

## **The EU commission starts proceedings against France over CSG/CRDS on non-residents**

Since August 1, 2012 <sup>1</sup> non-residents have been subject to CSG/CRDS<sup>2</sup> on rental income or capital gains derived from their French property.

With the addition of the 15.5 percent social contribution, the tax rate on non-residents deriving rental income from French property increased from 20 percent to 35.5 percent whereas the capital gains tax rate increased from 19 to 25 percent to 34.5 to 40.5 percent for EU residents.<sup>3</sup>

The announcement provoked an outcry in the United-Kingdom, where an estimated 500,000 residents own holiday homes in France. Some observers called the French proposal a “tax grab” on foreigners, while others questioned whether it would run foul of EU rules.

Indeed CSG/CRDS were introduced in the 1990’s in order to reduce the deficit of the French *sécurité sociale* – which covers parental, illness, maternity and pension benefits – and their legal nature (tax or social security charge) has never ceased to be debated.

In a release dated August 9, 2012<sup>4</sup> the Constitutional Council concluded that the amended budget provisions are not incompatible *per se* with the French Constitution but refused to comment further suggesting the matter would have to be examined by the French and EU judicial systems.

In the meantime HMRC confirmed their view that CSG/CRDS is a social security levy not covered by the double tax treaty of June 19, 2008 and that the additional 15.5 per cent are not available as a credit against income tax or capital gains tax.<sup>5</sup>

The issue was eventually referred by Mme Claudine Schmidt MEP to the EU Commission in September 2012. By letter of June 19, 2013 and 28 August, 2013,<sup>6</sup> the Commission informed that further to numerous complaints and after consideration with the French

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<sup>1</sup> LFR 2012 of July 31, 2012

<sup>2</sup> *Contribution sociale généralisée / contribution au remboursement de la dette sociale*

<sup>3</sup> 33.33 to 54.83 percent for non-EU residents

<sup>4</sup> Decision n° 2012-654 DC - paragraphs 55-59

<sup>5</sup> <http://www.hmrc.gov.uk/manuals/dtmanual/dt7252.htm>

<sup>6</sup> Available on : <http://claudine-schmid.ch/2013/08/23/prelevement-de-la-csg-et-de-la-crds-aux-non-residents/>

authorities, an infringement procedure will start shortly in the form of a “reasoned opinion” to France under article 258 TEC.

If it fails to comply with the opinion, France may be taken to the EUCJ by the Commission

France may then be under an obligation to change the law and be at risk of a heavy continuing fine and also to repay the undue charges retroactively.

The process may however take time since it takes an average of two years for the EUCJ to rule on a case brought by the Commission.

In the meantime, the French Government is likely to keep enforcing payment of the charge in view of the current deficit hoping that no repayment is necessary before the situation has improved.

In other words, it may take some time before the matter is settled. If you would like more information then please contact:

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