

# Trust in France

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# New regime

- Recent legislation (July 29<sup>th</sup> 2011)
- Late enforcement decree (Sept. 15<sup>th</sup> 2012 for reporting obligations)
- No tax guidelines (not planed either)
- Obviously: no Case law yet...  
...but tax audits already starting

# Origin of the new regime

- A rather recent flow of favorable court decisions in tax matters (wealth tax)
- &
- The disclosure of multiple situations involving French tax residents through the specific off shore assets regularization procedure officially available in 2009

# Scope of the recent legislation

- Income tax
- Transfer taxes (including donations, inheritance and an assimilated *per se* tax)
- Wealth tax
- Specific tax (a quasi “wealth tax anti avoidance” measure)
- Reporting obligations

# Main characteristics

- specific legislation
- obvious aim to tax
- no adaptation or implementation of the principal notions that govern a trust
- trust is a “look through” entity

# Eligible to tax treaties?

- should not, except in limited treaties, be eligible to claim application of treaties...

...but some situations should be treated by application of tax treaties at the level of the settlor/deemed settlor or beneficiaries

# Income tax

When? Beneficiary is a French tax resident

- Taxation at the progressive income tax rate on the proceeds distributed, irrespective of the nature of the trust or the nature of the distribution:
  - no distribution: no taxation (impact of the accounting of income generated by the trust)
  - characterization as distribution (whatever is distributed)
  - distribution fully taxable (no allowance or tax credit)

# Income tax

- capital itself (initially put into trust) should not be subject to income tax (estate & gift tax)
- implied long term book keeping requirement  
(in order to isolate initial capital vs capitalized income)
- eventual enforcement of article 123 bis of the FTC on income capitalized in a low tax jurisdiction

# Donations & inheritance taxes

- New legislation applicable to donations/grants & deceases which occurred as from July 31<sup>st</sup> 2011
- French tax authorities: for donations & deceases which took place before, the Case law rendered under the “absence of legal frame” regime would remain applicable (see prior presentation in 2011)

# Donations & inheritance taxes

## General principles:

- Foreign trusts are viewed and treated as look through entities
- Confirmation that the creation of trust and transfer of assets & rights, not a tax triggering event
- Generally accepted trust rules (property & rights concepts) are ignored: irrespective of trust deed, in most cases assets taxed at the level of settlor/deemed settlor

# Donations & inheritance taxes

→ Territoriality rules subject to treaties

No express rule (legislation or guidelines) setting the treatment of trust for treaty purposes

However, general principle of “look through” entity, should lead to enforcement of treaties on inheritance tax (40) and donations (9)

# Donations & inheritance taxes

→ Territoriality rules subject to treaties

As a result, most tax treaties should lead to French exemption when settlor (or deemed settlor) is not a French tax resident when no French asset transfer

# Donations & inheritance taxes

When taxable in France:

Tax regime depends on characterization of the transfer through a trust as:

- i) a donation or inheritance
- ii) or absence of donation or inheritance

# Wealth tax

## General principles:

- Generally accepted trust rules (property & rights concepts) are ignored: irrespective of trust deed, assets are taxed at the level of the settlor or deemed settlor  
Trusts are viewed and treated as look through entities
- Tax basis: net value of the assets and rights

# Wealth tax

- the beneficiary is not taxable
- territoriality rules for wealth tax (at the level of the settlor/deemed settlor)
- tax treaties covering wealth tax are applicable (tax residence of settlor or deemed settlor)

# Specific tax

- “wealth tax anti avoidance” measure
- not payable when the assets have been
  - (i) “regularly” declared for wealth tax purposes and
  - (ii) subject to specific annual reporting duties applicable to trust

# Reporting obligations

- Trust formation, modification (including change of trust deed) and termination
- Nature of assets and rights within the trust
- 5% penalty (potentially heavy due to worldwide assets basis)

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