



Can a trust set up in the United States be subject to reporting requirements in France?

Since July 29, 2011, **trustees of trusts having a connection with France** are subject to reporting requirements in France. Failing to comply with these reporting requirements can trigger the application of significant penalties.

1. When is a trust deemed to have a connection with France?

The French tax code provides that a trust is regarded as having a connection with France if either:

- (i) The trustee is a French tax resident.
- (ii) At least one of the settlors/grantors is a French tax resident.
- (iii) At least one of the beneficiaries is a French tax resident.
- (iv) The trust holds French located assets or *“deemed French assets”* (e.g., this can be the case of shares of non-French entities holding French real estate).

In addition to this, since February 14th, 2020, a foreign trust is also regarded as having a connecting factor with France if the trustee of the Trust, resident or established outside of the European Union:

- (v) Acquires real property located in France; or
- (vi) Enters a business relationship in France, as defined by the French Monetary and Commercial Code.

These criteria are alternative and not cumulative. Therefore, as soon as one of the above criteria is met, the trustee of a trust falls within the French reporting requirements detailed below.

2. What are the reporting requirements due by trustee(s) of trusts having a connecting factor with France?

The French tax code provides for two kinds of reporting requirements due by trustees:

- **Annual trust returns**, to be filed by June 15th, of which the main purpose is to report the market value of the trust’s assets as of January 1st of each year.
- **Event-based trust returns**, to be filed within 30 days of the event, of which the purpose is to report any *“modifications”* which occurred since the entry into force of the law regarding trusts (e.g. existence of the trust, distributions of assets or income, change of beneficiaries, change of trustee, death of the settlor, new connecting factor with France, etc.).

3. Why is it important to comply with these reporting requirements?

Failing to comply with the above reporting requirements triggers the application of a fixed penalty amounting to **€ 20,000** per missing return. The limitation period for these penalties runs until December 31st of the 4th year following the date when the reporting is due¹.

In addition, since December 31st, 2016, failure to comply with these reporting requirements may also give rise to an additional 80% surcharge (with a minimum of € 20,000) applying to all French tax consequences bearing on the trustee(s), the settlor(s) or the beneficiarie(s) (income tax, wealth tax, inheritance/gift tax, trustees' specific 1.5% levy) which may be due in respect of the trust assets and distributions that may have occurred.

In principle, the € 20,000 penalty is due by the trustee. However, the beneficiaries/settlors can be held liable for the payment of this penalty. This could lead the French tax authorities to try to obtain the payment of this penalty from one of the beneficiaries or settlor(s) who is a tax resident of France.

If your client is the settlor, the beneficiary and/or the trustee of a trust that may have a connection with France, it may be worthwhile to determine whether the above-mentioned reporting requirements have been complied with.

We remain at your disposal for any questions you may have.

Best regards,

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Partner

¹ Article L.188, al. 2, of the French tax procedure handbook.