

## Investments in France? Here is what you need to know

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In this day and age, many people have international investments around the globe so they can geographically diversify their portfolios. For Americans, Europe has always been a viable place for investments. In particular, France has been an important market. However, the reporting obligations imposed by the French authorities to regulate trusts and prevent tax avoidance by individual taxpayers are not well known. This article demonstrates the kind of disclosure requirements investors need to be familiar with in order to comply with French law.

According to the French Tax Code (FTC), there are reporting obligations for trustees of trusts with a French nexus – including, but not limited to, French tax resident settlors and beneficiaries<sup>1</sup>, trustees, and assets or rights located in France.<sup>2</sup> Thus, trustees worldwide have mandatory reporting obligations in France in two cases: (1) when either the trustee, settlor, or beneficiary is a French tax resident, or (2) if the trust holds assets or rights located in France. According to Article 1649 AB of the FTC, this triggers two types of reporting obligations. The first obligation is an annual tax return that provides the value of the assets or rights located in France, and the second obligation is reporting in the event of settlement, modification, or termination of the trust. Failure to comply with either of these is subject to a penalty of €20,000.<sup>3</sup>

Accordingly, it is crucial to identify what type of assets and rights are considered to be French in order to trigger the reporting obligation. The answer is far from clear because the French tax authorities have not defined what a French financial asset is for the purposes of trustee's reporting obligations and have withdrawn their guidelines as of October 2018.<sup>4</sup> Moreover, after the last amendment, in February of 2020, Article 1649 AB of the FTC now provides that a trustee may also have reporting obligations in France if it is located outside of the EU and enters into a business relationship in France.

Concerning the criteria for a French financial asset, one thing is certain – when it comes to shares issued by a French company with a registered office in France, the value of the assets is subject to mandatory reporting.<sup>5</sup> However, the French authorities may also argue that the shares issued by a company registered outside of France, but

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<sup>1</sup> You are considered French tax resident when either your main residence is in France, you spend 183 days in a calendar year in France, your principle activity (e.g. occupation) is in France, or your most substantial assets are located in France, *Becoming Resident in France. What are the Income Tax Implications?*, Belvins Franks, 5 August 2015.

<sup>2</sup> Filipe de Almeida, Florence Esmoingt, Vincent Natier, Sarah Belin-Zerbib, *French Finance Bill for 2019 modifies French annual trust reporting requirements*, EY Global Tax Alert, 17 January 2019.

<sup>3</sup> *Id.*

<sup>4</sup> Orianna Acheriteguy, Virginie Bousquenaud, Mathieu Chevalier, Christina Melady, Marion Zirah, *Significant changes to French reporting obligations*, Deloitte Taj Blog, 24 June 2019.

<sup>5</sup> Orianna Acheriteguy, Alexis Fillinger, Christina Melady, Nicolas Meurant, *Update on scope of trust reporting obligations*, Deloitte tax@hand, 20 June 2019.

having its *effective place of management* there, are considered French financial assets. This is based on the definition of French assets in the French gift and inheritance tax directly referenced in the withdrawn guidelines.<sup>6</sup> This expansive approach may place small companies and family offices into the category required for reporting. Alternatively, though, if a trust holds shares issued by a foreign company that is owned by a French parent company, there is no reporting obligation imposed on the trustee, assuming that the parties involved in the trust are non-French tax residents and the foreign company has no business relationship in France.<sup>7</sup>

Although the definition of French assets in Article 750 ter is expansive and could be used in determining what reportable shares are, this is not the case when it comes to other securities. Bonds, warrants, and claims are considered French assets only when they are issued by an entity that is a French tax resident. Thus, trustees are under an obligation to report only in the case when the trust holds debt, bonds, or other claims issued by a French tax resident entity.<sup>8</sup>

Furthermore, an event could also trigger the reporting requirements. In this instance, the reporting should be done within a month of the occurrence of the event.<sup>9</sup> The previously withdrawn guidelines provided an exemption for the purchase and sale of shares as long as the proceeds and investments remained in the portfolio held by the trust.<sup>10</sup> However, since those guidelines have been withdrawn, the question now is whether the purchase and sale of French securities or bonds would be considered an event that triggers reporting obligations.

The same applies when a trust receives dividends or interest from its holdings of French shares or bonds when all the parties involved are non-French tax residents. Since the guidelines that provided exemptions in this case were withdrawn, it is now unclear whether trustees should report when they receive interests and dividends from French assets. The French authorities, however, may effectively argue that this is essentially a modification of the trust and, therefore, must be reported within a month.

In conclusion, it still remains unclear what the French tax authorities would consider to be a French financial asset and what events trigger the reporting obligations for trustees. Some of the definitions are too broad, which makes the reporting quite burdensome – nevertheless, over-reporting is always better than under-reporting. Thus, everyone should do their own checks and use their own judgment when faced with such questions.

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<sup>6</sup> Article 750 ter, FTC, provides an over encompassing definition of French assets for the application of the French gift and inheritance tax.

<sup>7</sup> Virginie Deflassieux, Fiona McFarlane, *French Taxation and Trusts – Eight Years On*, STEP Jersey, 30 January 2020.

<sup>8</sup> Reid Feldman, *France: Reporting Requirements Under French Law For Trusts With Connections To France*, Kramer Levin Naftalis & Frankel LLP, 11 July 2016.

<sup>9</sup> Article 1649 AB, FTC.

<sup>10</sup> Acheriteguy, *supra* note 3.