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French Trust Reporting Obligations

Trustees, executors, personal representatives, how this may affect you

The French Government has finally issued a decree detailing the reporting obligations on trustees resulting from the French supplementary budget of 29 July 2011 (LFR 2011). The obligations are imposed on trustees of trusts that have French resident beneficiaries or settlors, or assets situated in France. Decree number 2012-1050 of 14 September 2012 clarifies, to an extent, the duty to report imposed on trustees.

Background

In view of the wide definition of trusts and trustees in LFR 2011, the duty to report may affect executors or personal representatives whenever the estate has a "French connection" i.e. either include French property or a French resident settlor or beneficiary.

The new regime was introduced to create a specific tax regime that was previously based on case law and therefore subject to great uncertainty. The reports submitted by the trustees will assist the French Government in identifying individuals who are not complying with their Wealth Tax reporting obligations.

Wealth Tax

Article 14 of LFR 2011 put an end to the existing case law that regarded assets held in a discretionary trust as having left the settlor's estate and thereby being considered to be outside the scope of the ISF.

Article 14 of LFR 2011 now provides an irrefutable presumption concerning the trust assets that are deemed to form part of the settlor's estate until his death. Failure to declare trust assets to ISF, now results in the 0.50 percent *prélèvement* (*sui generis* levy) being imposed, for which the settlor and the beneficiaries are jointly liable.

In an attempt to subject each generation to tax, even where there is no distribution of trust assets, LFR 2011 created the notion of the "deemed fiscal settlor". Where the original settlor has died, the beneficiaries of the trust become the deemed settlors and must include the trust assets on their personal Wealth Tax Return (ISF). This ensures the trust assets are taxed each year and through all generations, akin to the relevant property regime in the UK.

As for payment of the 0.50 percent *prélèvement*, a strict reading of the law suggests that trustees are only responsible for administrating the payment for which the settlor or deemed settlor remains entirely liable.

The decree is not clear on this point and it has been suggested that the trustees may also be personally liable for the tax.

The obligations to report

The Decree confirms the two separate reporting obligations introduced into the French tax code (CGI) by the 2011 LFR 2011 for trusts existing on 31 July 2011 or trusts created since that date:

1. *The annual report*

   The first is the obligation to submit an annual report including an inventory and market value of the trust assets as at 1 January each year.

   The report will be assessed and payment of the 0.50 percent *prélèvement* due if the trust assets are not declared in the settlor's or deemed settlor's ISF.

   The deadline for the first round of annual reporting for trusts with a French connection at 1 January 2012 was extended to 30 September 2012, but thereafter it will be on 15 June each year.

2. *The ongoing report*

   The second obligation is an ongoing duty to report the creation, modification or extinction of a trust. This may include distributions to beneficiaries, a change in trustees or beneficiaries or any event that affects the "economy" of the trust.

   If a life interest trust has been reported correctly, to include a statement that income is payable to the life tenant, distributions of income should not trigger a reporting obligation.

   When this second obligation to report is triggered, the trustees are obliged to report the change within one month of the relevant date. Although this year, the deadline has been extended to 31 December 2012 for any triggering event before 14 September 2012.

Contents of the declaration

Both declarations must include the following:

- Full name of the trust;
- Full details of the settlor (or deemed settlor), trustees and beneficiaries including their dates and places of birth (or death) and addresses;
- 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; and
- Details of the trust assets.

Whereas the annual declaration must include an inventory and market value of the trust assets, the declaration to report the creation of or change in a trust is to include "*la consistance*" of the assets settled or distributed at the date of the trigger event. This is literally interpreted to mean "the consistency" of the assets.

The meaning of “*la consistance*” is uncertain. It is therefore suggested that trustees should include a full inventory and market value of the trust assets at the date of the event as required by the annual report.

The continuing obligation to report applies retrospectively to trusts that may not be required to submit an annual report this year. For example, declarations must be made by 31 December 2012 for any trust created before 14 September 2012 even if the trust excluded French resident beneficiaries before 1 January 2012.

Supporting forms

It is clear that the two reporting obligations are distinct and as a result, separate declarations need to be made to satisfy each. It is therefore suggested that trustees who are obliged to submit an annual declaration by 30 September 2012 will also be required to submit a second declaration by 31 December 2012. Reports can be made on blank paper or using the forms n° 14805*01 and n° 14807*01 issued by the French Government available on impots@gouv.fr.

Confidentiality

Trustees and personal representatives should note that where a reputable tax authority is requesting information from them, there is likely to be no breach of confidentiality under the law of England & Wales if they are to provide such information without the beneficiaries' consent. (*AG V Guardian Newspapers* (No. 2) [1990] 1 AC 109).

Sanctions

The sanction for failing to file a declaration or filing an incomplete declaration is severe at 5 percent of the trust assets (with a minimum of €10,000) and is payable by the trustees. If in doubt, given the sanctions, trustees and personal representatives should submit a report.

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For further information please contact:

Patrick Delas
Solicitor
+ 44 (0) 208 394 6387
Patrick.Delas@russell-cooke.co.uk