OVERSEAS CHAMBERS OF PETER HARRIS

E: oc@overseaschambers.com
T: +44 (0)1534 625 879
F: +44 (0)1534 491 195
www.overseaschambers.com

Maison de la Boucterie
Rue de la Boucterie
Saint Saviour
Jersey, JE2 7ZW

Article

Date: 10th February, 2022.

French Tax and Reporting Obligations Relating to Trusts

***Caveat lector*: this is not an advisory memorandum and should not be relied upon as advice or as an opinion when considering taking a decision as to action or inaction in relation to a trustor similar relationship**

The French trust tax legislation has been in effect for 10 years, and some early uncertainties about its application have been resolved. However, the use or abuse of the 1984 Hague Convention's definition, a private international law system of defining aspects of a property law "arrangement" which could lead to its classification and recognition as a trust has led to the French fiscal treatment becoming a somewhat shaggy mongrel with little or no attractive qualities.

We have to work with that now, and various means of managing the exposure of beneficiaries and trustees moving to France involved with English or other trusts of land or other non-abusive trust structures. These can be made liable for penalties for non-declaration, even where there is no movement of any equitable entitlement from, dare I say the anglo-norman as distinct from the so called "anglo-saxon" viewpoint.[1]

The following is edited from a summary provided by **Reid Feldman**, an American dual qualified lawyer practicing in France. I acknowledge his copyright over his material. However, his material and approach does not quite fit the English or the British trust

[1] The English trust's roots are traceable back to the evolving Norman methods of land tenure following on from the Doomsday Book, the first land register after their Conquest of England through the ensuing Plantagenat and Tudor dynasties. It was all about paying the least feudal dues to the Crown under feudal tenure obligations. Anglo-Saxony would be somewhere between Germany and Denmark and has no independent fiscal autonomy or legislative capability.

OVERSEAS CHAMBERS OF PETER HARRIS

E: oc@overseaschambers.com
T: +44 (0)1534 625 879
F: +44 (0)1534 491 195
www.overseaschambers.com

Maison de la Boucterie
Rue de la Boucterie
Saint Saviour
Jersey, JE2 7ZW

Regulated by the General Council of the Bar
www.barcouncil.org.uk & supervised by JFSC • also a door tenant at www. clerksroom.com

.../...

phenomenon, so whilst acknowledging his structure, based on the developing legislation and administrative practice which I have been following and commenting on since prior to the 2011 legislation, I have had to alter it to suit this subject. I have trimmed it and expanded it to assist those with English trusts and British offshore trusts. Maître Feldman's footnotes are reproduced under their original numbering at the end. My footnotes with an independent numbering follow immediately at the bottom of the page concerned.

So: to sum up the developments in the French Trust reporting laws since 2011:

I. The connections with France that trigger the application of the legislation have been clarified and expanded, and reporting procedures have been standardized;
II. The reported information informs an official register accessible to authorities and certain others;
III. That information is fed in turn into the French international information reporting network, and France will also regularly exploit for example HMRC's and any offshore jurisdiction's registers of trusts;
IV. Some tax obligations resulting from the legislation have been simplified since the French general wealth tax (*impôt de solidarité sur la fortune* or ISF) was replaced beginning in 2018 by the real estate wealth tax (*impôt sur la fortune immobiliere* or IFI).

But questions remain as the interface between the declaratory information required and the legal and the tax treatment of trusts in France which remains incoherent and uneven.

This memorandum describes (1) the context of the French trust legislation; (2) reporting obligations of trustees; (3) the impact of French wealth tax (ISF and now the IFI) and the *prélèvement sui generis* (PSG), which I sometimes refer to as the trust levy; and (4) the application of gift tax and succession duty including the 2011 analogous transfer duty introduced for trusts on death (*droits de mutation par décès* or DMD).

Context of French trust legislation

OVERSEAS CHAMBERS OF PETER HARRIS

E: oc@overseaschambers.com | Maison de la Boucterie
T: +44 (0)1534 625 879 | Rue de la Boucterie
F: +44 (0)1534 491 195 | Saint Saviour
www.overseaschambers.com | Jersey, JE2 7ZW

Regulated by the General Council of the Bar
www.barcouncil.org.uk & supervised by JFSC • also a door tenant at www. clerksroom.com

.../...

The French trust legislation, adopted in 2011, had several purposes, including:

- To render assets held in trusts subject to ISF and to penalize failure to report assets held in trust - the PSG levy was created, payable by the trustee, was introduced for this purpose;
- To make transfers or deemed transfers of trust assets subject to gift and succession taxes or DMD, at the death of the settlor or any "beneficiary deemed settlor," including when assets are retained in trust (the term "beneficiary deemed settlor" is now generally, but not exclusively considered to refer to individuals who become income beneficiaries of the trust after death of the settlor or of another beneficiary deemed settlor);
- To require reporting – in the form of an annual declaration and a *déclaration évenmentielle* (both described below) – to promote compliance with the taxes mentioned above as well as income tax applicable to trust distributions.

These rules apply not only to a trust as that term is understood in common-law jurisdictions but also to other legal relationships, such as a *stiftung*, *anstalt* or foundation or potentially other arrangements involving companies or contractual relationships, by which a settlor places assets or rights under the control of an "administrator", including a trustee. The Hague Convention 1984 from which the definition has been dragged uses the term "trustee", not that of an administrator.

However, these rules do not apply to certain trusts established by a business or group of businesses on its/their own behalf (where the settlor was not an individual) or certain collective investment vehicles in the form of trusts having a trustee established in the European Economic Area (EEA) or in another jurisdiction with a tax-assistance treaty with France. Further, the PSG and DMD do not apply to assets in any irrevocable charitable trust with a trustee situated in the EEA or such other jurisdiction. [2]In some respects, the French trust legislation did not take account of the economic realities of why trusts are established and how they operate, and results from a degree of

[2] Unit trusts and similar mechanisms are thus excluded which renders them useful where a *fonds commun de placement* would not provide the necessary legal interval between the assets and the fund member

OVERSEAS CHAMBERS OF PETER HARRIS

E: oc@overseaschambers.com
T: +44 (0)1534 625 879
F: +44 (0)1534 491 195
www.overseaschambers.com

Maison de la Boucterie
Rue de la Boucterie
Saint Saviour
Jersey, JE2 7ZW

Regulated by the General Council of the Bar
www.barcouncil.org.uk & supervised by JFSC • also a door tenant at www. clerksroom.com

.../...

administratively institutionalised gallic scepticism as to whether there actually is any legitimate non-tax reason to create a trust. The fact that the English trust of land is used to regulate succession to immovable property in England and is treated under English law as an immovable in its own right (the seminal case of re *Berchtold*) was a mere trifle to the half-educated Enarque in his heroic attempting to draft the legislation[3].

French court decisions have led to modifications in French trust legislation and clarified somewhat how trusts should be viewed under French law, including the following cases:

- A decision by the *Conseil Constitutionnel* (constitutional court)[1] striking down a rule permitting the public to access the trust register;
- A decision by the *Conseil Constitutionnel*[2] ruling invalid the proportional penalty for failure to report trust assets properly (the penalty was originally equal to €10,000 or, if higher, 5% of trust assets, and was raised in 2013 to €20,000 or, if higher, 12.5% of trust assets), but maintaining the 20,000€ penalty as in some manner "proportionate"[4];
- Rulings by the *Conseil d'Etat* (supreme administrative court)[3] that (a) the PSG levy and ISF are not cumulative (i.e., cannot both be imposed on the same assets) and (b) the settlor and beneficiaries, although they do not have control of trust assets, can be held jointly and severally liable with the trustee for the payment of the PSG levy since they were presumed to have a right to recover that tax from the party ultimately liable for it (that is completely incorrect under most British laws law - although the decision did not address which party is ultimately liable or what law would apply to that right of recovery);
- A decision by the *Conseil Constitutionnel*[4] that attribution of trust assets to the settlor (or beneficiary deemed settlor) for wealth tax purposes is valid, but that the *Constituant*/settlor (or beneficiary deemed settlor) will have the opportunity to prove that he/she does not derive any tax-paying capacity from those assets (although the simple fact that the trust is irrevocable and discretionary would not constitute sufficient proof for this purpose);

[3] The gentleman concerned has requalified as an *avocat* is now in private practice in Paris. The wording of article 792-0 bis I CGI is defective in that under the law applicable to English land, a trust is an immovable and is not converted as defined in the Hague Convention's preliminary works.
[4] The trustees of an English trust of land with a beneficiary removing themselves to France will soon find themselves with a very illiquid trust, unless they are very careful with the declaration to HMRC.

OVERSEAS CHAMBERS OF PETER HARRIS

E: oc@overseaschambers.com
T: +44 (0)1534 625 879
F: +44 (0)1534 491 195
www.overseaschambers.com

Maison de la Boucterie
Rue de la Boucterie
Saint Saviour
Jersey, JE2 7ZW

Regulated by the General Council of the Bar
www.barcouncil.org.uk & supervised by JFSC • also a door tenant at www. clerksroom.com

.../...

- Decisions of the *Conseil d'Etat*[5] striking down official commentary of French tax authorities attributing trust assets to the settlor and beneficiaries (including in some cases allocation of trust assets per capita among beneficiaries deemed settlors) without regard to the terms of the trust and its nature;
- A curious decision of the *Conseil d'Etat*[6] finding that a trust with an individual as trustee, and individuals as beneficiaries, qualifies for a certain company tax exemption, available when a portion of the company's shares is held by individuals. Prior French law and practice did not consider that the assets of a trust were automatically subject to *affectatio societatis*, a fundamental requirement for a corporate body to exist[5];
- A decision of the *Cour d'Appel administrative* (administrative court of appeal) of Paris[7] holding that beneficiaries of irrevocable discretionary trusts set up in 2004 and 2008, for non-tax reasons, by a non-French resident, would not be subject to tax on income earned but retained in the trusts, under a rule taxing French residents on income earned by offshore entities in which they hold a 10% or greater interest[6];
- A decision of the *Cour de Cassation*[8] upholding application of succession tax on the distribution of trust corpus to a remainder beneficiary at the death (prior to 2011) of a life beneficiary;
- A decision by the *Conseil d'Etat*[9] upholding official commentary to the effect that, for wealth tax purposes, taxable trust assets are allocated to the settlor or beneficiaries deemed settlors to the exclusion of other beneficiaries;
- A decision by the *Cour de Cassation*[10] ruling on a situation predating application of the 2011 legislation, holding (among other things) that assets in trusts, as to which the settlor did not "irrevocably and operationally" give up control, would be considered forming part of the settlor's taxable succession.

A non-French lawyer should be aware and therefore beware of the differences between the British doctrines of precedent and the French courts' attitude towards prior senior decisions which are more readily distinguishable on the facts. Also each of the highest

[5] A curious case of the fiscal tail wagging the legal dog and attempting to hold the lead.
[6] Again a confusion of the corporate notions of control albeit recognising that the settlers did not have any voting rights in the trust concerned.

OVERSEAS CHAMBERS OF PETER HARRIS

E: oc@overseaschambers.com | Maison de la Boucterie
T: +44 (0)1534 625 879 | Rue de la Boucterie
F: +44 (0)1534 491 195 | Saint Saviour
www.overseaschambers.com | Jersey, JE2 7ZW

Regulated by the General Council of the Bar
www.barcouncil.org.uk & supervised by JFSC • also a door tenant at www. clerksroom.com

.../...

Courts in France considers itself master in its own court jurisdiction and does not necessarily consider itself beholden to follow the decisions of its peers.

Reporting obligations

Reporting obligations apply when any of the following criteria is met:

- A *Constituant*/settlor, trustee or any beneficiary (**including a contingent or remainder beneficiary**) is *domicilié* (tax resident) in France on January 1st of any year, beginning in 2012;
- Any other "ultimate or final beneficiary" is *domiciled* in France on January 1st of **2021** (a recent change) or in any later year. In this context, "ultimate beneficiary" is defined to include not only settlors, trustees and beneficiaries but also any individual who serves as a protector or has control over the trust or performs "equivalent or similar functions";
- The trust at any time since July 31, 2011, holding or acquiring certain French-situs assets, including French real estate and certain French portfolio investments, except that prior to October 12, 2018, reporting was not required for trusts with no French-domiciled settlor or beneficiary that held such French portfolio investments. The trustees may only hold movable assets or a significant proportion of such assets does not eliminate the annual declaration requirement which was reintroduced to enable valuable information exchange to be carried out on hose movables to other jurisdictions and despite the absence of any liability for the PSG levy on movables other than *sociétés civiles immobilières* or non-French equivalents;
- The trustee (if not an EU/EEA resident), on or after February 14, 2020, establishing an ongoing "business relationship" (such as opening an account) with certain French business professionals (including financial institutions, insurers, various financial intermediaries, an accounting or legal professional, or a variety of other professionals).

The last point is important. A similar requirement was introduced in the UK. The outcome is that non-French lawyers and tax advisers can give advice to French resident beneficiaries without the French administration needing to be in notified.

OVERSEAS CHAMBERS OF PETER HARRIS

E: oc@overseaschambers.com
T: +44 (0)1534 625 879
F: +44 (0)1534 491 195
www.overseaschambers.com

Maison de la Boucterie
Rue de la Boucterie
Saint Saviour
Jersey, JE2 7ZW

Regulated by the General Council of the Bar
www.barcouncil.org.uk & supervised by JFSC • also a door tenant at www. clerksroom.com

.../...

When any of these criteria applies, the trustee is responsible to file two kinds of reports (each to be filed on a form in French, available via the internet[11]):

- A 2181 Trust1 *déclaration événementielle* if you like a chargeable event declaration, within one month of creation, modification or termination of a trust, the term "modification" being defined widely to include events such as contribution of assets to the trust, death of the settlor or a beneficiary, addition of a beneficiary, or distributions or as the French have put it any event changing the é*conomie* of the trust; and
- A 2181 Trust2 *déclaration annuelle* or if you like annual declaration, by June 15th of the relevant reporting year, including a detailed statement of assets), as of January 1st of that year.

Failure to file any such report is subject to a fine of €20,000, payable by the trustee but for which the settlor and beneficiaries deemed settlors may be jointly liable, if they were liable for IFI on assets not reported. Other sanctions may apply, including an 80% penalty on IFI due on unreported assets and other penalties for intentional non-compliance or tax fraud.

The *déclaration évenmentielle* describes the event triggering the reporting requirement and includes the identification of the trustee, the settlor, beneficiaries deemed settlors, other beneficiaries, any other "ultimate beneficiaries" and anyone placing assets in, or receiving assets from, the trust. The report must also describe terms governing the trust (those in the trust deed and any additional terms governing its operation), including rules as to allocation of assets and income. Event-based reports are to be filed as to all distributions from trusts, although under past practice, distributions of interest and dividends derived from securities held as portfolio investments have been grouped together and reported once each year, in January of the year following the one during which the distributions were made.

The *déclaration évenmentielle* contains an inventory of assets enabling the administration to consider whether any DMD or substitute is due.

Please note that there are four options for each asset declared: a) *mis en trust*, for assets placed in trust, b) *transmis* to identify any gift or succession to an asset to a beneficiary or

OVERSEAS CHAMBERS OF PETER HARRIS

E: oc@overseaschambers.com | Maison de la Boucterie
T: +44 (0)1534 625 879 | Rue de la Boucterie
F: +44 (0)1534 491 195 | Saint Saviour
www.overseaschambers.com | Jersey, JE2 7ZW

Regulated by the General Council of the Bar
www.barcouncil.org.uk & supervised by JFSC • also a door tenant at www. clerksroom.com

.../...

beneficiaries, c) *attribué* to identify assets attributed within the trust to a given beneficiary, beneficiaries or class of beneficiaries, d) *sorti* to identify assets transferred out of the trust itself. Please note that the complexity of the definitions used are due to the frequent use by Americans in France of Grantor style trusts. A British trustee will need to carefully consider whether any boxes, if any at all need to be ticked/*checked* as the structure of interests in an English style trust may be completely different from the model used.

The annual declaration includes information similar to what is provided in the *déclaration évenmentielle*, plus the detailed inventory and net asset value of assets in the trust as of January 1st of the relevant year, setting out either all assets if the settlor or any beneficiary or other "ultimate beneficiary" had a French tax domicile at that date, or, if not, then only French assets held at that date. The detailed inventory can take the form of an account statement attached to the report, listing assets as of close of business on December 31 of the previous year.

As indicated above, the French trust reporting requirements take account of EU rules on anti-money-laundering / countering financing of terrorism ("AML/CFT), including the Fourth and Fifth EU Money Laundering Directives (Directives 2015/849 and 2018/843), which require reporting of the "beneficial owners" of trusts (defined to mean settlors, trustees, protectors, beneficiaries and any others exercising control over the trust) and recording such information in a national register, accessible to certain public authorities, to others carrying out due diligence required by AML/CFT rules, and to private parties for purposes of identifying beneficial owners of legal entities or for other "legitimate interests." In France, this register is kept by tax authorities, and includes information from the event-based and annual reports. The directive is by definition of limited application as ithas to be implemented by each State. Whilst partially introduced the Channel Islands where I am established, the local legislation does not require me to report to administrations outside Jersey.

Wealth tax and PSG

The PSG, payable by the trustee, is assessed to the extent that French wealth tax is due on trust assets but not paid by the relevant taxpayer, i.e., the settlor or beneficiary deemed settlor. As mentioned, until December 31, 2017, assets subject to ISF – and

OVERSEAS CHAMBERS OF PETER HARRIS

E: oc@overseaschambers.com | Maison de la Boucterie
T: +44 (0)1534 625 879 | Rue de la Boucterie
F: +44 (0)1534 491 195 | Saint Saviour
www.overseaschambers.com | Jersey, JE2 7ZW

Regulated by the General Council of the Bar
www.barcouncil.org.uk & supervised by JFSC • also a door tenant at www. clerksroom.com

.../...

consequently to the PSG – included assets such as cash, portfolio investments and real estate, but as of January 1, 2018, IFI and the PSG apply only to certain immovable assets including property holding entities. The statute of limitations for assessment of wealth tax, the PSG and related penalties, if required trust reports are not filed, expires at the end of the 10th year after the tax was due.

The PSG is assessed on taxable assets in the trust at the flat rate of 1.5%. By comparison, IFI (or ISF, for applicable years) is assessed at progressive rates on taxpayers with taxable assets in excess of €1.3 million; if that threshold is reached, progressive rates are applied to net taxable assets exceeding €800,000, beginning at 0.5% and reaching 1.5% on taxable assets in excess of €10 million. Rules applicable to IFI generally follow those established for the former ISF. For example, calculation of taxable assets takes account of exemptions for professional assets (*biens professionnels)* and reductions for a principal residence. Various anti-abuse rules have been designed to neutralize certain debts (which otherwise would reduce the taxable value of the real estate). Care has to be taken with these rules in the context of trustees indirectly holding French properties or financing purchases by their beneficiaries.

The PSG levy is generally sidestepped -not avoided or eluded- by the French resident taxpayer declaring the assets in their ISF or now IFI return. The object of the IFI is to encouraged direct declaration of indirectly held immovable assets.

The trustee still has to file thee annual return if the taxpayer concerned declare the assets themselves.

The PSG and IFI are and remain mutually exclusive.

It is possible for the French resident settlor or deemed beneficiary settlor of a dynastic trust of qualifying agricultural land in the United Kingdom to obtain relief under both this and the current Income Tax treaty between France and the United Kingdom. I advise several trustees of this type or English property arrangement.

As a general rule, the *constituant* settlor, if alive on January 1st of the relevant year, is subject to IFI on all taxable assets held by the trust at that date, but if at that date the settlor is deceased, the beneficiaries deemed settlors become subject to the tax. Further

OVERSEAS CHAMBERS OF PETER HARRIS

E: oc@overseaschambers.com
T: +44 (0)1534 625 879
F: +44 (0)1534 491 195
www.overseaschambers.com

Maison de la Boucterie
Rue de la Boucterie
Saint Saviour
Jersey, JE2 7ZW

Regulated by the General Council of the Bar
www.barcouncil.org.uk & supervised by JFSC • also a door tenant at www. clerksroom.com

.../...

to the Court decisions described above, this allocation of assets for IFI purposes can potentially be adjusted, taking account of the extent to which trust assets are as a practical matter available to the beneficiaries for payment of taxes.

The assessment of wealth tax is subject to rules as to territorial application of French tax set out in French law and in relevant tax treaties. In general, French tax domiciliaries are subject to tax on all taxable assets wherever situated, but non-residents are subject to tax only on French-situs assets. Taxpayers establishing French tax domicile are subject to tax only on French-situs assets for each of the first five years after their arrival, if in the relevant year they were not domiciled in France for the preceding five years.

The Succession Duty Treaty of 1963 between France and the United Kingdom can have an indirect bearing on succession duty outcomes involving a UK domiciled deceased and should be considered where there is a will trust with French beneficiary. However, whilst it may be arguable that the Treaty overrides the French statute, it does not apply to French gift duty or to the IFI. Care needs therefore to be taken as the French resident beneficiary will technically trigger the yearly reporting obligations even where they have only an unvested contingent interest in the trust fund.

If the PSG levy is payable by the trustee, it is paid along with the filing of the annual report. The settlor and the beneficiaries are jointly and severally liable for the tax, except to the extent (1) they declared trust assets on their own wealth tax returns or (2) taking account of assets included in the annual report allocated for purposes thereof to that settlor or beneficiary, the fair market value of their net taxable assets falls below the €1.3 million threshold. To evaluate the impact of these rules for trusts holding taxable assets, the trustee as a practical matter must obtain information about the wealth tax liability of the settlor or (if the settlor is deceased) of beneficiaries deemed settlors. Failure to pay the PSG when due may result in a penalty ranging from 10% to 80%, plus interest (currently 0.2% per month, i.e., 2.4% per annum).

There is an exemption from wealth tax and the PSG for irrevocable trusts whose trustees are established in a jurisdiction with a tax-assistance treaty with France and either (1) the trust's beneficiaries (including all income as well as remainder beneficiaries) are composed exclusively of charitable or public-interest entities which as

OVERSEAS CHAMBERS OF PETER HARRIS

E: oc@overseaschambers.com | Maison de la Boucterie
T: +44 (0)1534 625 879 | Rue de la Boucterie
F: +44 (0)1534 491 195 | Saint Saviour
www.overseaschambers.com | Jersey, JE2 7ZW

Regulated by the General Council of the Bar
www.barcouncil.org.uk & supervised by JFSC • also a door tenant at www. clerksroom.com

.../...

donees/legatees are exempt from gift/succession tax or (2) the trust was established in respect of certain pension or retirement arrangements.

Note that the EU and EEA rules currently require France to abstain from penalising trustees where there is an information exchange arrangement in place with the jurisdiction concerned.

However, certain further French exemptions only apply where there is also a tax recovery arrangement in place with jurisdiction concerned , which needs to be verified in each case.

Succession, gift and transfer tax by reason of death

A significant feature of the 2011 French trust legislation was the creation of a new regime for imposing transfer tax on trust assets at the death of the settlor and at the death of each successive beneficiary deemed settlor. For example, for a trust established by the settlor to benefit his/her children and then his/her grandchildren, and then passing to successive generations, tax will be imposed at each passage from generation to generation.

In the background, it should be noted that French succession tax is assessed on each beneficiary at progressive rates and after deductions, depending on the relationship between the deceased and the beneficiary. There is no tax on succession passing to a spouse or civil partner. For others, the rates are as follows:

- Direct descendants: After a deduction of €100,000 per descendant, progressive tax rates for each begin at 5% and reach 30% for assets above €552,324, 40% for assets above €902,838 and 45% for assets above €1,805,677.
- Siblings: After a deduction of €15,932 per sibling, the tax rate is 35% on the first €24,430 and 45% thereafter (subject to some exceptions).
- Nieces and nephews: A flat rate of 55% applies, after a deduction of €7,967 each.
- For other relatives up to four degrees of relationship (for example, great-uncle/grand-nephew): A flat rate of 55% applies after a deduction of €1,594 per relative.

E: oc@overseaschambers.com
T: +44 (0)1534 625 879
F: +44 (0)1534 491 195
www.overseaschambers.com

Maison de la Boucterie
Rue de la Boucterie
Saint Saviour
Jersey, JE2 7ZW

.../...

- All other beneficiaries: A flat rate of 60% applies after a deduction of €1,594 per beneficiary.

Gifts are generally subject to gift tax at similar rates (although not on identical middle range tranches). Gifts to spouses and civil partners are taxed whereas under succession duty rules these transfers are exempt..

With respect to trusts, tax is assessed on deemed gifts and at the death of the settlor and of each beneficiary deemed settlor as follows:

- If assets are distributed from the trust in a manner amounting to a classic gift or transfer at death, for example by distribution from a grantor trust during the settlor's life or at his/her death, normal gift or succession taxes will apply, with taxation based on the family relationship between the settlor and the beneficiary (donee or heir/legatee).
- In other cases, trust assets (including initial capital and all retained income) are taxed at the death of the relevant decedent as follows:

a) If at the date of death the share of trust assets that is due to a beneficiary is determined, this share is subject to DMD (transfer tax by reason of death) based on the family relationship between the relevant decedent and the beneficiary, and that share is taxed in the context of the succession tax return to be filed for that decedent. For example, if at the settlor's death the trust is divided into one share for each of the settlor's three children (even if not distributed outright to them), then one-third of trust assets will be considered added to other assets passing to each of them as part of the succession, and succession tax will be due on the total, with application of the normal deductions and progressive rates.

b) If at the date of death a determined share of the assets, rights or capitalized products is due generally to descendants of the relevant decedent (or to a class of such descendants, for example to grandchildren), this share is subject to DMD payable by the trustee at the flat rate of 45%.

c) All other trust assets attributable to the relevant decedent, i.e. assets not allocated to a specific beneficiary or to a class of descendants, are subject to DMD payable by the

OVERSEAS CHAMBERS OF PETER HARRIS

E: oc@overseaschambers.com
T: +44 (0)1534 625 879
F: +44 (0)1534 491 195
www.overseaschambers.com

Maison de la Boucterie
Rue de la Boucterie
Saint Saviour
Jersey, JE2 7ZW

Regulated by the General Council of the Bar
www.barcouncil.org.uk & supervised by JFSC • also a door tenant at www. clerksroom.com

.../...

trustee at the flat rate of 60%. This rate also applies if the trustee is subject to the law of a jurisdiction on the French list of non-cooperative states and territories or the trust was created by a French-resident settlor after July 30, 2011.

Peter Harris
Barrister in overseas practice
LLB. (Hons.) Dip. ICEI (Amsterdam)
Revenue Bar Association, Mediator
E: peter.harris@overseaschambers.com

[1] Oct. 21, 2016, n° 2016-591.

[2] March 16, 2017, n° 2016-618.

[3] Sept. 25, 2017, n° 412024 and n° 4112031.

[4] Dec. 15, 2017, n° 2017-679.

[5] Feb. 7, 2018, n° 412027, n° 412031 and n° 412412.

[6] March 20, 2020, n° 410930.

[7] June 24, 2020, n° 19PA00458.

[8] Nov. 18, 2020, n° 19-14242.

[9] Dec. 11, 2020, n° 442320.

[10] Jan. 6, 2021, Crim. 06.01.2021 n° 18-84570.

[11] Formulaire 2181 Trust1 and Formulaire 2181 Trust2

OVERSEAS CHAMBERS OF PETER HARRIS

E: oc@overseaschambers.com
T: +44 (0)1534 625 879
F: +44 (0)1534 491 195
www.overseaschambers.com

Maison de la Boucterie
Rue de la Boucterie
Saint Saviour
Jersey, JE2 7ZW

Regulated by the General Council of the Bar
www.barcouncil.org.uk & supervised by JFSC • also a door tenant at www. clerksroom.com

.../...