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Update in the matter of the EU proceedings against France over CSG/CRDS on non-residents

Lodge a provisional claim before 31 December 2014

Advocate General Sharpston, has issued an Opinion in the case of *Ministre de l'Economie et de Finances v Gerard de Ruyter*[1] to say that the social contributions which France has imposed on non-residents since 2012 fall under the scope of EU Regulation 1408/71. If this opinion is followed by the European Court of Justice (ECJ), this would have the effect of deeming those contributions contrary to Article 48 of the Treaty on the Functioning of the European Union and France may be forced to reimburse those who have been affected.

The Socialist French government under President Francois Hollande introduced the charge on 1 August 2012.[2] It made non-French residents subject to social contributions (CSG/CRDS[3]) on rental income or capital gains derived from their French property. The rate was 15.5% and so increased the tax rate on rental income for non-residents from 20% to 35.5% and the capital gains tax rate on EU residents from between 19 and 25% to between 34.5% and 40.5%.

The measure was introduced without warning and with immediate effect and provoked an outcry particularly in the UK, where an estimated 500,000 people hold holiday homes in France. It was called a "tax grab" by some observers[4] and the question of whether it breached EU rules has been posed ever since its introduction.

Mr de Ruyter, a Dutch national, has brought the case before the ECJ and a judgement is expected shortly. In the meantime, Advocate General Sharpston has issued her Opinion which the ECJ will have regard to in forming its judgement. Although there is no guarantee that the ECJ will come to the same conclusion, it frequently does follow the reasoning of an Advocate General's Opinion and it is considered that it will do so in this case.

It is advisable therefore that those affected should lodge a provisional claim with the French tax authority for reimbursement of any CSG/CRDS paid, on the basis of the Opinion. This should be done before 31 December 2014 as it is possible that the statute of limitations might apply under R*196-1 LPF §1. This provides that claims for refunds should be made by 31 December of the second year after the demand or payment of the tax at the latest. Failure to lodge a claim by the end of this calendar year therefore could result in no refunds being given for any tax paid in 2012.

On the other hand, there is an argument that CSG/CRDS is actually a *prélèvement* rather than a tax (hence the ECJ action), in which case the limitation period is reduced to one year (R*196-1 LPF §5). If this is the case, then it is too late to claim a refund of any tax paid in 2012, and a failure to lodge a claim by the end of 2014 would result in no refunds being given for any tax paid in 2013.

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[1] C-623-13
[2] LFR 2012 of 31 July, 2012
[3] *Contribution sociale généralisée/ contribution au remboursement de la dette sociale*
[4] The Telegraph, 5 July, 2012

It may be possible also to challenge the limitation periods in the ECJ but it such a challenge is unlikely to be proportionate for the vast majority of people given the average sums paid under the measure and the cost of bringing an action to the ECJ.

The social security charge on non-residents has raised significant amounts of revenue for the French government and the government is therefore likely to raise any objection it can to any claim for reimbursement.

It is therefore advisable to lodge a provisional claim before the end of the year, even if one should not expect to receive a cheque in return, as it would be disappointing to lose on a technicality should the matter come before the *tribunal administratif*.

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