



Tax Alert

French Public Register of trusts declared unconstitutional by the French Constitutional Council

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By decision dated October 21st, 2016, the French Constitutional Council declared that the **public access to the register of trusts was an infringement of the right to privacy protected by the French Constitution.**

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Background

A foreign trust must be declared to the French tax authorities if one of the following events occurs: a trustee, a settlor or a beneficiary of the trust is tax resident of France, or the trust holds at least one asset or right located in France.

Article 1649 AB of the French Tax Code provides that the identity of the trustee(s), the settlor(s), the beneficiary(ies) and the date of the trust constitution, are published in a public register of trusts (available online) without implementing any access restriction concerning persons having access to such public register. As sole safeguard clause, a decree provided a one-year storage of every details with respect to each register consultation (user identification, user's IP address, date and hour of the research).

The decision

The Constitutional Council noted that revealing the details of the trust in the public register provides everyone with information regarding the way one means to manage his private wealth. Therefore, the public register of trusts leads to an infringement of the right to privacy.

But such infringement may not be unconstitutional if the objective pursued is of public interest and the infringement is proportional to that objective.

By promoting transparency on trusts, Parliament pursued the constitutional objective of fighting against tax fraud and evasion. But since the Parliament did not limit the access of the public to the trust register (e.g. granting access based on the person's interest for having access to the register), the infringement of the right to privacy is disproportionate to the constitutional objective of fighting against tax avoidance.

The consequences

The decision declaring the public register of trusts unconstitutional is effective from the day it was published. As a result, Article 1649 AB of the French Tax Code was amended on October 23rd, 2016 and does not mention the trust register anymore.

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