

France implements new rules impacting French trust reporting requirements

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Executive summary

The French Government published, on 12 February 2020, Ordinance No. 2020-115 (the Ordinance) regarding the strengthening of French Anti-Money Laundering and Financing Terrorism (AML/FT) framework.

This Ordinance follows the requirements mandated by the European Union (EU) Directive 2018/843 of 30 May 2018, amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (referred to as the Fifth Money Laundering Directive).

The Fifth Money Laundering Directive makes amendments to the Fourth Money Laundering Directive on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing. These amendments and new provisions will further strengthen transparency and the existing preventative framework, while ensuring that the French AML/FT framework adheres to the international standards set by the Financial Action Task Force (FATF).

Due to COVID-19, the French Tax Administration has announced an extension of the deadline to file the annual tax return (Form 2181-Trust 2) to 30 September 2020 (instead of 15 June 2020).

This Alert summarizes the key changes impacting trusts.

Detailed discussion

Extension of the scope: a new French nexus that triggers a trust reporting requirement

Prior to the Ordinance, Trustees had reporting obligations towards the French Tax Administration in the following two situations:

- ▶ where the Trustee, the settlor, one of the beneficiaries or beneficiaries deemed settlor of the trust is tax resident in France for the year of the declaration; and / or
- ▶ one or more of the assets or rights placed in the trust are located in France.

The Ordinance introduces a third situation that triggers French nexus and then a reporting obligation by the trustee according to Article 1649 AB of Code Général des Impôts (CGI): this happens when (a) the trustee is established or resident outside the EU and (b) it acquires real estate or enters into a business relationship in France.

The notion of “business relationship” refers to a professional or commercial relationship which is supposed to be, at the time when contact is established, for a certain amount of time. The business relationship can be set up by an agreement according to which several successive operations will be carried out between contracting parties or which places continuous obligations on them. A business relationship is also established when, in the absence of such agreement, a client regularly benefits from the assistance of professionals to perform several operations or one operation with a continuous nature.

New sets of data to be filed in the trusts returns (annual and monthly returns)

The following additional information should be reported:

- ▶ The protector(s) as well as any other natural person exercising effective control over the trust or performing equivalent or similar functions
- ▶ The nationality of each member of the trust (administrator, settlor, beneficiary, protector or any other natural person exercising effective control)

As of publication of this Alert, the new French trust forms are not available.

Controls from the French tax authority

- ▶ The French tax authority will notify the trustee of any discrepancies between the information collected in the trust register and the information on beneficial owners available to the tax administration.
- ▶ The trustee should then reply to the French Tax Authority.
- ▶ There are two outcomes with respect to the notification:
 - The trustee agrees on the finding/discrepancy or provides a sufficient answer: in this case, the French tax authority will amend or complete both registers (French trust register and beneficial owners register).
 - The trustee does not answer or does not provide a sufficient answer: the French tax authority may apply the €20,000 penalty as already provided by Article 1736 IV bis of the CGI.

Accessibility of the French trust registry

- ▶ Full access to the registry is granted to the judicial authorities, customs authorities, police authorities, tax authorities, financial authorities as well as to those responsible for the control of money laundering obligations. These professionals are also authorized to communicate to the authorities of other EU Member States all information necessary for their mission, either spontaneously or upon request (according to Article L. 167 of Livre des Procédures Fiscales - LPF).
- ▶ All financial institutions subject to the AML/FT rules can have an access as well to the registry.
- ▶ Additional stakeholders may request access to the registry:
 - Any natural or legal person who makes a written application in respect of a trust which directly or indirectly holds a controlling interest in a company situated in a third State.
 - Any natural or legal person who can demonstrate a legitimate interest in the fight against money laundering (which could include certain non-governmental).

Trustees should review the new rules and take action to:

- ▶ Identify impacts of the new French nexus
- ▶ Collect new information to be compliant with the new trust reporting
- ▶ Inform relationship managers/clients about the new accessibility of the trust register

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