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Article : **The Register of Trusts and Trustee declaration requirements.
Implementing decree n° 2014-1372 of 17th November, 2014**

1st December, 2014.

French Decree on the Register of Trusts : *Décret n° 2014-1372 du 17 novembre 2014 relatif aux obligations déclaratives des administrateurs de trust*

The decree of 17th November, 2015 emanating from the Finance Ministry addresses two separate points, with what is effectively the same solution.

The first is aimed to enabling the new register of trusts to be properly "informed". However the manner in which this is carried out is deliberately non-committal and it is possible that the French Ministère de Finances has managed to reduce the register to little more than a register of tax returns, which has not yet been opened up to any form of public access. There is no hint of any move to enable public access to information in this decree.

The much trumpeted Register however has to be implemented through decrees passed by the *Conseil d'Etat* and not by the Finance Ministry, who are nonetheless responsible for its upkeep.

What does the Decree do? At first glance, it would appear from the preamble and article 1, that all non-resident trustees, beneficiaries and *constituants* may now be required to apply for a Siren number. There is therefore an implied recognition that the trust itself does not have a legal personality.

However, French practice in the past has been that foreigners are not required to put in a Siren number if they do not have one under a specific legal requirement such as a VAT registration. It is essentially a French number. The 2014 Declarations Cerfa Forms 2181 Trusts1 and Trusts2 both had a space for Siren numbers, which would mostly not have been filled in by non-residents.

The French Siren number is the basic generalised French identification number for persons, be they individual or legal entities. Until now its international application has been restricted to those foreign residents, corporate or otherwise with businesses in France. Any insistence on such registration would be a major change, and possibly contrary to European laws on the Freedom of movement, in particular that of capital.

However, it is now possible that each Trustee, French or otherwise, will now need to enquire as to any French resident's Siren number and carry this to the Cerfa Form 2181 Trusts 1 and 2 or

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risk facing a penalty for an inadequate declarative response, and worse triggering a tax investigation on that premise. Note that these now stand at a minimum of **20 000 €** or if higher **12,5 %** of the value of the trust assets.

If and when decreed, the Register will probably to continue to be run by the Service des Impôts des Entreprises, at the non-resident Centre at Noisy-Le-Grand, whose computer system, which will be the Register, runs on Siren numbers. The full implications of the changes will need to be addressed by an Instruction which will doubtless follow on soon.

Any introduction of a Siren number requirement for non-residents would need to be addressed carefully. Were the French administration to have imposed a Siren number on a trust, rather than the persons involved, that would have implied that the trust were a fiscal vehicle assimilated to a company, irrespective of the law governing its existence. Those laws will normally assimilate it to a creature of the laws of property. A trust is not a corporate entity, and, certainly in English law has never had that contractual connotation.

The Decree amends the current declarative articles 344 *sexies* and *septies* slightly in adding the requirement for a Siren number to the identification procedures in the declarations. It is therefore likely that this is no more than an alignment of the decree on existing practice. However, it is best to await the instructions confirming this.

The second issue is to provide a declarative framework for French resident trustees, whether these have a French connection or not. There are certain with French resident trustees but which may have no French assets, *constituants* or beneficiaries. These trustees have until 31st January, 2015 to file the necessary compliance returns for 2014. That issue is addressed at article 2 of the decree. Those French resident trustees will have a Siren number. It is possible therefore that any restricted public access to information may in the future be limited to those trustees and individuals with Siren numbers, rather than those non-residents who do not have them.

The latest hints from the G20 appear to admit that unlimited public consultation of such registers is not now the order of the day, and that access to the information held may be confined to certain administrations. Time will tell.

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However, there is still no sign of the Register being decreed by the French *Conseil d'Etat*. This may be symptomatic of the recent G20 retreat and the Germanicised EU opposition to the general principles, given the unsaid reliance of the Germanic and non-latin systems on foundations and other similar devices in the industrial sectors.

The link to the decree is :

http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=F868316391BA4D32674E07A689D9BD29.tpdjo08v_3?cidTexte=JORFTEXT000029777823&dateTexte=&oldAction=rechJO&categorieLien=id&idJO=JORFCONT000029777699

The links to the amended article 344 as at 1st January 2015 are:

article 344 *sexies* : *Événementielle* declarations:

http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=EE80AF518D5BBF27A6C5313EE172ABFD.tpdjo08v_3?idArticle=LEGIARTI000029779002&cidTexte=LEGITEXT000006069574&categorieLien=id&dateTexte=20150101

article 344 *septies* : Annual *Prélèvement* declarations:

http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=EE80AF518D5BBF27A6C5313EE172ABFD.tpdjo08v_3?idArticle=LEGIARTI000029778996&cidTexte=LEGITEXT000006069574&categorieLien=id&dateTexte=20150101

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