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French tax treatment of trusts with respect to inheritance and gift taxes, and wealth taxation

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French law does not recognize the trust as a domestic legal institution. That conceptual absence long created serious difficulties for French tax law, which had to deal with a foreign-law mechanism built around the dissociation between legal title, beneficial enjoyment and control. Before legislative reform, French courts and the tax authorities attempted to fit trusts into existing domestic categories. That case-by-case method was unsatisfactory. It depended heavily on the particular drafting of the trust deed, the powers retained by the settlor, the rights of the beneficiaries and the timing of distributions.

Until the reform enacted by the 2011 Amended Finance Act, it was therefore largely the courts that tried to fill the legislative gap. Their solutions were pragmatic rather than systematic, relying on analogies with familiar civil-law concepts that were not truly equivalent to the trust. Since 2012, as developed below, the French regime governing transfer taxes and wealth taxation has instead been built on a legal fiction: for French tax purposes, assets placed in a trust are, to a large extent, treated as though the trust were fiscally transparent and as though the assets remained attributable to the settlor or, in some cases, were deemed transferred directly to beneficiaries. This applies without any real structural distinction between revocable and irrevocable trusts, or between discretionary and fixed-interest trusts—an approach that greatly simplifies administration but does so at the cost of considerable over-simplification.

I. Background: from judicial approximation to statutory regulation

Before 2011, France had no coherent statutory regime specifically addressing trusts. The absence of a legislative definition meant that tax consequences had to be inferred from general principles of inheritance and gift taxation, wealth taxation, and anti-avoidance doctrines. Depending on the facts, the courts could view a transfer to or from a trust as a completed gift, a deferred transmission on death, or simply as an arrangement that had not effectively divested the settlor of the assets.

That approach suffered from three defects.

First, it was **fragmented**. The same trust might be analysed differently for different taxes.

Second, it was **fact-sensitive to the point of unpredictability**. Minor drafting variations—such as a reserved power of revocation, a power to appoint beneficiaries, or the existence of a life interest—could alter the tax outcome.

Third, it was **conceptually strained**. Civil-law notions of ownership and succession do not map neatly onto common-law trust structures. As a result, judicial assimilation often described the economic effects of a trust without truly capturing its legal nature.

The 2011 Amended Finance Act introduced a bespoke tax framework, effective essentially from 2012, to end that uncertainty. Article 792-0 bis of the French Tax Code created a tax definition of the trust for transfer tax purposes and established specific rules for taxation of assets, rights and income placed in trust. Complementary provisions also introduced reporting obligations and a specific levy designed to ensure the taxation of trust assets in the wealth-tax sphere.

II. The statutory definition of the trust in French tax law

French tax law now adopts an autonomous definition of the trust. For tax purposes, a trust is broadly any legal relationship created under the law of a state other than France by a settlor, either inter vivos or on death, whereby assets or rights are placed under the control of a trustee or administrator in the interest of one or more beneficiaries or for the achievement of a determined purpose.

This definition is deliberately broad. It seeks to capture not only classic Anglo-American trusts but also functionally similar foreign arrangements (e.g. civil law foundations).

The statute also gives a broad meaning to the notion of **settlor** (*constituant*). In principle, this is the individual who established the trust. However, in some circumstances the law substitutes another person—particularly a beneficiary treated as a deemed settlor after the death of the original settlor—so that the French tax charge can continue to attach to the trust fund. This deeming mechanism is a key aspect of the French model, because it prevents the trust from becoming ownerless for tax purposes upon the settlor's death.

III. The core logic of the French regime: fiscal transparency by legal fiction

The unifying idea behind the modern French treatment of trusts is that the trust is not allowed to form an autonomous tax screen between the assets and the persons whom French tax law wishes to charge. The regime does not truly analyse the internal property law of the trust. Instead, it works through attribution and deemed transmission.

In broad terms:

- during the settlor's lifetime, trust assets are often treated as remaining attributable to the settlor for wealth-tax purposes;
- on the settlor's death, the assets in trust are treated as if transmitted to the beneficiaries or otherwise subjected to a specific transfer-tax charge;
- if ordinary inheritance and gift tax rules cannot be applied satisfactorily, a special trust-specific charge steps in.

France seeks to ensure that putting assets into trust does not postpone taxation indefinitely, shift it outside the ordinary inheritance-tax structure, or permit uncertainty over beneficial entitlement to defeat the tax base.

Whether the trust is revocable or irrevocable, discretionary or fixed, vested or contingent, is often secondary or even irrelevant to the operation of the statutory machinery.

IV. Inheritance and gift tax treatment of trusts

1. Taxable events

The French rules on ***droits de mutation à titre gratuit***—that is, inheritance and gift taxes—apply to transfers of assets and rights placed in trust in several situations. The statute targets, among other things:

- assets or rights transferred into a trust;
- distributions made from the trust to beneficiaries;
- assets, rights or capitalized products remaining in the trust upon the settlor's death.

The key issue is not merely whether there has been a formal transfer under foreign trust law, but whether French tax law identifies a taxable gratuitous transmission, either immediately or by deeming one to occur at death (CGI art. 792-0 bis).

2. Territorial scope

French inheritance and gift tax may apply in the ordinary situations familiar to French transfer-tax law, in particular where:

- the deceased or donor is resident in France for tax purposes;
- the beneficiary is resident in France;
- the assets are located in France.

The trust provisions are designed to ensure that once a French nexus exists, the assets cannot escape French transfer taxation because title is held by a trustee under foreign law.

The provisions of the tax treaty dealing with gift and inheritance taxes signed between the US and France on November 24, 1978 amended on December 2004 alter the rights for France to collect gift and inheritance tax when the donor is resident in the US. France cannot any longer collect inheritance tax on assets transferred by inter vivos gifts or by death to French resident heirs, donees or beneficiaries of trusts. If the US citizen dies tax resident in France French inheritance tax applies on his worldwide assets with the exception of real estate properties located in the US (see our report prepared for the ACTEC La Quinta meeting on March 23, 2019, on the US/France treaty applying to gift and inheritance taxes signed on November 24, 1978, amended December 8, 2004).

3. Taxation of distributions during the settlor's lifetime

Where the trust makes a gratuitous distribution to a beneficiary during the settlor's lifetime, French law may treat that distribution as a taxable gift. In principle, the tax treatment seeks to identify the relationship between the settlor and the beneficiary, because French gift tax is normally assessed according to kinship and corresponding allowances and rates.

This means that if a distribution can be attributed to a settlor-beneficiary relationship that is sufficiently identifiable, ordinary gift-tax brackets may apply. In practice, however, that analysis may be difficult in discretionary trusts where no beneficiary had an enforceable right before the trustee's decision. The French regime deals with such complexity not by engaging deeply with trust law, but by using statutory deeming rules.

4. Taxation on the settlor's death

The centerpiece of the French regime is the treatment of trust assets on the **death of the settlor**. Rather than waiting for a later distribution, the law generally taxes the assets, rights and accumulated products held in trust at that moment. The objective is clear: death should trigger transfer taxation even if the trust continues and even if beneficiaries' rights remain uncertain or discretionary.

Three broad outcomes must be distinguished.

A. Ordinary inheritance tax where the share of each beneficiary is determined

If the trust deed, or the factual operation of the trust, makes it possible to identify the portion attributable to each beneficiary, those portions are in principle taxed under the ordinary inheritance-tax rules according to the family relationship between the settlor and each beneficiary. The normal allowances and rate schedules may then apply.

B. Taxation at the highest lineal rate where beneficiaries are descendants but rights are indeterminate

If the beneficiaries are descendants of the settlor but the trust arrangement does not permit a sufficiently precise allocation of the shares at death, the legislation may impose tax at the highest rate applicable in the direct line on the value of the relevant assets (45%).

This rule is already a departure from ordinary inheritance law. It reflects the legislature's refusal to let uncertainty over shares delay taxation, while still preserving a preferential rate where the beneficiary class is confined to descendants.

C. Taxation at the 60% rate in other cases

In other situations—especially where the beneficiaries cannot be precisely identified by share, or where the beneficiary relationship does not justify a more favorable rate—the trust assets may be subject to a special charge aligned with the **60% rate**, which corresponds to the French transfer-tax rate generally applicable between unrelated persons.

This is the regime's punitive edge. It is intended both as a default rule and as a deterrent against the use of opaque or highly discretionary trust structures that prevent the ordinary inheritance-tax framework from operating smoothly.

5. No meaningful distinction between revocable/ irrevocable and discretionary/fixed trusts

One of the most striking features of the French system is its relative indifference to distinctions that are central in common-law trust analysis.

Under many foreign legal systems, whether a trust is:

- **revocable** or **irrevocable**;
- **discretionary** or **fixed-interest**;
- accompanied by extensive reserved powers or genuine divestment,

would be crucial to determining whether the settlor has truly disposed of the property and whether beneficiaries hold vested interests.

French tax law, by contrast, often compresses these distinctions into a single functional approach. For wealth-tax purposes, the assets remain broadly tied to the settlor. For inheritance-tax purposes, death becomes the decisive moment for taxing the trust fund, whether or not the trust is irrevocable and whether or not beneficiary rights are fixed. That is why it is fair to say that the current French model rests on a legal fiction of transparency or deemed ownership rather than on a nuanced understanding of the trust's internal legal structure.

6. Reporting and collection

The trustee is subject to important reporting obligations to the French tax authorities where the trust has a French connection, including where the settlor, a beneficiary or assets have the requisite French nexus. The reporting regime is essential to the effectiveness of the substantive tax rules. It covers disclosure of the trust's creation, modification, termination and annual content in relevant cases. Significant penalties apply for failures to comply.

V. The specific trust levy as a backstop in transfer tax matters

The French legislature understood that ordinary inheritance and gift-tax mechanisms could be defeated by certain trust structures, particularly discretionary trusts. It therefore created a specific trust-related taxation mechanism to ensure that assets remaining in trust after the settlor's death do not fall outside the tax net.

This specific charge functions as a **backstop**. If the assets cannot be satisfactorily taxed under ordinary succession rules by reference to identified beneficiaries and shares, taxation is imposed directly under the special trust provisions. In practice, this means that uncertainty or indeterminacy in the trust deed does not eliminate taxation; it often merely pushes the structure into a harsher rate environment.

That design reveals the philosophy of the reform: the legislature preferred a rough but comprehensive rule to a refined but porous one.

VI. Wealth taxation: from ISF to IFI

1. Historical position: ISF

When the trust reform was enacted in 2011, France still levied the **Impôt de solidarité sur la fortune** (**ISF**), a broad annual wealth tax. The reform inserted trust-specific provisions to ensure that assets held through a trust remained within the wealth-tax base. The governing idea was that trust assets should be included in the taxable estate of the settlor, or of the deemed settlor, regardless of the trust's formal autonomy under foreign law.

The legislation also introduced a special levy on trust assets, intended both as a substitute and as an enforcement tool where normal wealth-tax inclusion might otherwise fail.

2. Current position: IFI

Since 2018, ISF has been replaced by the **Impôt sur la fortune immobilière** (**IFI**), which is confined to real-estate wealth. The trust logic, however, remains substantially the same: taxable real-estate assets or rights held through a trust are not ignored. They are, in principle, included in the IFI base of the settlor or deemed settlor when French law has the relevant taxing nexus.

The shift from ISF to IFI changed the **scope of assets taxed**, not the **underlying technique**. The French system still refuses to allow the trust form to prevent attribution of taxable wealth to an individual.

VII. Inclusion of trust assets in the wealth-tax base

1. Principle of attribution to the settlor

For wealth-tax purposes, the basic rule is one of attribution to the **settlor**. Assets and rights placed in trust are deemed to belong to the settlor for purposes of the annual wealth tax, now IFI insofar as French taxable real estate is concerned. Upon the settlor's death, this attribution may continue via the concept of the **deemed settlor**, typically involving beneficiaries identified by statute.

This is perhaps the clearest illustration of the French legal fiction. Even if, under the governing foreign law, the settlor no longer owns the assets, has transferred legal title to the trustee, and may have no vested beneficial rights, French tax law may still treat the assets as part of the settlor's taxable wealth.

2. Consequences of the attribution rule

The practical consequences are significant:

- the settlor must in principle report taxable trust assets in the annual wealth-tax return where the thresholds and territorial conditions are met;
- the existence of the trust does not remove the assets from the personal tax base;

This rule applies in a deliberately broad manner and only imperfectly reflects the economic diversity of trusts. A fully discretionary irrevocable trust settled years earlier may be treated in a manner structurally similar to a revocable family trust over which the settlor retained extensive powers. From a trust-law standpoint, that is highly reductive. From the French tax-policy standpoint, it is intentional.

3. Territorial scope under IFI

Under IFI, French residents are taxable on their worldwide taxable real-estate assets, subject to treaty and statutory limitations, while non-residents are generally taxable only on French real-estate assets. Trust assets follow that same territorial logic. Therefore, where French real estate, or real-estate rights falling within IFI, are held via a trust, the trust will not prevent inclusion in the IFI base if the statutory nexus exists.

The French-US tax treaty dealing with income tax and wealth tax signed on August 31, 1994 amended on December 8, 2004 does not prevent France to apply IFI to US citizens, regardless their country of residence.

VIII. The special levy on trust assets

French law also introduced a **specific levy on trust assets** at the flat rate of 1.5% to reinforce wealth-tax compliance. Historically linked to the ISF framework and maintained in adapted form with IFI-related logic, this levy is designed to apply where taxable assets held in trust have not been properly included in the tax base of the settlor or deemed settlor.

Its function is therefore both **substitutive** and **sanctioning**. It closes enforcement gaps by allowing the tax authorities to charge the trust sphere directly when personal wealth-tax inclusion has not occurred as required. The trustee is central to the administration of this mechanism, including declaration and payment obligations.

The importance of this levy should not be understated. It demonstrates that French law does not rely only on conceptual attribution; it also creates an operational collection device to ensure that the fisc can recover tax notwithstanding the foreign-law interposition of the trust.

IX. The role of the deemed settlor after death

A recurring technical problem is that the settlor, once deceased, can no longer serve as the person to whom trust assets are attributed. French law addresses this by designating a **deemed settlor** in certain circumstances. This mechanism allows both transfer taxation and wealth-tax attribution to continue after the original settlor's death.

The deemed-settlor device is essential to the coherence of the French model. Without it, trust assets could enter a form of fiscal limbo after death: no longer attributable to the deceased settlor, but not yet definitively vested in beneficiaries. The statute avoids that result by attributing the trust fund to a substitute taxable person.

Again, this is less an attempt to mirror the actual legal structure of the trust than a legislative choice to preserve the continuity of the tax charge.

X. Critical assessment of the French approach

The French regime has clear strengths.

- It provides **certainty** where pre-2011 law offered only analogies and litigation.
- It prevents the trust from being used as a **vehicle of indefinite tax deferral**.
- It secures the French tax base through **reporting duties, attribution rules and backstop levies**.

But its weaknesses are equally clear.

1. Excessive simplification

The legislation largely ignores distinctions fundamental to trust law. A revocable settlor-controlled trust and an irrevocable discretionary trust administered independently may create very different patterns of control and enjoyment, yet French tax law often treats them through the same attribution logic.

2. Tension with legal reality

By attributing assets to the settlor or deemed settlor even where foreign law would deny any continuing proprietary interest, the French rules operate through a fiction that can be difficult to reconcile with the legal analysis of the governing trust law.

3. Potential over-taxation

Because the system is designed to avoid non-taxation at all costs, it may produce harsh outcomes, especially where beneficiary rights are uncertain. The recourse to high default rates, including the 60% rate in some cases, can result in taxation that is disconnected from the real family or economic context of the arrangement.

4. Administrative burden

The reporting obligations imposed on trustees are extensive, and the penalties for non-compliance are severe. For foreign trustees unfamiliar with French law, this can be particularly onerous.

XI. Conclusion: a comparative perspective

The French tax treatment of trusts illustrates the tension that arises when a civil law system is required to tax an institution derived from foreign legal traditions that it does not itself recognize.

For many years, in the absence of a clear statutory framework, French courts and the tax authorities attempted to address trusts by analogy with domestic legal concepts, notably gifts, successions and interposed ownership structures. That case-by-case approach produced uncertainty and often failed to reflect the true legal and economic features of the trust relationship.

The reform introduced by the Amended Finance Act for 2011, applicable from 2012 onward, was intended to put an end to that uncertainty by establishing a comprehensive tax regime for trusts, both for transfer taxes and for wealth taxation. It did so, however, through a broad legal fiction: for French tax purposes, the assets placed in trust are in substance reattributed to the settlor, or failing that are taxed through specific mechanisms designed to prevent the trust from operating as a shelter from inheritance tax or wealth tax. This approach is marked by a strong anti-avoidance rationale and by the legislature's determination to ensure that the interposition of a trust does not defeat the application of French tax rules.

That legislative choice has the advantage of simplicity and administrative efficiency, but only at the price of a considerable degree of conceptual distortion. French tax law largely disregards distinctions that are central in trust law, in particular whether the trust is revocable or irrevocable, discretionary or fixed, and whether the settlor has effectively relinquished all powers and economic benefit. From a trust-law perspective, those distinctions may fundamentally alter the rights of the parties and the degree of control retained by the settlor. Yet, for French tax purposes, they are often neutralized in favor of a unitary and highly artificial treatment.

As a result, the French regime is best understood not as an attempt to tax the trust as such, but rather as a mechanism for looking through the trust and reallocating its assets to taxable persons identified by statute. In matters of inheritance and gift tax, this is achieved through specific charging provisions that seek to tax transfers to beneficiaries, or, in some circumstances, to impose a sui generis levy where ordinary rules cannot readily apply. In matters of wealth taxation, the same logic prevails insofar as the trust assets are, as a matter of principle, included within the taxable estate of the settlor or deemed settlor, subject to special reporting obligations and enforcement mechanisms.

Ultimately, while the post-2011 framework undeniably brought coherence where there had previously been fragmentation, it did so by adopting a deliberately simplified and sometimes over-inclusive model.

A comparison with the United States usefully shows that French law and U.S. law do not merely tax trusts differently; they proceed from fundamentally different legal premises.

In the United States, the trust is a fully recognized legal institution and the tax treatment of trust property for estate and gift tax purposes generally depends on a substantive analysis of the powers retained by the settlor, the rights conferred on beneficiaries, and the degree to which a transfer to the trust constitutes a completed transfer for tax purposes. In other words, U.S. tax law does not generally ignore the internal structure of the trust. On the contrary, it relies heavily on that structure. Whether trust assets are included in the settlor's gross estate at death depends to a large extent on whether the settlor retained powers or interests of the kind described in the federal estate tax provisions, notably where the settlor retained enjoyment of the property, a right to designate who shall enjoy it, or a power to alter, amend, revoke or terminate the trust.

This means that, under U.S. law, the distinction between a **revocable trust** and an **irrevocable trust** is of central importance. Assets transferred to a revocable trust will ordinarily remain includible in the settlor's taxable estate because the settlor has not truly divested himself or herself of dominion and control. By contrast, assets transferred to an irrevocable trust may, depending on the precise drafting and retained powers, fall outside the settlor's gross estate if the transfer is treated as complete and if the settlor has not retained powers triggering estate tax inclusion. The same conceptual distinction also matters for gift tax purposes, because a transfer to trust is not taxed in the same way if it is incomplete, revocable, or subject to retained powers.

The U.S. system therefore adopts an essentially **functional** approach. It asks whether the settlor has truly made a completed transfer and whether, notwithstanding the formal transfer to trustees, the settlor has kept sufficient powers or economic enjoyment to justify estate tax inclusion. This approach is technically complex, but it is conceptually aligned with trust law itself, because it treats the trust as a genuine legal arrangement whose tax effects vary according to its actual terms and operation.

The French system, by contrast, is based on a markedly different logic. Since France does not recognise the trust as a domestic legal institution, the legislature did not attempt to build a nuanced tax regime by reference to the internal categories of trust law. Instead, since the 2011 reform effective from 2012, French tax law has treated the trust through a set of specific anti-avoidance provisions designed to ensure that the interposition of a foreign trust does not prevent the application of French transfer tax rules.

As a result, the French approach is far less sensitive than the U.S. system to distinctions that are fundamental under Anglo-American trust law. In principle, French succession tax rules do not turn primarily on whether the trust is revocable or irrevocable, nor on whether it is discretionary or fixed, but on the statutory fiction through which the trust assets are attributed and taxed for the purposes of droits de mutation à titre gratuit. In that respect, the French legislation is deliberately reductive: it seeks not to replicate the legal logic of the trust, but rather to neutralize it fiscally.

The contrast may be put more directly. In the United States, the tax question is usually: **what powers did the settlor retain, and was the transfer complete?** In France, the question is more often: **how should the assets held in the trust be taxed so that the trust does not frustrate the French rules on gratuitous transfer taxation?** The former approach is analytical and trust-sensitive; the latter is protective and trust-neutralising.

This difference also explains why the French regime may appear over-inclusive from a U.S. perspective. A U.S. lawyer would naturally regard a fully irrevocable trust, in which the settlor has definitively divested himself or herself of any power or beneficial enjoyment, as materially different from a revocable living trust or from a trust over which the settlor retains dispositive powers. U.S. federal estate tax law is built around precisely those distinctions. French law, however, tends to give them much less weight in the field of transfer taxation, because its principal concern is to prevent trust structures from creating a gap in the tax base. The result is a system that is simpler in appearance, but also rougher and less closely calibrated to the legal and economic realities of particular trust arrangements.

Accordingly, the comparison with U.S. law confirms the central characteristic of the modern French regime: it is not a tax system built upon the law of trusts, but a tax system built against the risk that trusts may displace the ordinary operation of French succession tax rules. That is the key conceptual difference between the two models. The U.S. model differentiates according to retained powers, completed transfers and beneficial interests; the French model, at least in this field, largely substitutes a legislative fiction for those distinctions and thereby subjects trust property to a unitary tax framework that is intentionally indifferent to much of the internal diversity of trusts.

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