

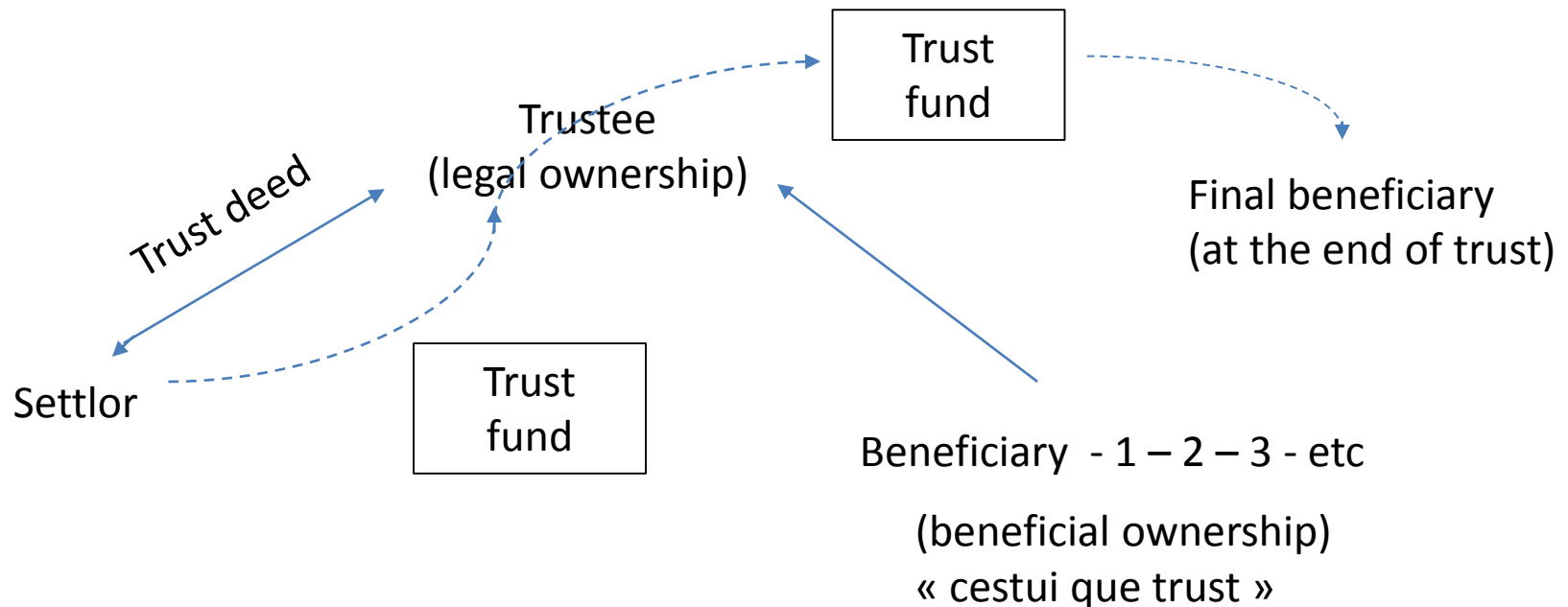
ALBO Annual General Meeting

20.05.2017, Lisbon

THE « TRUST » SEEN BY FRENCH (TAX) LAW

Oliver Stein
Rechtsanwalt &
Avocat

The trust : How it works (under anglo-saxon) law



- Split of property between trustee and beneficiary
- Possibility to transfer property over several generations (family) without changing the fund hands

The trust : How French law deals with it

The trust is unknown by French civil law

but not by French tax law → Art. 792-0 bis Code Général des Impôts

Definition (see HCCH, Convention on the law applicable to trusts and on their recognition, article 2) :

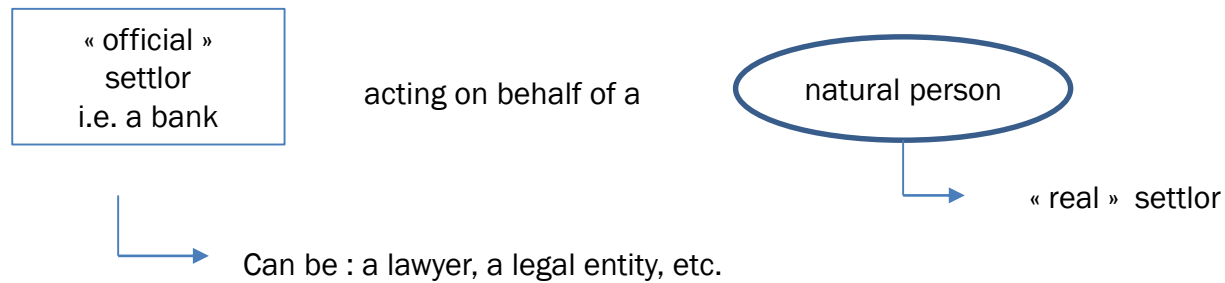
The term “**trust**” refers to

- the legal relationships
- created under foreign law - *inter vivos* or on death -
- by a person, the settlor,
- when assets have been placed under the control of a trustee
- for the benefit of a beneficiary
- or for a specified purpose.

The trust : How French law deals with it

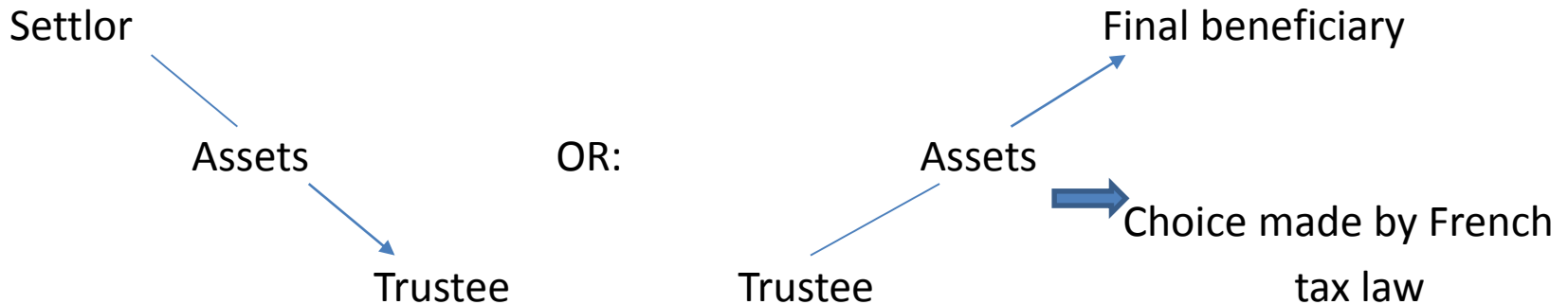
Art. 792 – 0 bis CGI

For tax purposes, the tax administration is deemed to search for the “real settlor” :



The trust : Donation or inheritance tax

The moment of transfer of property for tax purposes (Art. 792-0 bis, II, 1 CGI):



Tax rate is determined by the **degree of relationship** between the settlor and the (final) beneficiary

The trust : Successive transmissions by death

Fiction of a « new settlor » (*constituant fiscal*) in case of decease of the initial settlor as well as in case of decease of the « new settlor »:

1)
~~Settlor~~ ————— Beneficiary 1 ————— Beneficiary 2 ————— Beneficiary 3
becomes (new) settlor
instead of the initial settlor

2)
Beneficiary 1 ————— Beneficiary 2 ————— Beneficiary 3
becomes (new) settlor
instead of beneficiary 1

The trust : Taxation of current revenues



Art. 120-9° CGI:

- Payments from the trustee to the beneficiary are deemed to be **capital revenues/ capital income** (*revenus de capitaux mobiliers*) of the beneficiary **regardless of the nature of the assets** (real estate, shares, etc.) – but without any tax allowance
- Revenues born by the assets that are reinvested by the trustee are not deemed to be distributed and can only be taxed at the moment when they are paid (capital revenues) or transferred (donation tax) to the beneficiary

The trust : Capital tax (*impôt sur la fortune*)

The settlor is taxed with capital tax .

The beneficiary is not taxed with capital tax. Exception: From the moment when he is deemed to be the « new settlor »

Special tax on trusts in case that capital tax declaration is not filed:

Tax rate: 0,5 % of the whole property (not only assets that have to be declared under capital tax, but also operating capital (business assets of the taxpayer)

The trust : Declaration of the trust

The trustee has to file the following tax returns:

- In case of **constitution, modification** and **termination** of the trust if
 - the settlor is a French tax resident
 - a beneficiary is a French tax resident
 - assets are located in France
- Annual tax declaration of the value of the trust including assets abroad

High sanctions: 20,000 euros minimum or 12,5 % of the trust's value (including assets abroad)

THANK YOU FOR YOUR ATTENTION