Tax treatment of trust in France

The law will be voted on the 7 of July

Translation is only a corrected Google translation

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Article XX of the supplementary budget for 2011

The supplementary budget for 2011 has created a new system for taxing foreign trusts whose beneficiaries or constituents, must be an individual, are or were tax residents of France.

The effective application of this new regulation is primarily based on the disclosure of trust to the French tax authorities and that under the sole administrative and financial responsibility of the trustee named “administrateur du trust” under the new French tax law.

Under the French tax law, the direct responsibility of a director is a new concept as it exists in a number of states foreign friends.

The new tax legislation will allow retroactive amnesty de facto for donations and inheritance prior to the publication of the law, . The law will allow a regular and tax-wise use of certain foreign trusts

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The trust is frequently used in the English-speaking world, first to transmit a heritage, including shares of a family business, in ensuring the maintenance in the family over several generations, while a "real" legacy would include the heirs to dispose of the property. But in civil law, the trust is not recognized and is even banned in the context of Article 1130 of the Civil Code, promulgated by Act of February 7, 1804, which prohibits future succession pacts.

But a very small number of French tax residents have formed non resident trusts outside France for the purpose of tax evasion.

The objective of the French parliament is to pierce the veil of the trust by submitting the trustee to heavy administrative and financial obligations.

French tax law on trust @efi 07.2011 n°1
I / LACK OF DEFINITION OF TRUST IN TAX FRENCH LAW

The trust, institutions prevalent in Anglo-Saxon, has no legal existence in France. While the regime of the “Fiducie”, introduced into the French legislation by Law No. 2007-211 of 19 February 2007 [1] comes close in some ways.

Indeed, under Article 2011 of the Civil Code, the Fiducie is defined as "the process by which one or more components transfer property, rights or sureties, or set of assets, rights or interests, present or future, to one or more trustees, holding them apart from their own patrimony, act for a specific purpose for the benefit of one or more beneficiaries. »

There is very similar logic to that which governs the trust. But this system also can be distinguished in several important respects.

In particular, the Fiducie must be established by law or by contract, express. In addition, the Fiducie agreement is void if it proceeds from a donative intention to the beneficiary; such invalidity is a public order cause.

In tax law, the trust is subject to administrative pragmatism

Traditionally, many practitioners and administration clung to the principle of ownership is apparent to say that the trustee was deemed to be a nominee

Some tried to assimilate the trust to the fiducie in French law, established in 2007 and inspired by the trusts, but the contract the French fiducie is fundamentally different in that it is in principle a contract, the beneficiary and accepted by the ban, which is public, trust agreements for conducting a liberal to the beneficiary (Article 2013 Civil Code).

- Disparate legislation

Thus, the trusts are either specifically named or listed under the title "of entities or organizations" and

- Article 120 of the General Tax Code (CGI) describes in his 9 °, income from securities and foreign source «products "trusts" regardless of the consistency of the property comprising the trust. »

- Article 238 bis -0 I of the Code sets out the conditions under which the results from the management or disposition of assets transferred outside France, particularly those placed in a trust, are included in taxable income.

- Article 990 Section D states that legal entities, corporations, organizations, trusts or comparable institutions, directly or through an intermediary entity, with one or more buildings located in France or are holders of real rights on the property is liable an annual fee equal to 3% of the market value of such property or rights.

- Similarly, article 244 bis A Article shall submit to the regime of capital gains property "legal persons or organizations, whatever the form, which is headquartered out of France"

In the law prior to passage of the law, a total pragmatism prevailed and in many, certainly low, a situation when the trust was used as a vehicle for tax avoidance

In fact, this lack of written law has resulted in a case on an individual basis, both for the insecure state officials and users of these structures

- Doctrine and jurisprudence Praetorian

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In terms of doctrine

Initially, the administration tried to use the traditional doctrine of apparent ownership by requiring the trustee in his capacity as nominee administration is entitled to take for the beneficial owner of a property that appears as such in the eyes third parties, under terms of formal titles, or the law of his actions but was soon confronted with the legal qualification of the trust

. The right to property transfer and apparent ownership of a property that appears as such in the eyes of third parties, under terms of formal titles, or the law of his actions but was soon confronted with the legal qualification of the trust...

Similarly, in terms of indirect holding of property, the doctrine stated that the administrative law concerning inheritance or wealth tax was holding by means "of shares or shares of corporations and human rights organizations held in who do not have legal personality in France (trusts, foreign foundations ...). In this respect regardless of the form of the corporation or organization in question."

Administrative documentation 7s213 § 16

In terms of jurisprudence

Specifically, in fiscal matters, the jurisprudence of the Supreme Court has so far established by default, by linking the specific effects of each trust of which he has to consider a case in a category of national law to apply for appropriate legislation.

This is true both for the rights of inheritance tax (DMTG) for the solidarity tax on wealth (ISF).

1. In terms of DMTG (taxes on donations and successions)

The uncertainties on how taxation mainly irrevocable trusts. Indeed, in the case of a revocable trust, we cannot assume that the goods have left the estate of the deceased or donor. Therefore, how to tax law in matters of inheritance and gift taxes are normally applied in the current state of law.

In contrast, irrevocable trusts appear, a priori, more ambiguous in terms of property law.

In this regard, the Supreme Court held, in a decision [2] dated May 15, 2007, the designated beneficiaries of a trust " have acquired [the] property [of goods carried by a trust] at the close of trust caused by [the] death [of its constituent that s It was defeated irrevocably the property of the property] , "which features" an inheritance tax that took effect from the date of death of the grantor and not the day of the constitution of the trust . " In that case, the Court allowed the taxation of that mutation, it was also very careful to characterize inheritance or donation.

But even if existing law was found to respond to this particular situation, it may remain the most confusing situations in which neither the current provisions relating to inheritance, or those dealing with donations only applies in an obvious way. Thus, even in the above case, the Court of Cassation did not seem able to refer explicitly or donations to the plan, the transfer taking effect at death, or the system of donations, in the absence of acceptance of the donees and transmission goods to them at the time the trust became irrevocable.

2. In terms of the French annual capital tax (ISF): mounting aggressive tax optimization

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The state of the law, resulting from the solutions generated by recent case law [3], leads to:

- exclude the attachment of assets in the trust assets to the beneficiary when the administration is unable to prove that it holds rights in rem therein

Thus, a decision of the Tribunal de Grande Instance of Nanterre dated May 4, 2004 considered the case of a discretionary trust and irrevocable, it is for the Administration to prove that the beneficiary of a trust products has human capital which they come, representing a heritage value, and may come as such in the heritage ISF.

" perception of annual income from two trusts under American law is not enough to influence the recipient any presumption of ownership of securities, provided that the tax authorities produced no evidence on the consistency of assets under underlying the said trusts, or proof that the recipient of the income has rights representing real heritage value. Therefore, there is no need to subject it to the solidarity tax on wealth due to its capacity as beneficiary of such trusts."

- attach the assets in the trust’s assets constituting the case of a revocable trust and the trust deed allows the grantor to regain possession of assets in the trust at any time.

Furthermore, in a decision dated March 31, 2009 No. 07-20219[4], the Court of Cassation ruled that "the settlor of a trust deed should be seen as having a right of enjoyment and disposition of objects of the trust assets when the act provides:

"- the lifetime of the settlor the trustees will hold the assets in trust for his benefit and pay the income derived therefrom and any amount of principal, if any, for an unlimited amount, it may request at any time writing;

"- that the purchaser may revoke the agreement at any time and take possession of property entrusted or require all or part of the portfolio is liquidated, to receive the prize, or even that the securities be delivered to him.

«The objects of the trust assets must then be included in the basis of the component of the ISF. »

In short, when the trust is revocable, and non-discretionary goods that are the subject should be included in the taxable wealth of the settlor, then not really divested of his property.

In practice and on the contrary, these solutions jurisprudence, whose logic is indisputable with regard to our right, lead to only attach the assets or the assets of the beneficiary or to that of the settlor in the case of a trust irrevocable and discretionary.

The result was a state law opening up significant opportunities for tax evasion, including in respect of property which the grantor does not decline jurisdiction in reality but retains beneficial ownership through agreements with the administrator of the trust hidden in the administration.[5]

EWB in the case law is relatively sparse and less favourable to the tax authorities.

As a result, the beneficiary of a discretionary trust does not have the assets placed in trust for a taxable property right to the ISF because it has no real right to property placed in trust, managed exclusively by the trustee - the latter deal only with the income distribution.
The tax was based so heavily on quite case by case acts of trust. Therefore, in the absence of precise rules of taxation in French law, it appeared possible to use irrevocable discretionary trusts for aggressive tax planning: in particular, constituents or beneficiaries could keep in practice, control of trust assets through complex arrangements or confidential letters authorized by some states while appearing to have disposed of their assets in terms of the French authorities.

In tax law, the trust had no legal definition and was submitted to the pragmatism and administrative law waiver. The tax practice, non-defined by the administration varied depending on the nature of the trusts and according to the court. There was no general rule

II / TRUST IN THE NEW TAX LAW

The new law proposes to address the gaps and blur the current legislation for trusts in tax matters.

The law applies to a specific regime for trusts with regard both inheritance and donations tax laws (DMTG) that the French tax on capital (ISF) In addition, specific reporting requirements are planned to ensure effective of these measures.

This definition is only a “tax definition" that applies to all taxes covered by the General Tax Code (CGI) I.

The new article 792-0 bis CGI is therefore not intended to apply in another area that the French tax law.

A) Definition of trust for the French tax law

The definition of the trust tax law

The new law in the CGI inserts a new Article 792-0 bis, defining the trusts for and under French tax law. [I]

Under this new section, and for the implementation of CGI as a whole and not only to the taxes covered by the law, means trust

"all the legal relations created in the right of a State other than France, for a person who is a constituent, by act inter vivos or on death, in order to place the goods or duties under the supervision of a director, in the interests of one or more beneficiaries or for achieving a specific objective."

The definition is that provided in Article 2 of the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition, which was not ratified by France

This definition therefore unsuccessful in creating the trusts under French law but first and only enable the qualification of foreign trust structures under French tax law.

Definition of the initial settlor

The Article 792-0 bis, I. 2 of CGI sets, under Title IV of the CGI on registration fees and the like, the grantor of the trust as:

- is the person, who physically has formed,
- Or when it was made by an individual acting in a professional or a corporation, an individual who has placed the assets and rights.

The latter disclosure is intended to allow the administration to judge the reality of mounting the trust to determine, if appropriate, the identity of the agent's real trust.
Definition of the fiscal settlor

In addition, the text defines a "fiscal settlor", other than the initial component to allow law enforcement over the successive mutations. Thus, the beneficiary of a trust whose settlor is deceased original is treated as a fiscal settlor.

The definition of settlor is very broad as it may include the ancestors of a current beneficiary.

Definition of the beneficiary

The beneficiary can be an individual with or without inheritance relationship or not the settlor or a legal person (company, organization, foundation etc.). The law establishes a definition according to the nature of the charge provided.

- For the inheritance and donation

The beneficiary of the trust will be an individual person, heir or legatee, but the text also provides for the situation in which the beneficiary is not a person down, but another person whether physical or legal. In the latter case the rate of tax will be 60% and as such there is no provision for special tariff arrangements depending on the quality of the recipient.

- For the capital tax and the new special levy on trusts

The law does, however, that if the beneficiary is an individual.

The new Article 990 J CGI provides for "an individual constituents or beneficiaries of a trust defined in Article 792-0 bis are subject to a specific charge as will be discussed later. Only individuals constituents or beneficiaries of a trust are liable for the special levy, not any other private or public entities or corporations.

B - The reporting and disclosing obligations by the trustee

To enable the implementation of new tax rules, a new section AB 1649 [II] the CGI imposes new reporting requirements relating to trusts.

Who is the discloser? The trustee

According to the new Article. AB 1649. the administrator of a trust which the settlor or a beneficiary at least has its fiscal domicile in France, and that includes property or rights situated therein, shall be required to make reporting requirements to the French tax authorities.

What are the trusts to declare?

The reporting requirement extends to all of the following trusts:

- if the settlor is domiciled in France
- if a beneficiary is domiciled in France
- if an asset - property or right-is located in France

The scope, as defined by law before any administrative flexibility, is extremely wide and thus includes all the same charitable trusts that have a tie with France even though they could be subject to no tax.

The items to be reported

Under these provisions, the administrator of a trust which the settlor or a beneficiary at least has its fiscal domicile in France, or that includes property or rights situated therein, will be required to make a statement to the tax administration.
- The declaration coverage:

  - The establishment, modification or termination of the trust;
  - The content of his words (which should be understood as the contents of the trust deed and, if necessary, any additional provisions governing the operation of the trust);
  - The market value on 1 January of the year some of the assets and rights of their products placed and funded. The property and rights to be reported are those falling within the scope of the new levy on trusts. (Under the new Article 990 J of CGI)

A decree will set rules for the application of this device.

- Penalty for failure to report

  The new Article IV bis 1736 CGI [III] provides for penalties for violations of these new reporting requirements.

  This is a fine equal to 10 000 €uros or, whichever is higher, 5% of the assets of the trust.

  This is a very high level, corresponding to ten years of taking and carrying, in addition, the entire assets of the trust, whether or not taxable to the ISF or the new sampling of Article 990 J.

- Responsible for payment of the fine

  New 1754 Article V of the FTC states that the aforementioned fine is due jointly by the administrator that is to say, the trustee and the settlor and the beneficiaries of the trust.

The Taxation of the income of a trust

The trust is not a fiscally transparent entity

The new law limits the tax only to products distributed and therefore exempt products can be reinvested in the trust

**Article 120 § 9 new CGI** accurate because

*Are considered income for the purposes of this section, "9 products distributed by a trust defined in Article 792-0 bis, regardless of the consistency of the rights or property placed in trust;"*

It should be noted that the imposition of the products would be capitalized in one case particulier.si the trust is subject to taxation, within the meaning of the term and the tax in accordance with **article 123 bis CGI**

The taxation of the assets of a trust

As for inheritance tax for the French capital, the legislature wanted the weak link of the system: without any consideration of doctrine and asked professionals trust, that is to say the trustees, that French law called the "administrator" to reveal the French tax authorities the existence of the trust and the identity of the constituents and beneficiaries.
How are its professionals then react? The subject is delicate and controversial enough for everyone to take its ethics.

In any case the message is clear: a file is being prepared trusts as exists in France for the national bank accounts (FICOBA) and non-nationals (EVAFISC).

**The tax treatment of transmissions at no cost through trust donation or transfer by death**

The text recalls the law in cases where the transmission of property rights and placed in a trust is, under French tax law, donation or transfer by death.

### The general principles

The new article 792-0 *bis* II defines the tax treatment of trusts in donation and inheritance tax.

### The event is the death of the settlor

In this case, the assets transferred, including the products of capitalized assets initially placed in the trust will be taxed at their net market value at the date of transmission in terms of law, at a rate dependent on the relationship linking settlor and the beneficiary.

### The rates of inheritance taxes applicable

Several situations are considered

i) If direct transfer by gift or inheritance [IV]

This is the direct transmission of property rights placed in a trust as well as products that are funded; it is to say a direct transmission of an asset of the trust to an individual. The market value of net assets, rights or products concerned on the date of the transfer is subject to transfer taxes for free based on the relationship between the settlor and the beneficiary.

This is the reminder of the common law of mutations and its application to trusts, which is intended to apply when the gift or estate can be established clearly.

ii) If the donation or transfer by death cannot be established.

The legislature plans to get as close as possible to the law, considering the death of the settlor as the trigger for the mutation. The property, rights or products capitalized placed in a trust, which are passed to beneficiaries upon the death of the grantor without integrated to the estate or remaining in the trust after the death of the settlor, are then subject to the rights of transfer by death under the following conditions:

  a) If at the date of death, the share of property, rights or products which is capitalized due to a beneficiary is determined, this share is subject to transfer taxes on death as the relationship between the grantor and the beneficiary

  -B) If at the date of death, a certain proportion of property, rights or products is capitalized is globally due to due descendants of the settlor, the share, net of the share or shares mentioned in a) is subject to duties of inheritance tax on death at the rate applicable to the final tranche of Table I annexed to Article 777 or 45%

-C) A third case, that is, to some extent, the hypothesis "broom" of taxation of the net assets of the trust at the date of death of the grantor is, in practice

- assuming there is no transmission and where the assets remain in the trust at the settlor’s death,
- assuming there is no transmission from specific individual (case 1) to beneficiaries other than the descendants of the component (case 2).

It is then imposed at the marginal rate of taxation of inheritance apply to collaterals and between non-parents (60%).

iii) If the trustee is subject to the law of a non-cooperative state

The new law states if the administrator of the trust is subject to the law of a State or territory without a cooperative tax treaty within the meaning of Article 238-0 A of the gift tax and transfer taxes on death are due at the rate applicable the last part of Table III annexed to Article 777 (60%).

Article 238-0 A introduced by Article 22 of Law No. 2009-1674 of 30 December 2009 Supplementary Budget 2009 proposes an innovation, namely the definition in French law, the non-cooperative countries and territories (ETNC), that is to say those whose situation with regard to transparency and exchange of tax information has been reviewed by the Organization for Economic Cooperation and Development and who have not signed with France a convention on administrative assistance for the exchange of any information.

<table>
<thead>
<tr>
<th>French list of uncooperative states for 2011</th>
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<tbody>
<tr>
<td><strong>Stops 14 April 2011, OJ 29 April 2011, p.7477</strong></td>
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<tr>
<td>Anguilla</td>
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<td>Belize</td>
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<td>Brunei</td>
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<td>Costa Rica</td>
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<td>Dominique</td>
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<td>Grenade</td>
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</tbody>
</table>

CAUTION The text considers not the law of the domicile of the trust but the law on which the trustee is submitted. The marginal rate of inheritance tax applicable to collaterals and between non-parents (60%) applies in all case, if the trustee is subject to the law of a non-cooperative State or Territory:

iv) If the settlor is established in France (Art. 792-0 bis.)

The text provides that the rate of 60% applies ALSO in all cases, if the grantor is tax resident in France at the time of the creation of the trust and when the trust was established after May 11, 2011

v) Summary Table

These rules are presented in summary in the table below.

<table>
<thead>
<tr>
<th>Disposal of assets at death of the settlor</th>
<th>Taxation</th>
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<tbody>
<tr>
<td>Assets transferred</td>
<td>Determined by</td>
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<tr>
<td>of a beneficiary</td>
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<td>Do not</td>
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<table>
<thead>
<tr>
<th>Determined by &quot;collective&quot; of several progeny</th>
<th>45%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other cases</td>
<td>60%</td>
</tr>
<tr>
<td>Assets remaining in the trust</td>
<td>60%</td>
</tr>
</tbody>
</table>

### The rule of territoriality applicable

The text adapts to the trusts the rules of territoriality applicable to estates defined by Article 750 ter of the CGI.

The donation and inheritance French duties apply, **except in cases of tax treaties if**

- On French and foreign assets of donors or deceased tax domiciled in France,
- On French assets of donors or deceased non tax domiciled in France,
- On French and foreign assets received by the heirs, legatees or donees tax domiciled in France on condition they have been for at least six of the ten years preceding the year in which they receive the assets

### The revision of the rule of presumption of ownership

The new law supplements Article 752 CGI in order to **extend the presumption of ownership or rights to property placed in trust.**

### Who is responsible for payment of inheritance or gift tax?

Under French tax law, the **beneficiary of an estate or gift is legally liable for the taxes**, if necessary with financial solidarity between the heirs

In the situation of the imposition of transmission by the trust, the legislature amended the traditional principle of the French tax by engaging the administrative and financial responsibility of the trustee in some situations provided a new article 792-0 bis of the CGI

In some cases, the trustee can be responsible for the payment of the inheritance taxes due by the beneficiaries

### The property taxes on a trust:

Ownership of property through a trust is ambiguous in French law at the French tax on capital (ISF).

Parliament proposes first, to be a general principle of submission to the French annual capital tax (ISF) property or right placed in a trust and, secondly, to create a special tax on trusts in order to hit the assets that were not reported to tax authorities under the ISF.

The principle is that the assets of the trust shall be subject either to the annual wealth tax due by individual either to a specific and annual levy on trust

**In both situations, the tax is payable only if the grantor is an individual**

### The principle: the imposition of the settlor to the French tax on capital
The new law complements the CGI on the basis of tax on capital by adding new rule for trusts

The settlor is the person legally liable for the ISF

Section 2 of Chapter I of Title IV of Part I of the book of the CGI is complemented by Article 885 G as follows:

Property rights or placed in a trust defined in Article 792-0 bis and products that are capitalized are included, their net market value at 1 January of the taxation year, as appropriate, in the assets of the settlor or the beneficiary is deemed to be constituted under Article 792-0 of the same II bis.

The new Article 885 G ter CGI is therefore expected that assets placed in trust, including capitalized products are included in the taxable wealth in the ISF of the component (if it is a natural person) and, where applicable, the beneficiary "deemed to be constituted under Article 792-0 II bis" to market value a net January of the tax year.

In addition, the new law (Section 1649 AB ) has established a reporting requirement of the trust under the liability of the trustee, even in cases where the settlor or beneficiary deemed to be a constituent is not liable for the tax Solidarity on capital due to the taxable net value of its assets. Clearly, in all situations, the administration will be informed of assets held by a trust and beneficiaries and constituents.

An exception for charitable trusts or similar

These provisions do not apply:

i) For irrevocable trust and

ii) the exclusive beneficiaries are covered by Article 795 CGI and

iii) whose director is subject to the law of a State or territory which has concluded with France a convention on administrative assistance to the fight against fraud and tax evasion

Maintenance of qualifications tax assets

In addition, the tax qualification of the property is preserved; Ultimately, given the rules of territoriality applicable to the ISF, the assets in a trust whose settlor is a resident French tax would be taxed regardless of their location, as well as property in France and placed in a trust the settlor is not French tax residents.

The exception: a specific and annual levy on trusts

The law creates a new specific levy on trusts under new Article 990 J CGI, it is a tax intended to "catch up" property rights or subtracted from the base of the ISF. For French law, is not to engage in a complex definition in the ownership of real property housed in a trust, but to set a levy of a general nature, jointly owed by the trustee, the settlor and the beneficiaries the trust.

• a) The legal tax payer: The individual constituent or beneficiary

The new Article 990 J CGI provides:

The individual constituents or beneficiaries of a trust defined in Article 792-0 bis CGI are subject to a levy set at the highest rate of capital tax (ISF)

Only individuals constituents or beneficiaries of a trust are liable for the special levy, not any other private or public entities or corporations.

• b) The effective tax payer: the trustee

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While Article 990 provides that taxpayers J’s statutory levy on trusts will be the "natural persons, settlors and beneficiaries of a trust" which exempts charitable trusts for general purpose not covered.

In practice, the actual charges will be the trustee because the text states:

- on the one hand, the reporting requirements imposed on the trustee will have to declare that "The consistency and value of property, rights and capitalized products placed in the trust."
- secondly, that the trustee and administrator must pay the levy to pay qualified public accountant by the administrator of the trust no later than June 15 of each année. and for the first time June 15, 2012.

Otherwise, the settlor and beneficiaries are jointly responsible for payment of the levy unless the trust has been regularly reported to the ISF by the settlor or regularly reported by the trustee as part of its general obligation to return (cf. above).

- c) the basis of the tax

Article 990 D of the CGI creates a special tax levied on assets placed in trusts that have not been declared in respect of the wealth tax (ISF).

The levy will be sitting on the market value o the assets of the trust at 1st January of each year:

- all property located in France and outside France, including capitalized product placed in the trust of which grantors and beneficiaries are French tax residents;

And

- Property located in France placed in trust (other than financial investments) of which grantors and beneficiaries are NON French tax residents;

It is therefore the same tax basis as the ISF – the French capital tax - for assts or rights held through trusts, which, however, not apply the exemptions resulting from the nature of the assets is to that such works of art and business assets.

This specific levy on trust is, in practice, to "catch up" of assets not declared to be taxed at the ISF.

Indeed, all individuals have an incentive to declare the property or rights lodged in trust to the tax authorities as part of a declaration of ISF since:

- First, the basis of the ISF is narrower, due to the exemption of certain property (business property, works of art, etc.).
- Secondly, the rate of ISF is never higher than the levy on trusts.

The new levy will therefore apply where the assets, unregistered, will be "discovered" in a different way by the tax authorities. So there will be some suspicion of concealment of the property.

- The levy rate

The levy is equal to the maximum rate of tax on capital is 0.5 % to 1 January 2012

- d) Exceptions to the levy

The law provides several exceptions but as a general condition:

The general condition: A treaty with a Tax Information Exchange clause

- The administrator of the trust must be subjected to the law of a State or territory which has concluded with France a convention on administrative assistance in the fight against fraud and tax evasion,
The objective is clear; the trustee should be compelled to respond to inquiries made by the French tax authorities either as part of agreements to avoid double taxation with an information exchange clause is in the drafts of exchange of information

**Pension trusts companies**

The levy does not apply «to trusts set up to manage the pension rights acquired under their occupation by the beneficiaries under a pension plan established by a company or group ‘business’.

This exemption applies to trusts created by companies for the benefit of their officers and employees and their former managers and employees. However, property rights can enter, if any, in the base of the ISF stakeholders.

**Les trusts dont les bénéficiaires exclusifs sont des trusts caritatifs**

Article 990 J (V) new features that ultimately

The levy does not apply to irrevocable trusts whose exclusive beneficiaries can benefit from the provisions of Article 795 CGI.

This exception is called the charity trust or public interest trust referred to in Article 795 CGI but it applies only if the exclusive beneficiaries can benefit from the exemption provided by Article 795 CGI.

These organizations and public charities, mutual societies and other recognized public utility whose resources are devoted to particular works of charity or assistance

- **Trusts regularly reported to the ISF**

  The new tax is not payable for the portion of the tax base that has been retained in the base of the ISF of a component, or who has been declared (see below) and that is not taxable to the ISF.

  Ultimately, this new levy on trust therefore analyzed as a tax alternative to the ISF, or duties on assets that have not been regularly reported to the administration.

  The taxation of assets to the ISF is discharged from the levy on trusts that when the result of a spontaneous AND regular reporting to the tax administration from the taxpayer concerned and not if it results from the enhancement tax initiative administration.

  In general, it is logical to set precisely the regime of this new tax, it should be noted that there are no cases in which the levy on trusts will be more favourable than the settlement of the ISF, which led to the exoneration of the new tax. The new tax is therefore a priority, to hit more easily undeclared goods and housed foreign trusts.

- **The question of accumulation with the 3% tax**

  Article 990 D CGI provides that legal entities, corporations, organizations, trusts or comparable institutions, directly or through an intermediary entity, with one or more buildings located in France or are holders of real rights on these goods are liable to an annual fee equal to 3% of the market value of such property or rights except legal exemptions.

  The question is whether this tax will continue to be payable in case of declaration of trust.

**III-TOWARDS THE DEVELOPMENT OF RECOVERY ASSISTANCE**

For the first time, the legislature refers to the Treaty of recovery assistance and this simply to make effective measures against fraud and tax evasion.

It is also and perhaps especially to prepare a safety net against the application for the less widespread, the Court of Justice of the European Union of free movement of capital is the least of which controls a hindrance.

Thus, Article 5 § 3 throw the exception of banking secrecy between member states.

**IV-ENTRY INTO FORCE: NOT RECALL THE PAST**

The law provides that all provisions will apply to donations made DMTG and deaths have occurred after the publication of the law.

**V THE ARTICLES OF THE LAW**

[I] «Art. 792-0 bis .

- I. - 1. For the purposes of this Code, the term trust all the legal relations created in the right of a State other than France by a person who is a constituent, by an act inter vivos or death in order to place the property or rights, under the supervision of a director, in the interests of one or more beneficiaries or for achieving a specific objective.

"2. For the purposes of this Title, the term component of trust is the person who made or when it was made by an individual acting in a professional or a corporation, an individual who has placed the assets and rights.

"II. - 1. The transfer by gift or inheritance of property or rights placed in trust as well as products that are capitalized are for the market value of net assets, rights or products concerned on the date of transmission, subject to transfer taxes as Free based on the relationship between the settlor and the beneficiary.

"2. In cases where the qualification of donation and that of succession do not apply, property, rights or products capitalized placed in a trust that are passed to beneficiaries upon the death of the settlor without being integrated to the estate or trust left in the after the death of the grantor is subject to transfer taxes on death under the following conditions:

" a ) If at the date of death, the share of property, rights or products which is capitalized due to a recipient is determined, the share is subject to transfer taxes on death as the relationship between the grantor and the beneficiary ;

" b ) If at the date of death, a certain proportion of property, rights or products is capitalized due to generally descendants of the settlor, the share is subject to transfer taxes free of charge by the death rate for the last portion of Schedule I to Section 777;

" c ) The value of property, rights or products placed in the trust capitalized, net of shares mentioned in a and b of this 2, is subject to rights of inheritance tax on death at the rate applicable to the final installment of the table III annexed to the same article 777.

"Without prejudice to the application of Article 784 of those rights and the rights of inheritance tax referred to in II of this one case of transmission by donation, the collection of duties on inheritances even mentioned in a and a 2 of this is done by adding the value of property, rights and products they impose on the other property included in the declaration of succession to the application of a sliding scale and for the calculation of rebates and discounts enacted by sections 779 and 780.

"The rights of inheritance tax referred to in b and c of this 2 are paid and paid to the competent public accountant by the administrator of the trust within the period provided for in section 641, from the death of the grantor. If and if the administrator of the trust is subject to the law of a State or Territory non-cooperative as defined in Article 238-o A or have not concluded an agreement with France for mutual assistance for the recovery, the beneficiaries of the trust are jointly and severally liable for payment of duties.

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"Exceptionally, when the administrator of the trust is subject to the law of a State or Territory non-cooperative as defined in Article 238-0 or when the trust was established after May 11, 2011 and, at the time of the creation of the trust, the settlor was domiciled in France for tax purposes within the meaning of article 4 B, the gift tax and transfer taxes on death are due to the rate for the final installment of Table III annexed to Article 777.

"3. The beneficiary is deemed to be a component of trust for the purposes of this II, on the property, rights and capitalized product placed in a trust the settlor has died at the date of entry into force of Law No. supplementary budget for 2011 and due to those imposed in accordance with 1 and 2 of II and their products capitalized."

[II] "Art. AB 1649. - The administrator of a trust defined in Article 792-o bis whose constituent or at least one of the beneficiaries is resident for tax in France which includes a good or Right situated therein shall declare the establishment, alteration or extinction, and the content of its terms.

"He also said the market value at 1st January of the assets, rights and products referred to in 1 and 2 of Article III of 990 J.

"The modalities for implementing this Article shall be fixed by decree."

[III] Art1736 IV bis. - Violations of the provisions of Article AB 1649 are punishable by a fine of € 10 000 or, if higher, an amount equal to 5% of assets rights or placed in the trust as well as products that are capitalized."

[IV] Art. 792-o bis. II. - 1. The transfer by gift or inheritance of property or rights placed in trust as well as products that are capitalized are for the market value of net assets, rights or products concerned on the date of transmission, subject to transfer taxes as Free based on the relationship between the settlor and the beneficiary.

[V] Art. 885 G ter.
- Property rights or placed in a trust defined in Article 792-o bis and products that are capitalized are included, their net market value at 1st January of the taxation year, as appropriate, in the assets of the settlor or the beneficiary is deemed to be a component under the same article 792-o II bis.

"The first paragraph does not apply to irrevocable trusts whose sole beneficiaries are covered by Article 795 and the administrator is subject to the law of a State or territory has entered into an agreement with France for assistance administration in the fight against fraud and tax evasion."

[VI] Art. 990 J.
- 1. - The natural constituents or beneficiaries of a trust defined in Article 792-o bis are subject to a levy set at the highest rate I mentioned in a section of 885 U. (Note EFI 0,5% at the 1stJanuary 2012)

"II. - When their director is subject to the law of a State or territory which has concluded with France a convention on administrative assistance in the fight against fraud and tax evasion, the levy does not apply to irrevocable trusts which the exclusive beneficiaries are covered by Article 795 or those made to manage the pension rights acquired under their occupation by the beneficiaries under a pension plan established by a company or group of companies.

"III. - The levy is payable:"

"1 For those who have their fiscal domicile in France within the meaning of article 4 B, on the property and rights located in France or outside France and capitalized product placed in the trust;
"2 For other people, because the only assets and rights other than financial assets mentioned in Article L 885 located in France and capitalized product placed in the trust.

"However, the levy is not payable in respect of property, rights and capitalized when goods were:

" a ) Included in the assets, as appropriate, of the settlor or a beneficiary for the purposes of section 885 G ter and regularly declared as such by the taxpayer;

" b ) A declaration, pursuant to section AB 1649, the estate of a settlor or a beneficiary deemed to be established under 3 of article 792-o II bis, where the settlor or beneficiary is not liable to pay the solidarity tax on wealth due to the taxable net value of its assets, including this property, rights and capitalized products placed in the trust.

"The levy is sitting on the market value a net January of the taxation of property and rights and capitalized product comprising the trust.

"The consistency and value of property, rights and capitalized products placed in the trust are declared and paid and the levy is paid to the competent public accountant by the administrator of the trust no later than June 15 of each year. Otherwise, the settlor and beneficiaries, other than those mentioned in a and b of this section, or their heirs are jointly liable for payment of the levy.

"The levy is sitting and collected according to the provisions and sanctions and safeguards the rights of transfer by death. "

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