French Tax Administration provides new comments on trust reporting requirements but uncertainties remain

Executive summary

The French Tax Administration recently released a letter dated 28 January 2015 related to the French trust reporting rules. This letter follows a request for clarifications issued two years ago by the French financial institutions industry representative Federation Bancaire Francaise (FBF).

The comments provided with respect to the content and extent of the reporting itself still lack clarity and may lead to unpractical and very extensive reporting requirements (see sections 1 and 2 below). However, the January 2015 letter helped to clarify the French rules in terms of scope (collective investment funds, see section 4 below) and exemptions (pension related trusts, see section 3 below).

Trustees may want to consider how they are affected by this development and, in particular, whether they need to re-assess the efficiency and adequacy of the controls and processes they have in place to address the French reporting requirements.

Detailed discussion

Section 1: Necessity to identify and report all the beneficiaries of the trust

- In their January 2013 letter, the FBF requested the French tax authorities to confirm that trustees could limit their event-based reporting to only include information related to “first rank” French tax residents, clearly identified by a direct reading of the trust deed.

- The French tax authorities indicated in their answer that the event-based reporting must identify all the beneficiaries (existing or future) of the trust, as long as they are alive on 1 January of the reporting year.
The extent of this development is to be assessed on a case by case review. That being said, a simplified first rank approach does not seem to be sustainable any longer. Trustees may need to review their process to ensure that they gather the information needed to comply with this rather extensive (and sometimes impractical) requirement.

**Section 2: Reduced scope of the trust reporting requirements for trusts whose only French nexus consists of a French portfolio investment?**

- The FBF also addressed the extent of the event-based reporting needed in respect of qualifying French portfolio investments (nonresidents are not subject to the French net wealth tax on such French assets).
- The French tax authorities seem to agree to a reduced set of reporting requirements in case of sales, distributions, acquisitions, etc. of assets when the only French nexus of the trust is a qualifying French portfolio investment. Nevertheless, the exact extent of this reduced reporting and the extent of the reporting requirements outside of these specific circumstances still lack clarity.
- This seems to imply that in all other cases (i.e., other French assets, French tax resident beneficiaries or settlors of the trust, or French trustee), each modification of the trust needs to be reported including with respect to French portfolio investments.

In order to avoid any future penalties, Trustees may consider reviewing their current event-based reporting model and adopting, if necessary, a more extensive approach (i.e., event-based reporting forms should be filed for each modification of the trust in the month following the event).

**Section 3: Exemption of trust reporting requirement for trusts related to pensions**

- Trustees of trusts related to pensions for the purpose of the French trust reporting rules are, subject to conditions, exempt from reporting obligations. The law defines qualifying pension trusts as trusts set up in view of managing retirement rights obtained, as a result of their professional activities, by the beneficiaries of a pension plan set up by a company or group of companies.
- The French tax authorities indicated in their letter that individual retirement plans, such as the UK “Self Invested Personal Pensions” (SIPPs) could qualify for the exemption, even if they are not subscribed through a company but directly by an employee.

This position can cover similar individual retirement structures as long as their sole purpose is to be used for retirement savings and as long as they are recognized as such by their local regulators. This could for instance apply to US Individual Retirement Accounts or to 401(k) plans recognized as “Qualifying Recognised Overseas Pension Schemes” by the UK tax authorities.

A case by case analysis should be carried out in order to ensure that a trust could benefit from this exemption.

**Section 4: No specificity for collective investment vehicles investing in real estate**

- In their administrative guidance issued in 2012, the French tax authorities indicated that Unit Trusts subject to the provisions of the Directive 2009/65/CE (UCITS IV) or equivalent structures outside of the European Union do not comply with the definition of trusts provided by the French tax rules. As a result, these structures are out of the scope of the French trust reporting requirements (provided the existence of an administrative assistance agreement against tax fraud and tax evasion).
- In response to one of the requests of the FBF which specifically referred to real estate type of regulated funds (such as US REITs), the French tax authorities have clarified that the list of structures indicated in their guidance as not complying with the definition of trusts is not an exhaustive list. Accordingly, vehicles investing in real estate may potentially qualify as being out of scope of the French tax rules, depending on their characteristics.

It is important to note that the letter also clarifies that in case of a new qualifying administrative assistance agreement against tax fraud and tax evasion between France and the
country of location of the trustee of qualifying non EU structures, the annual reporting requirements need to be complied with up to and including the year of entry into force of the agreement. The event-based reporting requirement ceases to apply to events after to the date of entry into force of the agreement.

Overview of existing rules

Often referred to as the “French mini FATCA (Foreign Account Tax Compliance Act) for trusts”, the French rules require trustees of trusts to file specific tax reporting forms in France if the trusts they administer have a French nexus.

A French nexus is characterized in four cases: (i) the Settlor or (ii) one of the Beneficiaries of the trust or (iii) the trustee itself, has his/her/its tax residence in France, or (iv) one or more of the assets or rights placed in the trust are located in France. Exemptions are available but related published guidance is not fully clear regarding how to qualify for these exemptions.

The reporting requirements consist of:

- Annual reporting which may or not include the payment of a specific tax at a rate of 1.5%, and which the Trustee has to file by either 15 June or 30 August of each year;
- Event-based reporting, which has to be filed by the Trustee by the end of the month following a specific event relating to the trust (events include for instance the setting up of a trust, its modification, a distribution of its assets or the termination of a Trust).

Failure to comply with these requirements result in penalties of 20,000€ or, if higher, 12.5% of the fair value of all the assets and rights in trust.

A public register of trusts in France has been set up to gather the information reported under the above requirements.

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