

## LEADER

Dear Readers, Clients, Colleagues and Friends,

We hope, first of all, that you are all keeping safe during this peculiar period of confinement. Life goes on however, and on a more practical note, to date the deadline for filing the trustees' returns in France has not been postponed by the French tax authorities (FTA).

In addition, while the scope of the trustees' French reporting requirements was extended on 14 February 2020, it remains uncertain whether the FTA will be able to issue new model forms.

The purpose of this Newsletter is to draw your attention to the extended scope and new reporting requirements which may be due by the trustees of "French connected" trusts, in addition to those indicated in our Newsletter of May 2018.

## Extended scope and new requirements in relation to trustees' reporting obligations in France

The provisions of the EU Directive 2018/843 on money laundering and terrorist financing is now transposed into French domestic law by a Decree n°2020-115 of 12 February 2020 (hereinafter called the "Decree") which entered into force on 14 February 2020.

The Decree introduced a new French connecting factor for trustees who are tax residents outside of the European Union, extended the information that must be reported by the trustees and created a reporting obligation for the persons in charge of fighting against money laundering and terrorist financing.

### Introduction of new connecting factors with France

Since 14 February 2020, a foreign trust is also deemed to be connected with France if the trustee is resident or established outside the European Union and either:

- acquires real property located in France; or
- enters into a business relationship in France as defined by the French Monetary and Commercial Code.

The provisions of the Decree have not yet been commented by the French tax authorities.

For the time being it is therefore difficult to determine the exact scope, and hence the exact consequences of these measures from a reporting standpoint.

### Additional information to be reported by all trustees

Since 14 February 2020, in addition to the already mandatory information (see our Tax Newsletter of May 2018), all trustees of trusts with a French connecting factor should report:

- the identity of the Protector, and
- the identity of any other individuals "effectively controlling" the trust or performing "similar functions".

In the absence of any comments from the French tax authorities, the exact scope and consequences of these new measures are difficult to determine. However, trustees of French connected trust should, from now on, identify and collect any appropriate information regarding the (legal or *de facto*) protectors.

## REMINDER

Since 2011, trustees of trusts with a "French connection" are required to report, on an annual basis and when certain events occur, some information to the French tax authorities.

Up until February 13, 2020, a trust is deemed having a French connecting factor when either the settlor, the trustee or one of the beneficiaries is a French tax resident, or if the trust holds at least one French located asset.

**OUR FIRST OBSERVATIONS  
ON THESE NEW MEASURES:**

**The trustee is resident or established outside of the European Union and acquires real property located in France:**

Although before February 2020 some French real estate investments made by a trust through a holding chain would fall outside the scope of the “French connection”, we are of the opinion that the provisions of the new Decree will now prevent any such indirect real estate investment from being unreportable.

**The trustee is resident or established outside of the European Union and enters into a business relationship in France:**

The “business relationship” as defined by the French Monetary and Commercial Code covers a wide range of situations and in substance aims at any professional

or commercial relationship involving, in particular, financial professionals (banks, insurance companies, investment funds, etc), advisory activities (lawyers, accountants, etc) as well as traders and merchants as a general rule, which is supposed to occur continuously within a certain period of time.

The business relationship can be provided for by a contract but may also be established when a client regularly benefits from services provided by the above-mentioned professionals.

In our opinion, this aims notably at professional trustees performing financial or advisory activities with French clients. This potentially covers a very wide scope.

**New reporting obligation bearing  
on certain categories of individual and companies**

The Decree introduced an obligation for companies and individuals who have access to the French Public Register of Trusts (i.e. administrative authorities, financial companies such as bank or insurances companies, and some intermediaries) to report to the French tax authorities any discrepancies they notice between the information reported in the Public Register and the information they may have in their records.

In practice, a bank who would receive information from one of its clients that he/she is the beneficiary of a trust, should from now on consult the Public Register of Trusts to verify that the information received matches with the information mentioned on the Register. If the information is different or if the trust is not found in the Public Register, the bank should issue a report to the French tax authorities which, in turn, could issue a request for information to the trustee.

The French tax authorities are allowed to impose a € 20,000 fine in case the trustee does not answer the request for information or if the answers provided are insufficient.

**REMINDER: WHAT SHOULD BE DONE BY THE TRUSTEES FOR 2020?**

Trustees in charge of trusts having a French connection are required to fulfill various practical obligations in accordance with French legislation, summarized below:

- **The annual trust report** is due by **15 June 2020**. In substance, trustees should provide the identity of the settlor, the beneficiaries, the protector as well as the details and market value of the trust’s assets as of 1<sup>st</sup> January 2020.
- **An event-based report** is due **within 30 days** of any event affecting a French connected trust such as creation, modification or termination. Modifications may include distributions, transfers of assets into trusts, changes in the class of beneficiaries or the allocation of the trust’s assets to certain beneficiaries.

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In view of the approaching **15 June deadline** for the 2020 annual reports, please do not hesitate to contact us if you need any further information or assistance in this respect.