

Charles Hamer Financial Services

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PRELEVEMENTS SOCIAUX JOY AT LAST BUT WILL IT BE SHORTLIVED?

Like a sulky 8 year old being required to hand back their younger sibling's favourite toy, the French central tax office, via a communication issued on 20th October, has finally – through gritted teeth - given instructions to the local tax offices on how to tackle the mountain of *Prélèvements Sociaux* appeals.

We are now starting to see a trickle of acceptances or requests for additional information as the relevant departments work their way through the pile.

For those of our clients for whom we have already submitted appeals, you should already have received from us an email updating you of the situation and – if relevant – detailing or anticipating the extra information request from the tax office.

For those readers who have, as yet, held back from submitting an appeal pending proof of success, the way is now clear to act. For those of you who paid *Prélèvements Sociaux* in 2013 the clock is ticking fast – the tax office must receive your appeal by no later than the 31st December 2015 for the appeal to meet the deadline for it to be studied.

To all intents and purposes, for those of you claiming against 2013, this leaves us with less than 3 working weeks to prepare and submit appeals, so please contact Emilie mengin as soon as possible if you would like Charles Hamer to make the appeal on your behalf. She can be contacted on 01844 218956 or by email via: info@charleshamer.co.uk

Are the rebates being agreed for the full amount claimed?

For those cases where we have seen definitive results, the amount being accepted is not always for the full amount. Often they are falling short on a tax office claimed technicality:

When this is the case, they are withholding one component of the levy.

Prélèvements Sociaux comprises 5 components which, between them, amount to a 15.5% levy: *CSG* (8.2%), *CRDS* (0.5%), *Prélèvement Social* (4.5%), *Prélèvement de solidarité* (2%) and *Contribution Additionnelle au Prélèvement Social* (0.3%).

The component being withheld on occasion is the *Prélèvement de Solidarité*, (2%). When this is the case, (it has not always been so), the reasons generally given are that:

- This levy was not a component of *Prélèvements Sociaux* in the period considered by the CJEU when making their judgement (it was introduced afterwards) and
- Unlike the other components, it does not finance the social security budget but rather the general budget.

In their view, consequently, the *Prélèvement de Solidarité* does not bear the characteristics of a National Insurance contribution otherwise given to the other components by the CJEU judgement.

If this situation occurs in your case you will have the option either to accept the slightly reduced rebate or appeal the decision to the *Tribunal Administratif*. If the latter, then the whole of the rebate will be deferred pending the Tribunal outcome, which may take a further 12 months. So far, all clients affected have accepted the lower rebate.

Going Forward:

Is this the end of it then? For those readers who have not yet sold or who remain subject to French tax by reason of unfurnished rental income or French tax residence, will Prélèvements Sociaux no longer apply if the taxpayer is subject to UK NI legislation or that of another EU state other than France?

Unfortunately, at the time of writing the situation is unclear.

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What is definitely known is that *Prélèvements Sociaux* should no longer be collected at source on any sale completed before 31/12/2015 when the vendor claims that they are subject to the NI legislation of another EEA state. If this is likely to be relevant for you and the notaire is unaware of the situation, contact us and we will set the record straight

For those of you who have a valid claim against *Prélèvements Sociaux* as non residents or residents in respect to income, or qualify for exemption for the first time, you will be able to successfully claim exemption for 2015, subject – where relevant - to being in the same circumstances regarding NI legislation as gave rise to your exemption.

But we are less than 5 weeks away from the end of the year. What of 2016 and beyond?

This is where things start to become uncertain once again:

In the 2016 Social Security Finance Bill, (art. 15 *Projet de Loi de Financement de la Sécurité Sociale / PLFSS 2016*), the Govt. proposed a change in the financial focussing of *Prélèvements Sociaux* so that all components will – if the provision is adopted – finance the general as opposed to social security budget. The aim is for the levy as a whole to adopt the same basic characteristics of the *Prélèvement de Solidarité* component – as described above – and therefore be interpreted as a tax rather than NI levy going forward. It is a clear attempt to manipulate matters so as to avoid the stamp given to the levy by the CJEU judgement.

If adopted for all sales and revenue to which *Prélèvements Sociaux* previously applied prior to the CJEU judgement, (unfurnished lettings for non residents, all capital gains and unearned income apart from UK rental income for French residents), then *Prélèvements Sociaux* would once again apply in full force from 01/01/2016.

In practice, for French residents, this would mean that all the *Prélèvements Sociaux* avoidance strategies traditionally used in past years would once again become relevant.

However, as of the time of writing this bulletin, there is a standing amendment, adopted by the *Sénat*, which provides that *Prélèvements Sociaux* would not apply to non residents full stop.

For the French resident this changes nothing, but it would certainly be a welcome concession for the non resident French property owner. The difficulty though is that the

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Sénat amendment was made in opposition to the Govt. and it will need to stand up to challenge when the bill is debated again in the *Assemblée Nationale*.

Meanwhile, for the French resident taxpayer there are other uncertainties brought about by the change in format of the Prélèvements Sociaux:

If they are taking on the nature of a general tax rather than a hypothecated levy for the social security budget then the question needs to be raised as to whether or not they will be extended to earned income, including UK pensions – effectively bypassing the CJEU judgement made way back in 2000 since which time such income has escaped the charge.

If so then this has broader implications for those residents who so far have avoided operating a professional business in order to avoid falling into the trap of then finding yourself within scope of French NI legislation and leaving your pensions exposed to *Prélèvements Sociaux*. The strategy might no longer bring the benefits intended.

At this point in time, however, all balls are still very much in the air and no actions otherwise relevant to *Prélèvements Sociaux* planning should be taken until they land. We will keep you posted on any developments and their impact as they become clearer.