tax notes international
Volume 71, Number 13 ■ September 23, 2013



# News Analysis: The European Commission's Response to France's Social Contribution

by Patrick Delas

Reprinted from *Tax Notes Int'l*, September 23, 2013, p. 1176

# COUNTRY DIGEST



**NEWS ANALYSIS**

## The European Commission's Response To France's Social Contribution

Since August 1, 2012, nonresidents have been subject to the CSG (*contribution sociale généralisée*) and the CRDS (*contribution pour le remboursement de la dette sociale*) on rental income or capital gains derived from their French property.

With the recent approval of a measure in the second Amended Finance Act for 2012 that imposes the 15.5 percent social contribution — which consists of five separate charges, including the CSG and CRDS — on nonresidents' property gains, the tax rate for nonresidents deriving rental income from French property increased from 20 percent to 35.5 percent, and the capital gains tax rate for those nonresidents increased from a range of 19 to 25 percent to a range of 34.5 to 40.5 percent (for EU residents).[1] (Prior coverage.)

The announcement of the increased tax liability provoked an outcry in the United Kingdom, where an estimated 500,000 residents own holiday homes in France. Some observers called the social contribution a French ''tax grab'' on foreigners, while others questioned whether it would run afoul of EU rules.

In an August 9, 2012, decision (No. 2012-654 DC),[2] France's Constitutional Council concluded that the amended budget provisions are not incompatible with the French Constitution. However, the council refused to comment further, suggesting that the matter would have to be examined by the French and EU judicial systems.

In the meantime, HM Revenue & Customs expressed the view that the CSG and CRDS are social security levies and are not covered by the France-U.K. income tax treaty and that the 15.5 percent social contribution is not available as a credit against income tax or capital gains tax.[3]

The CSG and CRDS were originally introduced in the 1990s to reduce a deficit in the French social security fund — which covers parental, illness, maternity, and pension benefits — and the debate over the legal nature of the two contributions (that is, whether they are actually taxes or social security charges) has never ceased.

The issue was referred to the European Commission in September 2012, and in letters dated June 19, 2013, and August 28, 2013,[4] the commission announced that it would issue a reasoned opinion under article 258 of the Treaty on the Functioning of the European Union[5] as part of an infringement procedure against France.

If France fails to comply with the opinion, the government may be taken to the European Court of Justice by the commission. France then may be required to change the law and to repay the undue charges retroactively, and could be at risk of a heavy ongoing fine.

That process may move slowly, however, because it takes two years, on average, for the ECJ to rule on cases brought by the commission. In the meantime, the French government is likely to keep enforcing payment of the social contribution to reduce the current deficit in the social security fund, hoping that any mandated repayment will not be necessary before the situation has improved. ◆

♦ *Patrick Delas, leader of the French tax team of Russell-Cooke LLP, London*

[1] And to a range of 33.33 to 54.83 percent for non-EU residents.

[2] Paras. 55-59.

[3] *Available at* http://www.hmrc.gov.uk/manuals/dtmanual/dt7252.htm.

[4] *Available at* http://claudine-schmid.ch/2013/08/23/prelevement-de-la-csg-et-de-la-crds-aux-non-residents/.

[5] Formerly article 226 of the Treaty establishing the European Community.