

TIRARD, NAUDIN
International Tax Newsletter

LEADER

As expected, the 2019 Finance Act confirmed that trustees should file an annual return by 15th June each year, reporting the market value of all assets held in trust as of 1st January, irrespective of whether they hold real estate properties and rights or only movable assets, as long as they have a French connection.

What should be done by the trustees for 2019?

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

• Before 15 June 2019

- * Trustees should receive confirmation from each settlor (or beneficiary deemed settlor) that the fraction of the trust assets attributed to them, corresponding to the sole real estate properties held directly or indirectly, have been duly reported for the purpose of the new wealth tax (**IFI**), when applicable. As a reminder, IFI is due in respect of :
 - ⇒ For French resident individuals, **worldwide** real estate properties and rights held directly or indirectly (e.g. through French or foreign companies, entities, trusts...);
 - ⇒ For non-French resident individuals, real estate properties and rights located in France held directly or indirectly (as defined above).
- * The annual trust report (“*Déclaration annuelle*” 2181-Trust2): Trustees should provide the identity of each settlor (or beneficiaries deemed settlors) and beneficiaries as well as the market value of the trust’s assets as of **1st January 2019**. If at least one of the settlor(s) or beneficiaries has its tax residence in France, the trust’s worldwide assets should be reported, regardless of their nature (i.e. not limited to real estate). Alternatively, the trustees should only report the trust’s “French assets” (or deemed as such under article 750 *ter* of the French tax code).
- * Assuming they do not receive confirmation that the settlors (or beneficiaries deemed settlors) duly complied with their IFI reporting obligations (when applicable), trustees should pay spontaneously a specific tax amounting to 1.5% of the net market value of the assets subject to IFI as of 1st January 2019.
- An event-based report (“*Déclaration événementielle*” 2181-Trust1) is due **within 30 days** of any event affecting a French connected trust (e.g. its creation, termination or modification). Modifications may include distributions, transfers of assets into trusts, changes in the classes of beneficiaries, etc.

WARNING

Since 31st December 2016, failing to comply with the above reporting requirements may trigger the application of a minimum fixed penalty amounting to € 20,000 per missing return, or the application of an 80% surcharge applying to all French taxes which may be due in respect of the trust assets.

Assuming the trustees failed to report trusts which have had a French connection since 2011, we strongly recommend filing the missing returns as soon as possible and, most importantly, before the French tax authorities request it.

REMINDER

The French tax authorities consider that trusts are, among other French or foreign “entities”, within the scope of the **3% tax** levied each year on the market value as of 1st January of the real estate properties or rights located in France, held directly or indirectly. The concerned “entities” (including trusts) can benefit from an exemption provided that they file a 3% tax return before 15 May 2019.

In view of the approaching deadlines for the 2019 annual reports, please do not hesitate to contact us if you need any further information or assistance.