

September 6, 2022

## French Tax Obligations Relating to Trusts

Reid Feldman

Kramer Levin Naftalis &amp; Frankel LLP

[+ Follow](#)[Contact](#)The image shows the Kramer Levin logo in white serif font, centered on a solid orange rectangular background. The logo is partially obscured by a dark, semi-transparent rectangular overlay on the right side.

Since French trust legislation was adopted in 2011, some early uncertainties about its application have been resolved. The connections with France that trigger application of the legislation have been clarified and expanded and reporting procedures have been standardized, with the reported information being fed into an official register accessible to authorities and others. 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 immobilière*, or IFI). An update of official commentary published March 30, 2022, modified some rules relating to reporting by trustees, and recent court cases provide clarification on some points, but questions remain.

[Privacy](#) - [Terms](#)

This memorandum describes (1) the context of the French trust legislation; (2) reporting obligations of trustees; (3) the impact of French wealth tax and the *prélèvement sui generis* (PSG), sometimes referred to as the “special trust tax”; and (4) the application of gift tax, succession tax and the analogous transfer tax by reason of death (*droits de mutation par décès*, or DMD).

## Context of French trust legislation

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

- To make assets held in trusts subject to ISF then in effect and to penalize failure to report assets subject thereto; for this purpose the PSG was created, payable by the trustee
- 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 generally 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 report and an event-based report, 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* 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. 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.

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 appears to have been inspired by skepticism as to whether there is any legitimate nontax reason to create a trust. French court decisions have led to modifications in French trust legislation and clarified somewhat how trusts should be viewed under French law, including decisions as follows:

- Striking down a rule permitting the public to access the trust register<sup>[1]</sup>
- 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)<sup>[2]</sup>
- Rulings that (1) the PSG and ISF are not cumulative (i.e., cannot both be imposed on the same assets) and (2) 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 since they would have a right to recover that tax from the party ultimately liable therefor (although the decision did not address which party is ultimately liable or what law would apply to that right of recovery)<sup>[3]</sup>
- Upholding attribution of trust assets to the settlor (or beneficiary deemed settlor) for wealth tax purposes, with the settlor (or beneficiary deemed settlor) having the opportunity to prove that he/she does not derive any taxpaying capacity from those assets (although the simple fact that the trust is irrevocable and discretionary would not constitute sufficient proof for this purpose)<sup>[4]</sup>
- 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<sup>[5]</sup>

- Holding 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<sup>[6]</sup>
- Holding that beneficiaries of irrevocable discretionary trusts set up in 2004 and 2008, for nontax 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<sup>[7]</sup>
- 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<sup>[8]</sup>
- 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<sup>[9]</sup>
- 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<sup>[10]</sup>
- Approving assessment of wealth tax for real estate held indirectly by trusts considering the beneficiary's use and enjoyment thereof<sup>[11]</sup>
- Upholding fines assessed on a trustee for failure to file trust reports for the years 2012 through 2015 for trusts having French-resident beneficiaries, taking into account documents obtained from foreign authorities under administrative assistance agreements, and rejecting defenses based on potential sanctions under foreign law for furnishing information required in French trust reporting<sup>[12]</sup>

## Reporting obligations

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

- A settlor, trustee or any beneficiary (including a contingent or remainder beneficiary)<sup>[13]</sup> being domiciled in France on Jan. 1 of any year, beginning in 2012
- The trust at any time since July 31, 2011, holding or acquiring French-situs assets, including French real estate, held directly or indirectly, and other French assets (including securities of French issuers), but reporting is currently not required for trusts with no French-domiciled settlor, beneficiary or trustee that hold no French assets other than portfolio investments
- The trustee (if not residing or established in the EU), on or after Feb. 14, 2020, establishing an ongoing “business relationship” with certain persons in France (including financial institutions, insurers, and accounting or legal professionals)

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):<sup>[14]</sup>

- An event-based report, within one month of creation, modification or termination of a trust, the term “modification” being defined to include events such as contribution of assets to the trust, death of the settlor or a beneficiary, addition of a beneficiary, or distributions
- An annual report, by June 15 of the relevant reporting year, including a detailed statement of assets, as of Jan. 1 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 noncompliance or tax fraud.

The event-based report 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. In this context, “ultimate beneficiary” has been defined (as from Feb. 14, 2020) 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 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 distributions of interest and dividends derived from securities held as portfolio investments can be grouped together and reported once each year, in January of the year following the one during which the distributions were made.

The annual report includes information similar to what is provided in the event-based report, plus the detailed inventory and net asset value of assets in the trust as of Jan. 1 of the relevant year, setting out either all assets if the settlor or any 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 (in French) attached to the report, listing assets as of close of business on Dec. 31 of the previous year.

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.

## 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 benefitting from the assets (who is jointly liable with the trustee for payment of the PSG). As mentioned, until Dec. 31, 2017, assets subject to ISF — and consequently to the PSG — included assets such as cash, portfolio investments and real estate, but as of Jan. 1, 2018, IFI and the PSG apply only to certain real estate assets. 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 10<sup>th</sup> 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 formerly established for the 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).

As a general rule, the settlor, if alive on Jan. 1 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 are subject to the tax. Pursuant 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 others 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.

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

### **Succession tax, gift tax and transfer tax by reason of death (DMD)**

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.

As 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.
- 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 gifts to spouses and civil partners are taxed).

With respect to trusts, tax is assessed on deemed gifts and at the death of the settlor and 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 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.

\* \* \*

Although the detailed rules described above include some complexities, in many cases the reporting process is straightforward. Our firm is available to provide additional details when appropriate.

---

[1] Conseil Constitutionnel (constitutional court), Oct. 21, 2016, n° 2016-591.

[2] Conseil Constitutionnel, March 16, 2017, n° 2016-618.

[3] Conseil d’Etat (supreme administrative court), Sept. 25, 2017, n° 412024 and n° 4112031.

[4] Conseil Constitutionnel, Dec. 15, 2017, n° 2017-679.

[5] Conseil d’Etat, Feb. 7, 2018, n° 412027, n° 412031 and n° 412412.

[6] Conseil d’Etat, March 20, 2020, n° 410930.

[7] Paris Cour d’Appel administrative (administrative court of appeal), June 24, 2020, n° 19PA00458.

[8] Cour de Cassation, Nov. 18, 2020, n° 19-14242.

[9] Conseil d’Etat, Dec. 11, 2020, n° 442320.

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

[11] Paris Cour d’Appel (court of appeal), Jan. 31, 2022, n° 20/14370.

[12] Paris Cour d’Appel Administrative, May 12, 2022, n° 20 PA 01898.

[13] The current official instructions for the reporting forms state that reports are also required if any “ultimate beneficiary” (see below) is resident in France.

[14] Formulaire 2181 Trust<sup>1</sup> and Formulaire 2181 Trust<sup>2</sup>.

[[View source.](#)]

 Send

 Print

 Report

# LATEST POSTS

- [Recent Chapter 15 Cases Show Potential for Non-Consensual Third-Party Releases Based Upon Foreign \(Non-U.S.\) Proceedings](#)
- [Pension Plan Withdrawal Liability Takes Center Stage in Bankruptcy Judge's "Preliminary Observations"](#)
- [The California Privacy Protection Agency Announces Its First Enforcement Settlement Against Honda](#)
- [Trademark Damages: Supreme Court Rejects Disgorgement of Non-Defendant Affiliate Profits](#)
- [Updates to Registration Requirement for Foreign Nationals](#)

[See more »](#)

DISCLAIMER: Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations. Attorney Advertising.

© Kramer Levin Naftalis & Frankel LLP 2025

## WRITTEN BY:



Kramer Levin Naftalis & Frankel LLP

[Contact](#) [+ Follow](#)



Reid Feldman

[+ Follow](#)

- ✓ Increased visibility
- ✓ Actionable analytics
- ✓ Ongoing guidance

[Learn More](#)

**PUBLISHED IN:**

|                          |                          |
|--------------------------|--------------------------|
| Estate Planning          | <a href="#">+ Follow</a> |
| Tax Planning             | <a href="#">+ Follow</a> |
| Trusts                   | <a href="#">+ Follow</a> |
| Wealth Management        | <a href="#">+ Follow</a> |
| Wealth Tax               | <a href="#">+ Follow</a> |
| Finance & Banking        | <a href="#">+ Follow</a> |
| Wills, Trusts, & Estates | <a href="#">+ Follow</a> |

**KRAMER LEVIN NAFTALIS & FRANKEL LLP ON:**

