

CREATION IN FRANCE OF A PUBLIC REGISTER OF TRUSTS

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France will put on on-line a “public register of trusts”, an unprecedented initiative permitting public access to personal information on settlors, beneficiaries and trustees.

France plans to put on-line, beginning 30 June 2016, a “public register of trusts”. This is an unprecedented initiative, to make public personal information held by tax authorities, with the announced goal of fighting tax evasion, money-laundering and financing of illicit activities.

The trusts included in this register are those for which a report (in the form of an information return) has been communicated to French tax authorities, pursuant to article 1649 AB of the French tax code. Such reports are required since 2011¹ for trusts of which at least one of the trustees, settlors or beneficiaries is domiciled for tax purposes in France or which contain assets situated in France (except for financial investments, if none of the trustees, settlors or beneficiaries is domiciled in France).

The reports are filed annually and upon the occurrence of events affecting the trust: its creation; its modification including among other things change of its terms or its mode of operation, change in trustee, change or death of a “beneficiary deemed settlor” or distribution, transmittal, attribution or placement into the trust of assets; or its termination.

The creation of the register and placing it on-line are provided for in decree n° 2016-567 of 10 May 2016² (text attached hereto, with translation), according to which information available to the public will include “the name of the trust and its address” as well as its date of creation (and termination, if applicable) and the identity of the trustees, settlors and beneficiaries (full name, date and place of birth for an individual or name and identifying number for a legal entity).

Apparently the information in the register will be derived from reports filed with French tax authorities, but will not include information about the terms of the trust or its assets or the addresses of settlors or beneficiaries.

It is expected that an administrative order of the Budget Minister will establish a “secure authentication procedure” permitting members of the public (after identifying themselves) to access the register and consult data on the trusts included thereon. Data can be accessed using search criteria including among other things the name of the trust; the identity of the trustee, settlor or beneficiaries, the place the trust is established; or the date it was created. The use of this register will be governed by general conditions set out by the Budget Minister. Pursuant to the decree, persons listed in the public register will not be able to exercise the right to object to their personal information being included therein.³

When this measure was announced, French officials noted that the tax administration currently has information on 16,000 trusts identified as such and that transparency and exchange of information regarding beneficiaries will result “ending use of shell companies for tax evasion, money-laundering and financing illicit activities”.⁴

But French officials also stated that “the difficult point will be to distinguish between the legal use of these measures and concealing something”⁵. It is true that many perfectly legitimate trusts, set up purely for wealth-management and estate-planning purposes, not involving tax evasion or illicit activities, will be listed in the new register.

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¹ Cf. loi de finances rectificative n° 2011-9 of 29 July 2011.

² Journal Officiel n° 0109 of 11 May 2016, text n° 25. The decree was promulgated under authority set out in article 1649 AB of the French tax code, as modified by article 11 of loi n° 2013-1117 of 6 December 2013 relating to the fight against tax evasion and large-scale economic and financial delinquency.

³ This right of objection is provided for by article 38 of law n° 78-17 of 6 January 1978 relating to information technology, data files and civil liberties.

⁴ Press release of the Finance and Public Accounts Ministry of 11 May 2016.

⁵ AFP report of 10 May 2016.

Annexe

Articles 368, 368A, 368B and 368C of the Code Général des Impôts, Annexe II, created by décret n° 2016-567 of 10 May 2016 relating to the public register of trusts

French text

Art. 368.

- I.-Un traitement automatisé de données à caractère personnel dénommé Registre public des trusts est mis en œuvre par la direction générale des finances publiques.
- II.-Les informations traitées, issues du traitement dénommé Base nationale des données patrimoniales, sont les suivantes :
 - 1° La dénomination du trust et son adresse ;
 - 2° La date de constitution, la date d'extinction du trust ;
 - 3° La date et la nature de la déclaration de trust mentionnée à l'article 1649 AB du code général des impôts ;
 - 4° Les éléments d'identification du constituant, du bénéficiaire et de l'administrateur du trust.

Les éléments d'identification du constituant et du bénéficiaire, personne physique, sont leur nom, leur prénom, leur date et lieu de naissance, leur date de décès.

Les éléments d'identification de l'administrateur sont son nom, son prénom, sa date et son lieu de naissance.

Les éléments d'identification d'une personne morale sont sa dénomination sociale et son numéro SIREN.

- III.-Les informations mentionnées au II sont conservées pendant dix ans après la date d'extinction du trust.

Art. 368 A.

- I.-Toute personne peut obtenir, par voie électronique, la délivrance des informations mentionnées à l'article 368. L'accès au traitement automatisé est réalisé dans le cadre d'une procédure sécurisée d'authentification fixée par arrêté du ministre chargé du budget.
- II.-A.-La consultation du registre est effectuée, par voie électronique, auprès de la direction générale des finances publiques, à partir de l'un des critères de recherche suivants :
 - 1° La dénomination du trust ;
 - 2° L'identité du constituant, du bénéficiaire ou de l'administrateur en indiquant, s'il s'agit d'une personne physique, son nom ou, s'il s'agit d'une personne morale, sa dénomination sociale ou son numéro SIREN.
- II.-B.-La recherche peut être complétée en y ajoutant l'un des critères facultatifs suivants :
 - 1° La commune ou le pays d'établissement du trust, sa date de constitution ;
 - 2° Pour le constituant ou le bénéficiaire, personne physique, son prénom, sa date de naissance, sa

commune, son département ou son pays de naissance, sa date de décès ;

- 3° Pour l'administrateur, personne physique, son prénom, sa date de naissance, sa commune, son département ou son pays de naissance.
- III.-Les interrogations du registre font l'objet d'un enregistrement journalier qui se traduit par la conservation, pour chaque connexion, des éléments suivants :
 - 1° Identifiant de l'utilisateur ;
 - 2° Adresse IP de l'utilisateur ;
 - 3° Date et heure de la recherche.

Ces éléments sont conservés pendant une durée d'un an.

Art. 368 B.

- I.-Lors de chaque accès au traitement mentionné à l'article 368, le demandeur est informé de ses conditions générales d'utilisation telles que fixées par arrêté du ministre chargé du budget.
- II.-Le droit d'accès et le droit de rectification, prévus par la loi du 6 janvier 1978 susvisée, s'exercent auprès du directeur général des finances publiques.

Le droit d'opposition prévu par l'article 38 de la même loi ne s'applique pas au présent traitement.

Art. 368 C.

Les informations faisant l'objet du traitement prévu à l'article 368 sont transmises périodiquement au ministre de la justice, aux agents des douanes mentionnés à l'article 28-1 du code de procédure pénale ainsi qu'aux agents des services fiscaux mentionnés à l'article 28-2 du même code.

Unofficial translation

Art. 368.

- I.-An automated processing of personal data called "*Registre public des trusts*" is set up by the *direction générale de finances publiques*.
- II.-The information processed, generated by the processing called "*Base nationale de données patrimoniales*", is the following:
 - 1° The name of the trust and its address;
 - 2° The date of creation, the date of termination of the trust;
 - 3° The date and the nature of the trust filing mentioned in article 1649 AB of the General Tax Code;
 - 4° The items identifying the settlor, the beneficiary and the trustee of the trust.

The items identifying the settlor and the beneficiary, if an individual, are his/her surname, first name, date and place of birth, date of death.

The items identifying the trustee are his/her surname, first name, date and place of birth.

The items identifying a legal entity are its name and SIREN number.

- III.-The information mentioned in II is retained for ten years after the date of termination of the trust.

Art. 368 A.

- I.-Any person may obtain, electronically, the issuance of the information mentioned in article 368. Access to the automated treatment is via a secure authentication procedure determined by decree of the Budget Minister.
- II.-A.-Consultation of the register is carried out, electronically, through the *direction générale des finances publiques*, using one of the following search criteria:
 - 1° The name of the trust;
 - 2° The identity of the settlor, the beneficiary or the trustee by indicating, in the case of an individual, his/her name or, if it is a legal entity, its name or SIREN number.
- II.-B.-The search can be made by adding one of the following optional criteria:
 - 1° The district or country of establishment of the trust, its date of creation;
 - 2° For the settlor or the beneficiary who is an individual, his/her first name, date of birth, district, region or country of birth, date of death;
 - 3° For the trustee who is an individual, his/her first name, date of birth, district, region or country of birth.
- III.-The searches of the register will be the subject of a daily record which will entail recording, for each connection, the following items:
 - 1° Identification of the user;
 - 2° IP address of the user;
 - 3° Date and time of the search.

These items are retained for one year.

Art. 368 B.

- I.-Each time the searcher accesses the database mentioned in article 368, he/she is informed of the general terms of use as established by order of the Budget Minister.
- II.-The right of access and the right of correction, provided for by the law of 6 January 1978 mentioned above, are addressed to the *directeur général des finances publiques*.

The right of objection provided for by article 38 of that law does not apply to this process.

Art. 368 C.

The data processed under article 368 are periodically transmitted to the Minister of Justice, to customs agents mentioned in article 28-1 of the Criminal Procedure Code as well as to agents of the tax administration mentioned in article 28-2 of the same code.