

French taxation of trusts: summary of the proposal at end of first readings.

Monday, 27th June 2010

The previous postings need only the following updates:

Retroactivity:

In order to avoid the drafting being reviewed as unconstitutional, the 60% rates applicable to deemed transfers on death within trusts constituted by French resident Settlers have been curtailed. Trusts established prior to the publication of the *loi de finances rectificative* by French resident Settlers will be subject to the less onerous general régime, not the punitive régime applicable to trusts established in Non Co-operative States and Territories (ETNCs). However the discrepancies in treatment for relationships other than direct bloodline have not been addressed or resolved. It remains technically possible that 60% rates will be applied in transfers which would have been less harshly taxed were the disposal to have been made directly: for example siblings and, more significantly, to spouses and civil partners. It is likely that such transfers may need to be declared on death as if the trust was of no effect, under the general “escape” clause at article Art 792-0 *bis* II 1. *if available*. However, advice will be needed on how to proceed there.

Wealth Tax *prélèvement*:

The Wealth tax liability is settlor based. There is therefore a clear fiscal distinction between trusts settled by non-resident settlors and resident settlors; and also those trusts which whilst settled during a period of non-residency, could be caught on the settlor returning to or settling in France. Whilst the *prélèvement's* specific nature is yet to be defined, it is clear that it is not only the Settlor and, where the settlor has died prior to 1st January 2012, the beneficiary “deemed” settlor, but also their heirs who will be responsible for its payment.

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Gift and Succession duty:

Where there are no administrative tax recovery provisions in effect between France and the State or Territory of the trust¹, the Beneficiaries are liable for the succession duty and gift tax, and this is not limited to those resident in France. To that extent, care will need to be taken as to asset allocation and what is more, the capacity of a beneficiary to fund the liability, where the Trustee will not.

Charitable trusts qualifying under article 795 CGI

Trusts whose objects are exclusively charitable and who can obtain the equivalent status under article 795 are exempt from the Wealth tax régime, at the same level as corporate pension schemes. This effective differential of treatment would have been struck down at the European Union level had it been allowed to persist.

Solutions

Each Trustee of a trust established by a French resident settlor needs to take action immediately to review assets and beneficial classes, and to consider an internal restructuring if assets, as appropriate. A review will allocate trusts under trusteeship in two separate categories: those established by French resident settlors, prior to 1st January, 2012; and those whose beneficial

¹ Art. 792-0 bis. – I. « À défaut et dans le cas où l'administrateur du trust est soumis à la loi d'un État ou territoire non coopératif au sens de l'article 238-0 A ou n'ayant pas conclu avec la France une convention d'assistance mutuelle en matière de recouvrement, les bénéficiaires du trust sont solidairement responsables du paiement des droits ».

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class involves beneficiaries who has moved to France, and whose position will require clarification. A sub-class un both categories will further isolate trusts through which French situs assets are held, or assets considered immovable under French law, e.g. sociétés à prépondérance immobilière.

The main thrust of the legislation is to ensure that the one commodity over which France has a monopoly, French immovables, remains within the scope of Wealth tax, and gift and succession duty. The 3% annual tax is and remains an information gathering exercise, and to a certain extent remains so. However, in order to gain exemption, information will needs be provided and will be interpreted by the French administration in a manner enabling it to tax indirect transfers. Hence the need for a review of accounting methods and information presentation.

The main aim will be to isolate assets in sub funds, and isolate the liabilities and payment responsibilities of beneficiaries and Settlers resident in France under the prélèvement régime, and also those of the Trustee.

There are solutions and opportunities. However, it is prudent not to rely on legal principle alone.

Effective solutions will not be based only on points of principle, but rather more in the use of other mechanisms, and information handling and disclosures.

Overseas Chambers can provide guidance and advice to onshore and offshore trustees in the legal, fiscal and administrative changes necessary to accommodate the changes in a positive manner.

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