

Update on the new French reporting rules for trusts: practical consequences for Employee Benefit Trusts

The new French reporting rules for trusts finally came into force on 15 September 2012. The scope of the new reporting requirements is very broad and, as things stand, employee benefit trusts (EBTs) are subject to these reporting requirements if they include French tax-resident employees within the class of beneficiaries or hold French assets (such as shares in a French company, French real estate properties, etc).

The initial report has to be made **no later than 30 September 2012**.

The French tax authorities are mindful that the new reporting requirements may give rise to practical difficulties for EBTs and they have been considering for some months whether to exempt EBTs from the reporting requirements. The French tax authorities have said informally that the current draft of their long-awaited official guidelines that are due to be published includes an EBT exemption but they would not confirm when the guidelines would be published or the precise scope of the exemption.

As of today, it remains uncertain whether the published version of the guidelines will include an EBT exemption and, if they do, how far it will go. We will let you know once the official guidelines are published but, for the time being, the trustees of EBTs should be prepared to make reports to the French tax authorities by the end of September unless EBTs are exempted in the next week.

Reporting requirements

Trustees of a trust have to comply with the reporting requirements if either (1) the settlor or at least one of the beneficiaries is a French tax resident or (2) the trust holds an asset or right located in France. Many EBTs will include French tax resident employees within the class of beneficiaries and will be caught by the new regime, even if the company that established the EBT is not a French tax resident company and the EBT does not hold any French assets. The reporting requirements will in principle also apply to UK SIP trusts if they have a French tax resident settlor company.

There are two separate reporting requirements, only one of which has a 30 September 2012 deadline:

- A report of the fair market value as at 1 January 2012 of the assets or rights held by the trust – the deadline is 30 September 2012. (As from 2013, the fair market value of the assets or rights held by the trust as at 1 January of a given year will have to be disclosed no later than 15 June of that year).
- A report of the setting up, termination or modification of a trust - the deadline is 31 December 2012. (As from 1 January 2013, these events will have to be disclosed within one month of an event).

For both reporting requirements, tax residence of beneficiaries and/or assets is assessed each year on 1 January

Form of report

The report due by 30 September can (but does not have to be) be made by filing a specific form published by the French tax authorities last week ("2181 TRUST2" form). A copy of this [form](#) together with an [English translation](#) for information purposes is attached. The French version of this form should be addressed to the *Direction des résidents à l'étranger et des services*

Key issues

- New reporting requirements and their impact on EBTs
- Form of reports
- 30 September 2012 deadline for the first report
- Sanctions for failure to comply
- Potential tax charged at a flat rate of 0.50%

généraux (DRESG), 10 rue du Centre, 93465 Noisy-Le-Grand Cedex, France. As 30 September 2012 is a Sunday, the form should be posted on 29 September 2012 at the latest (the postmark serves as proof of the date). In practice, we would however recommend that the report be filed with the French tax authorities by carrier on Friday 28 September 2012 at the latest and that an acknowledgement of receipt be requested.

Fair market value report (due by 30 September)

For EBTs, the report should include the following information:

1. Name and address of the trust;
2. Trustee: company name and address;
3. Settlor: company name, and address;
4. Beneficiaries: the legislation expressly requires trustees to list the names of the beneficiaries, as the aim of the reporting requirement is to ensure full disclosure to allow the taxation in France of trust earnings received by French taxpayers. As it is likely to be completely impractical for most EBT trustees to list out the names of all beneficiaries before this year's reporting deadline, a practical solution for these EBTs would be, for the purpose of the first filing, to report the class of beneficiaries and include an explanation of why provision of a list would be impractical. (Should the awaited guidelines not confirm the EBT exemption from the reporting requirements, a list with the names of beneficiaries should be provided later);
5. A description of the terms of the trust (e.g. content of the trust deed and of any additional terms governing its operation, revocability, discretionary character, rules governing the allocation of assets or rights held in trust and their proceeds): the legislation does not indicate how much detail needs to be included but a practical solution for EBTs may be to provide a copy of the trust deed in the first instance;
6. If **at least one of the settlors or beneficiaries is a French tax resident**: details of the assets, rights and proceeds, wherever located and held in trust as well as their fair market value as at 1 January of the given tax year. In light of the aim of the reporting requirement which is to ensure the taxation in France of trust earnings granted to French taxpayers, where the class of beneficiaries includes all employees of the parent company and its subsidiaries, we think that there are good arguments that individuals who are within the class of beneficiaries but have not actually been chosen to receive something from the EBT should not be taken into account in the report. We are hoping that this point will be confirmed in the official guidelines;
7. If **none of the settlors or beneficiaries is a French tax resident**: detailed inventory of the assets, rights and proceeds **located in France** and held in the EBT as well as their fair market value as at 1 January of the given tax year. Assets located in France include all French assets, including French real estate properties, receivables against a French borrower or French shares. Certain financial investments are however excluded from the reporting requirement (e.g. bank deposits, bonds and "portfolio shareholding"). Importantly for EBTs, shares representing less than 10% of share capital are considered as "portfolio shareholding" (unless this holding is sufficient to allow the holder to exercise real influence over the company). On this basis, shares in a French company representing less than 10% of the share capital would generally not need to be reported. The official guidelines may provide further guidance.

Set up, modification and termination report (due by 31 December 2012)

The report should include the information in points 1 to 5 above and also information on the specific event and its impact (e.g. a transfer of shares), including details of the recipient of any assets and can be made by filing a specific form published by the French tax authorities ("2181 TRUST1" form).

For the purpose of this reporting obligation, "modification of the trust" is extremely wide and includes any change in its terms, operation, settlor, class of beneficiaries, trustee or, the transfer or removal of assets or rights. This broad definition of "modification" would be fairly unworkable for EBTs as it would seem to require reports to be made whenever shares or assets were moved into or out of an EBT, for example. We would hope to have helpful guidance from the French tax authorities well before the December 2012 deadline.

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Sanctions for failure to comply

A failure by the trustees to comply with the reporting requirements triggers a penalty of € 10,000 or, if higher, 5% of the value of all of the assets held in the trust. The settlor and beneficiaries are jointly liable with the trustee for payment of the penalty.

Wealth tax aspects and specific tax at a flat rate of 0.50%

If trust assets have not been disclosed either (1) by the settlor (if the settlor is an individual) in his/her French wealth tax declaration or (2) by the trustees under the reporting requirements explained above, tax at a flat rate of 0.50% applies under the French Tax Code. This 0.50% charge applies:

- if the settlor is a French tax resident: on all assets, rights or proceeds in the trust;
- otherwise: on French assets, rights or proceeds in the trust, excluding certain financial investments (see under point 7 above).

If the 0.50% tax is due, the trustees must disclose the assets and pay the 0.50% tax before 15 June of the relevant year. As with the penalty, the settlor and beneficiaries are jointly liable with the trustee for the payment.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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