

FRENCH REPORTING OBLIGATIONS FOR FOREIGN FINANCIAL TRUSTS

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Tags

Annual Declaration
Event-Based Declaration
Foreign Financial Trusts
U.S.D.M.T.N.

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INTRODUCTION

This article provides a general overview of the French information reporting obligations regarding foreign financial trusts. In general, the obligations are broad, the scope of reporting persons and transactions is broader, and the risk of penalties is severe.¹

This article also addresses relatively recent rulings issued by French Tax Authorities (“F.T.A.”) that provide some relief. After explaining the rulings, the article concludes that more formal general guidance is required in order to provide consistent assurance to foreign investors that use foreign trusts to pool funds that are used to acquire only financial assets in France.

BACKGROUND

In order to provide a legal and tax framework for trusts, several laws have been enacted since 2011 that address the filing obligations of trusts in France. These include (i) the implementation of a Trust Register, (ii) the imposition of French Income Tax and French inheritance and gift taxes, and (iii) the imposition of French real estate wealth tax to French tax-resident beneficiaries of assets held by a trust.

These laws also include reporting obligations regarding trusts pursuant to Articles 1649 AB and 369 of Appendix II of the French Tax Code (“F.T.C.”). Two major tax returns must be filed:

- One return implements an event-based reporting obligation related to the constitution, modification, or dissolution of a trust, including amendments to its terms (F.T.C., art. 1649 AB, 1° and 2°) and
- The second return implements an annual trust obligation to report the market value as of January 1 of each year regarding assets and rights placed in a trust and their capitalized income (F.T.C., art. 1649 AB, 3°).

In addition, the F.T.A. issued guidelines² (“F.T.A. Guidelines”) aimed at clarifying the application of these rules. In particular, the F.T.A. Guidelines address foreign financial trusts, which are (i) trusts formed under foreign law, (ii) having only non-French individuals as settlor and beneficiaries, and (iii) financial investment assets as the only assets located in France.

¹ See D. Hadjiveltchev, A. Meidani, L. Soubeyran-Viotto, “[French Treatment of Foreign Trusts](#),” in *Insights*, Vol. 8 Number 1, 2021-01.

² BOI-DJC-TRUST-30/03/2022.

French reporting obligations can be a burden for the trustees of foreign financial trusts. Often, foreign trustees are not aware of the full scope of the French rules. Even when the rules are known by the trustee, the rules are ambiguous and imprecise, leading to legal uncertainty.

The problem often affects U.S. individuals who invest in French financial assets through trusts upon the recommendation of U.S. asset managers or private bankers. Programs to issue U.S. Dollar Denominated Medium-Term Notes (“U.S.D.M.T.N.’s”) represent a major source of U.S. Dollar liquidity for French banks. Typically, the U.S.D.M.T.N.’s are pooled through a U.S.-based trust considered to be an investment trust for U.S. income tax purposes. These U.S.D.M.T.N.’s are issued by the head office of French banking institutions rather than U.S. offices. Consequently, they are considered to be French assets under the F.T.C.³

Because the U.S.D.M.T.N.’s are French assets and the trusts are U.S. domestic trusts, U.S. banking institutions face French reporting issues in connection with their U.S. clients and customers at the time reporting events occur.

SCOPE AND CONTENT OF FRENCH REPORTING OBLIGATIONS REGARDING TRUSTS

The first step in understanding the reporting obligations in France is to identify the different actors under French law.

- **The trustee:** The trustee is not explicitly defined by the French tax law. Nevertheless, French tax law considers that the trust is under the control of the trustee.
- **The settlor:** The settlor is referred to in the statute as follows:⁴
 1. Either the natural person who set it up [*i.e.*, the trust], or, where it was set up by a natural person acting in a professional capacity or by a legal entity, the natural person who placed assets and rights in it.⁵
- **The beneficiary:** The beneficiary is the person designated as the recipient of the trust income paid by the trustee and/or as the beneficiary of the trust assets or rights, during the life of the trust or at the time of its termination.

Pursuant to Article 1649 AB of the F.T.C., the trustee is subject to several reporting obligations in France. The reporting obligations are described in the statute as follows:

- I.- The trustee of a trust defined in article 792-0 *bis* whose settlor or at least one of whose beneficiaries is domiciled for tax purposes in France or which includes an asset or a right located therein, the trustee of a trust defined in article 792-0 *bis* established or resident outside the European Union when acquiring real estate or entering into a business relationship in France pursuant to

³ Art. 750 ter.

⁴ F.T.C., art. 792-0 bis, I-2.

⁵ All English language recitations of provisions of the F.T.C. are unofficial.

Article L. 561-2-1 of the French Monetary and Financial Code, as well as directors whose tax domicile is in France, are required to declare the following information:

- 1° The creation, modification or termination of the trust, as well as the content of its terms;
- 2° Information concerning the surname, first names, address, date, place of birth and nationality of the beneficial owners of the trusts, defined as all natural persons having the capacity of administrator, settlor, beneficiary and, where applicable, protector, as well as any other natural person exercising effective control over the trust or performing equivalent or similar functions;
- 3° The market value on January 1st of the year.

To illustrate, the following trustees are subject to the reporting obligations related to trusts:

- A trustee of a trust for which (i) the settlor or at least one of the beneficiaries is resident for tax purposes in France or (ii) property or rights located in France are included in the trust assets
- A trustee whose tax residence is in France
- A trustee of a trust established or resident outside the European Union when the trust acquires real estate or enters into a business relationship in France pursuant to Article L 561-2-1 of the French Monetary and Financial Code

Thus, in principle, only a trustee falling within the scope of one or more of the above reporting obligations is required to comply and file a report. If such covered trustee fails to comply with one of the reporting obligations, penalties are imposed. See Article 1736, IV *bis* of the F.T.C., which provides that

IV bis. Infractions of article 1649 AB are punishable by a fine of €20,000.

Furthermore, Article 1754, V-8 of the F.T.C. provides that

8. The settlor and the beneficiaries subject to the levy under article 990 J are jointly and severally liable with the trust administrator for payment of the fine provided for in IV *bis* of article 1736.

In line with F.T.A. Guidelines⁶ and referring to the origins of the French tax law on trusts as intended by the legislature, the French Supreme Administrative Court⁷ (“*Conseil d’Etat*”) has ruled that the term “beneficiaries” refers to “deemed settlor” beneficiaries. Thus, § 80 of the F.T.A. Guidelines identifies covered beneficiaries in the following terms:

⁶ BOI-CF-INF-20-10-50-26/05/2021, #80.

⁷ *Conseil d’Etat*, 11 déc. 2020, no 442320, Sté Sequent (North America).

“Thus, in principle, only a trustee falling within the scope of one or more of the above reporting obligations is required to comply and file a report.”

* * * the beneficiary who, following a transfer, is substituted to the initial settlor, or to the person who previously acted as settlor (*i.e.* the previous “deemed settlor” beneficiary).⁸

However, F.T.A. Guidelines related to trusts⁹ specify the definition of the settlor of a trust in the following way:

Article 792-0 *bis* of the F.T.C. provides that the settlor of a trust is the individual who set it up. Where the trust has been set up by an individual acting in a professional capacity, or by a legal entity (in the case of trusts created by the trust administrator alone, for example), the settlor is the individual who has directly or indirectly placed assets or rights in the trust.

The application of this definition is limited to the provisions of the F.T.C. related to registration duties, the French real-estate wealth tax and the *sui generis* levy pursuant to article 990 J of the F.T.C.

For further information on this point, please refer to BOI-PAT-IFI-20-20-30-20.

§90

This definition of the settlor makes it possible to grasp the economic reality of a trust without being able to oppose a legal appearance. In practice, it is necessary to identify the “true” settlor in cases where the settlor of a trust, who is the only person to appear in the trust deed, is a legal entity - for example, an asset management company or a credit institution - or a natural person acting in a professional capacity who is, in reality, acting as the agent of a natural person from whose assets the assets placed, directly or indirectly through one or more legal entities, in the trust originate.

F.T.A. GUIDELINES – CURRENT AND PRIOR TO 2018

In the latest version of the official F.T.A. Guidelines, a paragraph related to event-based trust reporting obligations has been inserted. It provides as follows:

In the case of trusts whose settlor and beneficiaries are all non-French residents, and whose assets located in France within the meaning of article 750 *ter* of the F.T.C. consist exclusively of financial investments, this obligation applies as follows:

- the trustees of the trusts in which these financial investments have been placed at the time of their creation or at the time of subsequent modifications are bound by the reporting obligation;

⁸ Ccl. Karin Ciavaldini under CE, Dec. 11, 2020, no 442320, Sté Sequent (North America).

⁹ BOI-DJC-TRUST-30/03/2022, #80.

- in other cases, the trusts' administrators are only bound by this reporting obligation when the settlor or one of the beneficiaries becomes resident in France within the meaning of article 4 B of the F.T.C.

In the part of the latest version of the F.T.A. Guidelines related to the annual trust reporting obligation, the following paragraph has been inserted:

The annual return includes the following information: * * *

- if none of the settlors, deemed settlors or beneficial owners is domiciled in France for tax purposes, a detailed inventory of the assets, rights and capitalized income located in France and placed in the trust, as well as their market value on January 1 of the year.”

Previous F.T.A. Guidelines as to annual trust reporting obligation which were repealed in 2018 excluded trusts holding French financial assets as their only French assets. The F.T.A. Guidelines stated that the reporting obligation was “*excluding financial investments pursuant to Article 885 L of the F.T.C.*”

Following the reform of French wealth tax in 2018, article 885L was removed from the F.T.C. and the related F.T.A. Guidelines were repealed. As a result, there no longer is any explicit exclusion from the annual reporting obligation for foreign trusts holding only French financial assets as their sole French assets. The trustee of a trust holding French financial assets is therefore now required to comply with the reporting obligation.

However, the new paragraph related to the event-based reporting obligation seems to provide a broader exemption from the reporting obligations. It provides that if none of the settlor/beneficiaries of a trust is a French tax-resident, a reporting obligation exists only upon (i) the constitution of the trust, if French financial assets are held from the beginning and (ii) upon every modification of the trust resulting in the acquisition of a new investment of French financial assets or a sale of French financial assets. This rule limits the reporting obligations of such trusts when no settlors/beneficiaries are French tax-residents, while allowing the F.T.A. to be aware of any change in the French assets held by the trust.

Maintaining the annual reporting obligation when the event-based reporting obligation is not required seems illogical.

RECENT RULINGS ISSUED BY THE F.T.A.

Pursuant to article L.80 B, 1° of the French Tax Procedure Code (“F.T.P.C.”), taxpayers can request a ruling from the F.T.A. regarding the interpretation of the F.T.C. When issued, the ruling represents a formal position that can be relied upon by taxpayers.

Based on this provision, two rulings have been issued by the F.T.A. to clarify the French reporting obligations regarding foreign trusts owning French financial



“ . . . the F.B.F. requested guidance concerning the scope of the reporting obligation related to the annual declaration in the case of a trust whose settlor and beneficiaries were not French tax-resident and whose assets consisted exclusively of French financial assets.”

assets.¹⁰ One ruling request was filed with the *Service de la sécurité juridique et du contrôle fiscal* (the “Service”) on January 4, 2022, asking for more precise guidance about the scope of the reporting obligation related to the event-based trust return in the case of a trust whose settlor and beneficiaries were not French tax residents and whose assets consisted exclusively of French financial investments. On February 7, 2022, the Service ruled that the procedures for filing an event-based trust return were not affected by the repeal of the French wealth tax guidelines. As a result

the administrators of the trusts [, *i.e.*, the trustees,] in which these financial investments were placed at the time of their creation or at the time of subsequent modifications [are required to file a report regarding the acquisition of assets];

- in other cases, the trusts’ administrators are only bound by this reporting obligation when the settlor or one of the beneficiaries becomes resident in France within the meaning of article 4 B of the F.T.C.

On March 30, 2022, this position of the Service was officially included in the F.T.A.’s Guidelines related to the trusts reporting obligations, in the section related to event-based reporting obligation:¹¹

With regard to trusts whose settlor and set of beneficiaries are all non-French residents and whose assets located in France within the meaning of article 750 *ter* of the F.T.C. consist exclusively of financial investments, this obligation is understood as follows:

- the trustees of the trusts in which these financial investments have been placed at the time of their creation or at the time of subsequent modifications are bound by the reporting obligation;
- in other cases, the trusts’ administrators are only bound by this reporting obligation when the settlor or one of the beneficiaries becomes resident in France within the meaning of article 4 B of the F.T.C.

The second ruling request was filed with the Service on January 4, 2023, by the *Fédération Bancaire Française* (“F.B.F.”), a professional association of French banking institutions. In it, the F.B.F. requested guidance concerning the scope of the reporting obligation related to the annual declaration in the case of a trust whose settlor and beneficiaries were not French tax-resident and whose assets consisted exclusively of French financial assets.

On June 28, 2023, the Service replied that the annual declaration obligation does not apply in the context described, stating:

It will be accepted that the annual trust return provided for in Article 1649 AB of the CGI does not apply when, on the one hand, the trust has no settlor, beneficiary deemed to be a settlor or beneficiary resident in France for tax purposes and, on the other hand, the trust

¹⁰ To the exception of any other type of French assets (*i.e.*, French real estate assets) which would lead to filing obligations in France.

¹¹ BOI-DJC-TRUST-30/03/2022, #190.

only includes in its assets as property located in France financial investments within the meaning of former Article 885 L of the F.T.C. in force on December 31, 2017.

OUTSTANDING ISSUES

In light of the answers provided by the Service in respect to the event-based declaration and the annual declaration, it seems that additional questions need to be addressed by the Service on the application of the event-based trust reporting obligation where (i) the trust settlor and beneficiaries are not French tax residents and (ii) the assets of the trust consist French financial assets, exclusively.

F.T.A. Guidelines¹² that reflect article 369 Appendix II of the F.T.C. specify the following with regard to the definition of the term “modification” made to the trust:

[M]odification means any change in its terms, mode of operation, settlor, beneficiary deemed to be settlor, beneficial owner, administrator, any death of one of them, any new entry into the trust, or any exit from the trust of property or rights, any transmission or allocation of property, rights or proceeds of the trust and more generally, any modification of rights or facts likely to affect the economy or operation of the trust concerned.

In comparison to the ruling, the F.T.A. Guidelines¹³ do not exclude from the reporting obligation modifications that merely reflect successive purchases and sales of securities contained in the trust portfolio. Event-based declarations are not required given the repetitive and continuous rhythm of these purchase and sale transactions.

In line with the same logic, it seems that this general definition of the term “modification” should cover the specific and restricted case of foreign trusts (i) set up by foreign settlors, (ii) for the benefit of persons who are not residents of France, and (iii) for the purpose of investing solely in French financial assets. By their very nature, those trusts limit French transactions to purchase and sale transactions of French securities.

PATH FORWARD

It is suggested that the F.T.A. Guidelines should be clarified to take into consideration the origins and logic of the exception¹⁴ that successive purchases and sales of securities contained in the portfolio do not constitute modifications that must be declared by the trust administrator (*i.e.*, the trustee), provided that all sums deriving from the sales of securities remain in liquid assets in the portfolio or are reinvested in portfolio securities. In particular, the following two modifications should be made to the F.T.A. Guidelines.

¹² Paragraph #180 of the BOI-DJC-TRUST-30/03/2022.

¹³ Paragraph #320 of the BOI-DJC-TRUST-30/03/2022.

¹⁴ Already provided for in paragraph #320 of the BOI-DJC-TRUST-30/03/2022.

- In the case of a trust whose settlor and beneficiaries are not French tax-resident and whose assets consist exclusively of French financial assets, the Guidelines should provide that the transfer or acquisition of French securities by this specific type of trust in the context of regular and successive purchase/sale operations do not constitute a modification¹⁵ requiring the filing of an event-based trust reporting obligation each time a French security is acquired/sold.
- In the case of a trust whose settlor and beneficiaries are not French tax-resident and whose assets consist exclusively of French financial assets, the Guidelines should provide that interest and dividends arising from the management of the securities portfolio by this specific type of trust does not give rise to an obligation to file an event-based declaration.

CONCLUSION

The F.T.A. have issued two rulings which are a good starting point to allow trustees to escape from the burdensome filing obligations for trusts with no French tax-resident settlors/beneficiaries owning French financial assets.

Nonetheless, additional guidance from the F.T.A. is needed to clarify that event-based filing is not required to report the turnover of French securities as part of ongoing management of portfolios managed by a trust that has neither a French resident settlor nor a French resident beneficiary.



¹⁵ Pursuant to Article 369 of Appendix II of the F.T.C.

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