

TAX FOCUS

France: Fines on declaration obligations of trusts and foundations

Since 31 July 2011, administrators of trusts (or equivalent structures) have been required to file annual declarations (2181 TRUST-2) which must, in particular, contain a detailed inventory of the assets, rights and capitalised income located in France or outside France and placed in the trust as well as their market value on 1st January of the year. Event declarations (2181 TRUST-1) must also be filed in the event of the creation, legal or de facto modification likely to affect the structure or operation of the trust or the termination of the trust.

However, under the terms of Article 1649 AB paragraph 1 of the CGI, the filing of these declarations is only required in certain specific circumstances, when the settlor or at least one of the beneficiaries is domiciled for tax purposes in France, but also when the trust or foundation holds French assets, i.e. real estate, receivables against a French debtor or French shares (CAC 40 or unlisted companies).

Failure to comply with the aforementioned reporting obligations may result in a fine of €20,000 per failure to report over a period of four years. The settlor or beneficiary deemed to be the settlor is jointly and severally liable with the trust administrator for payment of this fine.

In the event of an omission, it is usual to file the missing declarations, with delay, with the Non-Resident Tax Department, without any financial consequences. Trustees and members of foundation boards can therefore regularise their situation.

A judgment handed down on 23 January 2025 by the Montreuil Administrative Court (no. 2305276) has thrown doubt on this possibility of spontaneous regularisation without application of the €20,000 fine.

On 17 June 2019, a Maltese company acting as a trustee filed the 2181 TRUST 1 annual returns for 2015, 2016, 2017, 2018 and 2019 with the French tax authorities.



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The facts of the case are not set out in great detail in the judgment, but we understand that this company was notified of the fine payable for failing to file the annual 2181 TRUST 1 return for four years, i.e. an amount of €80,000, even though it had filed the returns, but late.

The judge's position therefore consists of assimilating late declarations with a failure to declare, which is highly prejudicial, particularly if we are dealing with a first offense that was spontaneously regularised, outside of any context of tax litigation. However, the circumstances of this specific case do not allow us today to be so affirmative as to the risks incurred by proceeding with a spontaneous regularisation of trust-related declarations.



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