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PRELEVEMENTS SOCIAUX : ARE THESE SOON TO BE A PAST EVIL FOR BRITISH EX-PATS & NON RESIDENTS?

THE EUROPEAN COURT OF JUSTICE IS TO DECIDE.

Originating in 1991, Prélèvements Sociaux were introduced with the aim of helping to contribute towards the rising French social security cost burden. Starting out at a rate of just 1.1% and limited in application to earned income, they have since risen to a mighty 15.5% on unearned income and gains, broadening their scope of application so that little escapes them. Today, for a non working British ex-pat resident in France they more often than not represent the largest component of the annual charge on income.

Furthermore, against much protestation, since August 2012, Prélèvements Sociaux have been charged on non residents against certain income and gains which remain taxable in France under the double tax treaty.

However, the scope of Prélèvements Sociaux has regularly been called into question, with the claim that they are a social charge subject to European social security legislation, as opposed to a pure tax.

Under European regulations, in general, an individual can only be subject to the social security legislation of one member state at any one time. So, if a British ex-pat living in France remains subject to UK social security legislation under the regulations, then he cannot have French social security contributions imposed on him.

In a European Court of Justice decision in 2000¹ it was decided that Prélèvements Sociaux are national insurance contributions when attached to earned income. It is as a consequence of this judgement that for the majority of British ex-pats their UK sourced pensions escape the Prélèvements Sociaux charge.

Unfortunately, this decision was at pains to point out that its scope extended only to earned income. Consequently, the French administration determined that they were at liberty to apply Prélèvements Sociaux to all other revenue and gains. The contention over this interpretation was highlighted during fierce debates over the second 2012 Rectifying Finance Act, which provided for Prélèvements Sociaux to be extended in scope to income and gains generated in France by non residents and taxable by virtue of double tax treaty provisions.

¹ CJCE decision 15/02/2000 case no 169-98

The Government won the debate in this instance, but the anomalous nature of Prélèvements Sociaux has been highlighted here in the UK by HMRC's stance that they are a social charge rather than a tax and so are not admissible for double tax credit.

Soon, however, we should see a final resolution to the issue. In a decision, published at the start of October, the French Supreme Court (the Conseil d'Etat) has referred judgement to the European Court over whether or not Prélèvements Sociaux are charges subject to European social security legislation².

The case revolves around a non pension annuity received by a Dutch national who is resident in France but not subject to French social security legislation.

The final decision will have a significant impact on the long term financial planning for all British, French resident ex-pats as well as non residents with property in France:

If the European Court decides that Prélèvements Sociaux are National Insurance Contributions then only those taxpayers who are subject to French social security legislation will be chargeable:

Those taxpayers who are not so positioned would enjoy complete exemption from Prélèvements Sociaux, irrespective of the source and nature of their income or gains. For them, this could make France a very attractive low tax haven! The relative advantages of a whole range of investment vehicles and investment asset classes would change.

For the non resident, Prélèvements Sociaux could no longer be charged on gains nor on any form of rental income, (they currently apply to profits from unfurnished lettings and on gains from disposal of property).

Meanwhile, those taxpayers who have signed up as Auto-Entrepreneurs, or are self employed paying into the regime des non salariés, or employees paying French N.I under the régime générale are all currently subject to French social security legislation. All of their income, whether earned or unearned would remain chargeable to Prélèvements Sociaux – a distinct long term disadvantage. This would make the idea of Couverture Maladie Universelle – CMU – a much more attractive route to accessing healthcare.

What is the likely European Court of Justice (ECJ) decision?

Clearly the outcome is uncertain, however it is worth noting that there is a related but separate development regarding the application of Prélèvements Sociaux to non residents, in which the European Commission has indicated their opinion that Prélèvements Sociaux are social security contributions. Preliminary infringement procedures have commenced with the Commission inviting the French administration to withdraw the charge. These procedures will be formally published in the event that France refuses or fails to respond within the next couple of months.

The timescale for a decision from the ECJ is likely to be in the order of 2 years, but we expect to see earlier developments as the infringement procedure progresses.

² CE 13 Juillet 2013 No. 334551 & 342944

Meanwhile, in light of the Conseil d'Etat decision it could very well be worthwhile for those residents and non residents alike who are facing a charge to Prélèvements Sociaux regarding income or gains in any year since and including 2009 to submit an appeal against the charge, if they are likely to qualify for the exemption in the event that the conclusion is that Prélèvements Sociaux are indeed social charges subject to EU Social security Legislation. The time limit to appeal the assessments on 2009 income and gains is 31st December this year.

We'll keep you posted of further developments as soon as we have them.

For more information how Charles Hamer Financial services can help you mitigate your personal tax, prepare for the impact of the potential court decision on your personal planning and help manage your financial planning, please visit our website:

<http://www.charleshamer.co.uk/taxation.aspx>

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