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Wragge Lawrence Graham &Co

Legal Alert

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French Social contributions: the French tax authorities have issued their comments on the reimbursement claims

On 20 October 2015, the French tax authorities (FTA) issued their comments on the reimbursement of the French social contributions following the De Ruyter decision on 26 February 2015, where the Court of Justice of the European Union (CJEU) held that French social contributions paid on income derived from capital (as opposed to income deriving from a professional activity) fall within the scope of Regulation N°1408/71; Article 13 of which provides that the people to whom the Regulation applies shall be subject to the legislation of a single Member State only. Here we address the FTA's comments and what they could mean for you.

Who can make the claim?

As expected, the FTA considers that the claim can only be made by EU, European Economic Area (EEA), and Swiss residents.

We do not totally agree with this as residents of third party countries should also benefit from the De Ruyter decision, but on a different ground.

In respect of third party state residents, we believe that there are two means by which they may benefit from these decisions, as they cannot directly rely on Regulation N°1408/71.

- Firstly, France has signed many international social security agreements which prohibit the application of overlapping legislation. Depending on the State of residence of the taxpayer, these agreements should be taken into account when making a claim.
- Secondly, we believe that the EU law principle of freedom of movement of capital could also be relied upon. If EU-residents are subject to more favourable tax treatment than others, this could constitute a restriction on the freedom of movement of capital, and therefore be contrary to EU law. Non-EU residents would be able to benefit from this.

In their comments, the FTA also indicate that in order to make a successful claim the individual must be affiliated to a mandatory social security regime in their country of residence. This is not surprising as otherwise it would not violate the principle according to which a person should be subject to the social security legislation of a single State only.

The French social contributions (not to be confused with national insurance contributions) are made up of four different taxes, the combined rate of which is now 15.5% (rate applicable as of 1 July 2012). Among these four taxes, there is a 2% solidarity tax which the FTA consider will be outside the scope of the reimbursement. In theory, the FTA should therefore only reimburse 13.5% of the social contributions paid. This is quite a new development which will need further thought.

What are the periods being impacted by the claim?

In respect of claims introduced by 31 December 2015, the following taxes are impacted:

- Capital gains tax on the sale of French real estate paid since 1 January 2013;

- French income tax paid in particular on rental income in respect of tax bill issued as of 1 January 2013;

- French withholding tax paid since 1 January 2013 on income deriving from securities (such as in particular dividends).

We confirm that in respect of years 2013 and 2014, actions must imperatively be taken by 31 December 2015.

How should the claim be made?

The claims can be made via the FTA's website or by letter. It must be accompanied by all the necessary justifications, in particular:

- Confirmation of the amount of social contributions effectively paid (e.g. tax bill, CGT computation etc);

- Confirmation that the individual making the claim is effectively affiliated to a mandatory social security regime in his country of residence;

- Evidence that the individual making the claim is effectively the one who suffered from the taxation.

Conclusion

Recently the French government announced that it will reform the laws relating to future social contributions.

This was completed in the recent 2016 draft law on the French social security budget.

The French Government has just changed the allocation of social contributions to avoid the application of Regulation N° 1408/71 and to circumvent the court ruling. Indeed, we know that for Regulation N° 1408/71 to apply, the charge in question must be allocated specifically and directly to financing social security in France. This is still the case for French social contributions.

The French social security budget for 2016 proposes to change this allocation in the future. We will see if the Government succeeds in passing this new law and finds a better alternative allocation…

We assist and represent taxpayers before the French tax authorities and French Courts in respect of these issues.

For more information about this subject, please contact:

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Between Paris and Monaco, the French tax team of Wragge Lawrence Graham & Co comprises expert lawyers with capabilities to cover all aspects of French tax, in particular, real estate tax, corporate tax, tax disputes, personal tax and wealth management.

This update may contain information of general interest about current legal issues, but does not give legal advice.

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