

New Guidelines Exempt Employee Benefit Trusts From French Reporting Requirements For Trusts

On 16 October 2012, the French tax authorities issued their long-awaited official guidelines on the new reporting requirements for trusts. The good news is that the French tax authorities have provided an express exemption from the reporting requirements for certain trusts which many employee benefit trusts (EBTs) will be able to take advantage of.

EBTs are in principle subject to the reporting requirements for trusts

As indicated in our client briefing in September 2012, the French reporting requirements for trusts came into force on 15 September 2012. An initial report, including information on the trust and its assets, had to be filed with the French tax authorities by 30 September 2012. Given the very broad scope of the reporting requirements, EBTs (1) with a French tax resident settlor or which include French tax resident-employees within the class of beneficiaries or (2) which hold assets located in France, are in principle subject to these reporting requirements. Although the French tax authorities had said informally that they were considering whether or not to exempt EBTs from the reporting requirements, it was not certain whether the exemption would be provided or what its scope would be.

In the light of this uncertainty and the potential sanctions for a failure to report (a maximum penalty of 5% of the value of all of the assets held in the trust), some trustees of EBTs decided to file a report by 30 September 2012.

The new guidelines expressly exempt many EBTs from the reporting requirements

The new guidelines from the French tax authorities state that trusts created by a company or a group of companies *for their own account* whose settlor is not an individual (or a professional or entity acting for an individual) do not qualify as a trust for French tax/reporting purposes. This exemption was already referred to in a revenue ruling published on 23 December 2011, but it was not clear whether this applied to EBTs. The new guidelines resolve this uncertainty by providing that "*trusts created by companies and dedicated to the management of employee savings plans or employee shareholding schemes*" are an example of a trust that has been created by a company or a group of companies for their own account.

On the basis of these new guidelines, many standard EBTs should not qualify as trusts for French tax/reporting purposes and are therefore exempt from both the reporting requirements and the specific wealth tax charge at a flat rate of 0.50% (which may otherwise have applied in certain circumstances).

Although the wording of the exemption is broad, some trust arrangements, for example those used to pay bonuses (or which are not otherwise used primarily for facilitating employee share ownership), may not be covered by this exemption. In relation to such trusts a case-by-case analysis should be carried out in order to establish whether or not those trusts continue to be subject to the reporting requirements. In particular, if you operate cash alternative arrangements or certain types of deferred share bonus plans for French tax resident employees, it would be sensible to obtain specific advice on your circumstances

Key issues

- EBTs are in principle subject to the reporting requirements for trusts
- The new guidelines expressly exempt many EBTs from the reporting requirements
- The exemption should protect EBTs that did not file a report by 30 September 2012

The exemption should protect EBTs that did not file a report by 30 September 2012

As noted above, the exemption was not published until after the 30 September 2012 reporting deadline. However, in our view, the newly published guidelines are merely interpreting the scope of the law as at that deadline. We therefore expect that EBTs which qualify under the exclusion and which did not file a report by 30 September 2012 (or which filed an incomplete report) should not be pursued by the French tax authorities.

If you have any questions on these new guidelines please get in touch.

Contacts

Sonia Gilbert
Partner

Kevin Thompson
Partner

Robin Tremaine
Partner

Sally Robinson
Editor

To email one of the above please use:
firstname.lastname@cliffordchance.com

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