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Article : **2015 French Trust declaration campaign**

29th April, 2015.

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Cautionary note : IN CASES WHERE AT LEAST 8 RETURNS HAVE NOT BEEN FILED, THE FRENCH PENALTIES CAN AMOUNT TO THE TOTAL VALUE OF THE TRUST'S ASSETS.

As of 8 December 2013, the penalty for non-declaration is now 12.5% of the trust's assets (with a minimum of 20.000 €) rather than the prior 5% for each missing declaration.

That means an omission to file 2181 Trusts<sup>1</sup> for the initial acknowledgement of the trusts existence as at the coming into force of the legislation on June, 2011, and any constitution, modification or extinction of a trust since that date; or 2181 Trusts<sup>2</sup> of the asset value of the trust at 1st January of each year as from 2012.

As a practical mathematical example, the failure to report a) the constitution followed by b) the liquidation after c) 6 years of existence of a trust with a French connection (i.e. 8 missing returns) entails penalties equal to the full value of the trust's assets. Trustees as well as settlors (and deemed settlors) are jointly liable for the payment of these penalties.

The Declarations in 2015

**I The annual levy declaration 2181 Trusts<sup>2</sup>** : the *prélèvement* declaration of exemption declaration of wealth.

We stress that following the change in the 2014 legislation, French resident Trustees will need to file the declaration 2181 Trusts<sup>2</sup> by 15th June, 2015, irrespective of whether there are other non-residents involved.

The administrative timetable each year for the filing of **2181 Trusts<sup>2</sup>** by Trustees of trusts that have a French connection can be summarised as follows:

**- Prior to 19th May 2015** (the filing date of the paper Income tax return<sup>1</sup>) the trustees should provide each French resident constituent (as distinct from but perhaps equivalent to its settlor) or deemed constituent with the market value of the trust's assets attributed to each constituent or deemed constituent on 1st January 2015. I believe that it is essential to determine with advice from a trust specialist - not therefore necessarily a French avocat or notary - on the status of each French resident connected with the trust to determine their status as a simple beneficiary behind

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<sup>1</sup> see <http://www.overseaschambers.com/news-press/latest-news/french-income-tax-declarations.aspx>

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other living constituents or deemed constituents. I stress that there is a fundamental ambiguity in the French definition of a constituent and a beneficiary owing to an inability to apprehend those concepts in a civil law environment.

We recommend filing the paper income tax return to enable a *mention expresse* to be attached to it if necessary to limit the damage of misinterpretation of the declaration and ensure that penalties are not inflicted.

Each Constituant (or deemed constituent) should then report the value of the trust's assets provided by the trustee, for their wealth tax which should be the same as those reported by the trustees in the annual report (see below).

Where there are several constituents on a deemed basis; advice will be needed as to what deemed share needs to be declared and by whom.

**- in the weeks prior to 15<sup>th</sup> June 2015** Each French resident Constituant or beneficiary deemed constituent should provide evidence to the trustees that the value of the Trust Fund attributed to them has been properly reported for French wealth tax purposes. **This cannot be left until 14th June.** I would suggest that where there is doubt as to whether a French beneficiary is deemed a constituent or not, that this issue be addressed with the Trustees as a matter of principle.

**-Prior to 15<sup>th</sup> June 2015** The trust annual report is due on 15th June 2015 in cases where the senior (or deemed settlor) is a French resident, or on 31 August for all other cases.

-Assuming they do not receive the evidence that wealth tax reporting obligations have been fulfilled by the settlor (or deemed settlor) the trustees should pay the *sui generis* levy (amounting to 1.5% of the trust's assets for 2015) to the French tax authorities by 15 June 2015.

**- in the weeks prior to 31<sup>st</sup> August 2015** Each non resident constituent or deemed constituent of a trust with a French connection by assets or beneficiaries should provide evidence to the trustees that the value of the French situs Trust Fund attributed to them has been properly reported for French wealth tax purposes under the non-resident régime.

**-Prior to 31<sup>st</sup> August 2015** The Trust annual report is due for trusts with non-resident constituents

## **II 2181 Trusts1: The *évènementielle* declaration**

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- An event-based declaration is due within 30 days after the event needing declaration in other words: the constitution, modification or termination of a trust with a French connection.

Modifications may include distributions, transfers of assets into trusts, changes in beneficiaries or the allocation of the trust's assets to certain beneficiaries. It may also include the decease of a constituent or deemed constituent, however advice will be needed as to the link with any French succession declaration, to be filed within 6 months or, if non-resident 12 months of their decease.

Assuming the trustees have failed to report trusts that have maintained a French connection since 2011, we suggest sending the missing returns as soon as possible and most importantly before the French tax authorities make a request for them. No penalties should be charged, for the moment, for the late deposit of returns (as long as no *sui generis* levy is due).

### **III. HOW TO DECLARE?**

Since January 2014, trust declarations must be completed on mandatory declaration forms, 2181 Trusts<sup>1</sup> and 2818 Trusts<sup>2</sup> that have been issued by the French tax authorities and are or should be available on the website [www.impots.gouv.fr](http://www.impots.gouv.fr). Trusts 2 is at 29<sup>th</sup> April, pending. The law also requires that the declarations be completed in the French language only. Those who unwisely chose not to file free-style declarations carrying a full description of the trust and its economy will have missed valuable opportunity to put the trust on a given, set of legal rails. There remains a window involving the use of a mention expresse, but that needs specific advice and assistance in its drafting. English trusts of land will need one of these, to explain whether and to what extent these are excepted under the definition of article 792-0 bis CGI as statutory trusts of English realty.

We stress that the 2015 declarations, whether 2181 Trusts or Trusts<sup>2</sup> will need to be carefully worded as there is a risk that the information in part will be transferred to the French register of trusts depending upon the decrees for its implementation.

In view of the approaching 19<sup>th</sup> May and 15<sup>th</sup> June deadlines for the 2015 annual declarations, please do not hesitate to contact Overseas Chambers on [oc@overseaschambers.com](mailto:oc@overseaschambers.com) if you need any further information or assistance in completing the declarations:

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Please do not hesitate to contact us with instructions on any difficulty of interpretation.

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