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Trusts and French real estate wealth tax: how to report when discretionary trust?

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Real estate wealth tax must be paid on trust assets by the settlors or the beneficiaries, except if it can be demonstrated that the assets, rights or income in the trusts do not give right to any contributory capacity. A recent Court decision confirmed a strict approach to the application of this exemption.

French real estate wealth tax principle

French real estate wealth tax is assessed on the market value of the real estate assets and rights on January 1st owned by individuals. Taxpayers who are French residents for tax purposes are taxed on assets located in and outside France whereas non residents are only taxed on French assets[1].

The tax starts to be due if the market value minus deductible debts linked to the taxable assets exceeds €1,3M.

Not only real estate assets and rights owned directly by the taxpayer are included in the taxable base. Those held indirectly through companies or other organizations must also be added, including assets in trusts that fit the French tax definition of a trust.

French real estate wealth tax in the case of trusts

Real estate assets and rights held in a trust are taxable at the level of the settlor or beneficiaries if the settlor has passed away[2].

The tax guidelines state that this rule applies regardless of the nature of the trust deed (revocable or irrevocable; discretionary or non-discretionary).

Thus settlors (or by default the beneficiaries) may have to pay the real estate wealth tax on such assets held in the trusts if they are not French tax residents or on all such assets if they are French tax residents.

This rule was subject to a reservation of interpretation by the Constitutional Council. It was particularly criticized for undermining taxpayers' ability to pay, in violation of the constitutional principle of equality before public charges, in that they lead to settlor of an irrevocable and discretionary trust being taxed on the assets placed in that trust even though they have been deprived of them and no longer have any control over them.

The Council validated this rule on the condition that the settlors are exempt if they "can prove that the assets, rights or income in their trusts do not give them any contributory capacity resulting especially from direct or indirect benefits from those assets". It specifies that such proof cannot be based solely on the irrevocable nature of the trust and the discretionary management powers of its trustee[3].

Recent case law

The concrete application of this possible exemption is given by a recent case law regarding a French beneficiary of a Jersey trust for which the settlor had died[4].

He declared trust assets in his 2019 and 2020 real estate wealth tax returns. He then requested a refund of the tax arguing that he had no control over the trustee's absolute discretionary power, he derived no direct or indirect benefit from the trust that was irrevocable.

[1]Article 965 of the French tax code
[2]Financial law n°2011-900 dated 29 July 2022 - Article 970 of the French tax code
[3]Decision dated 15 December 2017, n°2017-679
[4]Tribunal Judiciaire de Paris, 9e ch. 3e sect., 11 déc. 2025, n° 23/00260

The taxpayer mainly produced a statement from the trustee supporting that he was not bound by a guidance note signed by the death settlor and that he had no means of coercion over the trustee, nor any vested rights over the trust's income and assets.

The tax authorities argued that under the Guernsey Law, the settlor had the power to modify the trust and that he had dissolved the trust in order to transfer all of its assets to the current trust in 2011. They also stated that the current trust was not discretionary, as the settlor could give instructions to the trustee, in particular by means of a letter of wishes. They also said that the taxpayer as the beneficiary had received two distributions from the trust in 2019 for a total amount of €116,711.

The Court judges that the information provided does not allow the trust to be considered fully discretionary and irrevocable, given both the limitations on the powers of the trustees and the possibility of transferring this trust to another jurisdiction and thus changing its nature. The Court also add that the beneficiaries have financial rights in the trust.

Consequences

It results from that case law that the determination whether a settlor or a beneficiary is subject to the real estate wealth tax on trusts' assets is based on a case-by-case analysis according various facts.

The judge adopts a realistic and strict approach focusing not only on the written documents that were provided such as trust deeds and legal opinions but also on all current facts and circumstances (assets and income transferred and actual instructions given by the settlor) from the creation of the trust (and not only during the years for which the tax is reassessed).

Distributions made and/or guidelines from the settlors to the trustees even if they have discretionary powers will prevent the settlors or the beneficiaries from being exempt from the real estate wealth tax on trust assets.

Any decision not to declare trust assets for wealth tax purposes must then be carefully analyzed and documented.

This filing comes in addition to the one applicable to the disclosure of the assets held in trusts and at the charge of the trustees - that is another filing obligation for the trusts holding French assets or having a settlor, beneficiary or trustee who is French tax resident. Failure to do is subject to a sui generis tax of 1.5% on the value of these assets.

Our team is available to provide guidance and advice on any French tax issues related to trusts.

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