUR 10,000). The Decree does not detail however to what extent an incomplete or late declaration will expose to sanctions. Trustees are therefore advised to scrupulously fulfil their reporting obligations as soon as possible.

As for payment of the 0.50 percent *prélèvement*, whether the trustee is personally liable for the *prélèvement* and the possible sanctions for not paying is not clarified by the decree. Article 990 J however suggests that the trustee is only responsible for collecting the tax from the settlor who is ultimately liable for payment.

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