

Charles Hamer Financial Services

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1. ECJ DECIDES ON THE SCOPE FOR PRELEVEMENTS SOCIAUX

The long awaited preliminary ruling from the European Court of Justice was published on the 26th February 2015 and, as anticipated, found in favour of the taxpayer.

The essential conclusion of the judgement is that Prélèvements Sociaux, whether attached to earnings, pensions or investment income or gains are, by their nature, social security contributions within the meaning of EU social security regulations. Therefore their scope as a levy on income and gains is dependent on the taxpayer not being subject to the social security legislation of another EU state (e.g. the UK) under the terms of EU regulation 883/2004 and its related instruments.

The upshot of this is that if, at the time of the income or gains being generated, the taxpayer can justify that they were or are subject to the social security legislation of any EU member state other than France then they can claim exemption from the Prélèvements Sociaux charge and submit a claim to recover any which have already been paid – subject to the standard time limits for appeals.

Nonetheless there has yet to be any implementation of the decision in France: Prélèvements Sociaux continue to be collected on property sales for example.

Why is this and is it a cause for concern?

In its press publication the CJEU reminded everyone that when the ECJ is asked for a preliminary ruling involving a case brought before the national court rather than a case being brought by the commission directly to the CJEU, the CJEU does not decide the dispute itself. Rather, although the CJEU decision is binding on the national court and other tribunals assessing similar cases, it is up to the national court to conclude the case in accordance with the CJEU decision. Before doing so, however, the national court is first entitled to refer to the CJEU on matters of interpretation of European Law or the validity of a European Union Act (such as – in this case - the scope of elements of the regulation 1408/71 and/or its replacement 883/2004 and related regulations and directives).

Currently then the French Treasury await the directions of the Conseil d'Etat before concluding on the scope and application of the ECJ decision in respect to appeals against Prélèvements sociaux being levied on capital gains and investment income.

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The wait for a formal conclusion to the process therefore continues for the time being.

The judgement from the European Court of Justice does not apply retrospectively for an indefinite period and therefore any successful claim will need to respect the relevant time limits provided by the present French tax code.

The time limit, however, is not entirely clear cut and so it is unsurprising that there is a fair amount of contradictory information being provided on the matter.

In general terms, putting aside any peripheral arguments to the contrary, the safe limit dates to work to are:

The **31st December of the year following the year of payment** of the Prélèvements Sociaux if:

- a). The taxpayer was **non French tax resident** at the time of payment **and**
- b). The charge is linked to the **CGT assessment** on disposal of the French property **and**
- c). The appeal is made **directly by the taxpayer** or the taxpayer's behalf

OR:

The **31st December of the second year following the year of payment** of the Prelevements Sociaux if:

- a). The taxpayer was **French tax resident** at the time of payment, or
- b). The charge is linked to unfurnished rental income from the French property, or
- c). The appeal is made by the taxpayer or on the taxpayer's behalf via the Fiscal representative or the notaire responsible for the CGT declaration and payment of the Prélèvements Sociaux¹.

¹ The responsible party will be the notaire where there was no fiscal representative required, (which is normally when the sale price did not exceed 150.000€per individual (co)-owner or married couple

2. APPLYING THE TIME LIMITS IN PRACTICE:

SALES & REVENUE ARISING IN 2013:

So, in these conditions, the appeal for any payment of Prélèvements Sociaux made during 2013 **must be made no later than 31st December 2015 in any event.**

If the appeal revolves around CGT and the property was disposed of in 2013, when you were non French tax resident - **to be on the safe side** - it will need to be submitted via the fiscal representative or notaire who paid the Prélèvements Sociaux at the time of the sale. The fiscal representative (or notaire) will need to have submitted the appeal **by 31/12/2015.**

SALES ARISING IN 2014:

Similarly, if you wish to make an appeal directly to the tax office without *potentially* having to rely on this being established in your name by the fiscal representative or the notaire², **to be safely within all time limits**, this appeal would need to be submitted by **31st December 2015 at the latest.**

All is not necessarily lost, however, for those of you who sold in 2013 but are unable or unwilling to submit the case via the fiscal representative. See the Appendix to this bulletin for more details.

SALES ARISING IN 2015 AND REVENUE ARISING IN 2014:

Again, if wishing to make the appeal directly, the **safe** time limit for this will be 31st December 2016, however the ECJ decision will have been issued well before this date so it makes sense to wait until the judgement is issued.

² see note 1.

3. PREPARING AND MAKING YOUR APPEAL – HOW CHARLES HAMER CAN HELP.

As specialist Anglo-French financial planners, with over 20 years practical experience in French tax office liaison and appealing, we are well placed to prepare the basis of your appeal and oversee it to its conclusion – whether this be submitted directly to the tax office via ourselves as your agent or through the fiscal representative or notaire.

It therefore makes sense to ensure that the formal appeal has been submitted before the cut off date of 31st December.

With this in mind we have designed a questionnaire alongside a document checklist to complete and supply in order to make a well presented appeal in time.

OUR FEES:

- To assess whether or not we believe you are entitled to a rebate and to estimate the amount of this rebate **we do not levy any charge**
- To prepare and submit the appeal we have a fixed administration fee **of £250**. This is payable at the same time as you provide instructions to us.
- Once the appeal be successful we will levy **a supplementary success fee of 10% of the amount recovered subject to a minimum of £250 and a maximum of £1,250.**

So, for example:

If the appeal successfully recovered £2,000, our fee would be:

£250 + £250 (£2000 x 10% being less than £250) = £500

If the appeal successfully recovered £6,000, our fee would be:

£250 + £600 = £850

If the appeal successfully recovered £20,000, our fee would be:

£250 + £1,250 = £1,500

To find out whether or not you qualify for a rebate and to receive our questionnaire, documents checklist and fee agreement then please contact either Jon Pawsey (jon@charleshamer.co.uk / 01844 218956) or Emilie Mengin (info@charleshamer.co.uk / 01844 218277).

APPENDIX:

THE BASIS FOR DETERMINING THE SAFE TIME LIMITS: PRELEVEMENTS SOCIAUX = RETENUS A LA SOURCE

For taxes and levies categorised as “*Prélèvements et Retenus à la Source*” the appeal date limit is:

31st December of the year following the date of payment of the levy unless the appeal is made by the individual or party through whom the levy was paid (the fiscal rep or notaire in the case of Prélèvements Sociaux attached to CGT), when the limit is extended to the general appeal date limit of 31st December of the second year following the date of payment.

The earlier date then relies on Prélèvements Sociaux being interpreted as a form of “*Prélèvements et Retenus à la Source*”. There is, however, considerable doubt that this is indeed the case.

According to article 244 bis A of the Code Général des Impôts, gains realised by non residents carry a specific charge at source (Prélèvement) whose rate varies according to the location of residence of the vendor. This Prélèvement is not income Tax (Impôt sur le revenu) *per se* but nonetheless frees the taxpayer from any French income tax liability and excludes the proceeds against which the charge at source has applied from being assessed to income tax at the progressive rate.

This prélèvement – introduced by article 244 bis A - is distinct from Prélèvements Sociaux which (like Impôt sur le Revenu) is a direct “tax” in its own right and is not included in the list of taxes and levies defined as “Prélèvements et retenus à la source”

Accordingly, the limit for any reclaim of Prélèvements Sociaux could – in our view - respect the general limit for direct taxes, namely: the 31st December of the **second year** following the year of payment of the tax, whether or not the appeal is made directly or via the fiscal representative or Notaire who handled the sale.