

STEP BAHAMAS

BFSB

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The New French Tax Treatment and Reporting obligations of Foreigns Trusts

**Jean-Marc Tirard
9 rue Boissy d'Anglas
75008 Paris
France**

**Tel: +33 1 53 57 36 00 Fax : +33 1 47 23 63 31
tirard.naudin@online.fr**

TIRARD, NAUDIN

SOCIÉTÉ D'AVOCATS

The legal treatment of trusts in France

- The trust is 'unknown' under French law
- The Hague Convention has not been ratified but...
- French courts recognise the effects of foreign trusts.

Main taxes in France

- Gift/Inheritance tax
- Income tax/Capital gains tax
- Wealth tax

The French tax reform concerning trusts

- The creation of a specific regime
- The definition of “trust”
- The concept of deemed settlor

Tax consequences on formation of a trust

The constitution of a trust is not treated as
a gift for French tax purposes.

The new law does not change the
situation.

Tax consequences in respect to income tax

When is income from a trust subject to
French income tax?

Tax consequences in respect to income tax (cont.)

Is it upon distribution to beneficiaries or
when income is earned by the trust?

Tax consequences in respect to income tax (cont.)

- As a general rule income tax is only due upon distribution of income (article 120.9° CGI).
- The new law does not change the rule in respect of income realised and distributed during the life of the settlor.
- But beware CFC rules (article 123 bis CGI).

Tax consequences in respect to income tax (cont.)

Does article 123 bis (CFC rules) apply to
beneficiaries of a discretionary trust?

The answer is probably no (still).

Tax consequences in respect to income tax (cont.)

Under the new law, income accumulated and not distributed during the life of the settlor is not subject to income tax but to inheritance tax.

Tax consequences in respect to wealth tax up until 31st December 2011

- Discretionary trust : No.
TGI Nanterre 4th May 2004
- Life interest?

Tax consequences with respect to wealth tax as from 1st January 2012

Wealth tax is due by the settlor.

Tax consequences upon distribution of capital and/or liquidation of the trust up until 31st July 2011

- Gift or inheritance tax becomes due depending on whether the distribution is made during the life of the settlor or after his death.

Tax consequences upon distribution and/or liquidation of the trust as from 31st July 2011

No change.

Tax consequences upon death of the settlor

- Under the former regime, no tax was due.
- Under the new regime, inheritance tax is due on both the capital and accumulated income.

The tax obligations of the trustees

- In respect of wealth tax

A specific tax of 0,5% is due by the trustees if the trust assets are not reported by the settlor.

- In respect of inheritance tax

Under certain circumstances the tax should be collected and paid by the trustees

The reporting requirements in respect of trusts

- The burden is on the trustees.
- Heavy penalty in case of failure to comply.
- The settlor and beneficiaries are jointly and severally liable.

The reporting requirements in respect of trusts (cont.)

Trustees will have to disclose :

- The contribution, modification or end of the trust as well as the provisions of the Trust
- The fair value of the Trust's assets each year as from January 1st 2012

What are the alternatives to trusts ?