

# Charles Hamer Financial Services

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## **CHFS BULLETIN 2<sup>nd</sup> JUNE 2015 :**

### **1. TIMETABLING THE RECOVERY OF PRELEVEMENTS SOCIAUX**

The long awaited preliminary ruling from the Court of Justice of the European Union (CJEU) was published on the 26<sup>th</sup> 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 and on unfurnished rental income received in 2014.

#### **Why is this and is it a cause for concern?**

First and foremost it needs to be recognised that

**a).** The extent of the appeals made so far is unprecedented at a number of tax offices and the overall anticipated scale of any rebate needs to be placed into context: in its 2015-2018 financial stability report submitted to the European Commission the French government has already made provisions for an aggregate rebate of **0.5billion €** over 2015 and 2016 directly as a consequence of the CJEU judgement. The fact that they have done so is encouraging news: it indicates that the Govt has at least accepted the principle of the CJEU decision, but the size of the rebate does suggest that the administration of the appeals process will be directed centrally, rather than being left to the interpretation of individual tax officers.

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b). In its press publication the CJEU reminded everyone that when the CJEU 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 (the Conseil d'Etat in this case) 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). Bearing in mind that the implications of the CJEU are potentially far reaching – the fact of non residence not being directly relevant to the particular case brought before the CJEU – and the need for domestic law to be altered to accommodate the judgement, although undoubtedly frustrating, it is perhaps understandable that a delay has ensued.

**So how much longer will we have to wait before definitive progress can be achieved?**

Our current understanding is that the awaited directions from the Conseil d'Etat are expected around the end of July 2015. Allowing for the unfortunate timing of this with the French holiday season and the huge number of individual files involved, assuming cases are dealt with in chronological order according to the date of initial appeal, we anticipate starting to see, from the end of August onwards, our first successful responses to cases we submitted in December 2014.

Once the backlog has been cleared and tax office familiarity with supporting documentation established we then anticipate a much quicker turnaround for appeals not yet submitted, although of course this still won't be until after the Conseil d'Etat has completed its direction.

Despite this encouragement it is important to understand two matters:

**1). The repayment of Prélèvements Sociaux paid already will not be rebated automatically.** Recovery **must** be claimed by tax office appeal in which justification will need to be provided that your status at the time of the property sale or receipt of rental income took you outside of the scope of French Social security legislation by reference to EU regulations.

2). For those readers who have yet to complete their sale and/or who have declared their Revenu Foncier for 2014, **Prélèvements Sociaux will continue to be payable until such time as legislation is changed**; the amounts paid being recoverable by appeal as above. In this regard, although a proposed law change has already been submitted to the Assemblée Nationale on 11<sup>th</sup> March, realistically we anticipate the legislative change to be incorporated into one of the Finance Bills for 2016, (perhaps the Projet Loi de Finances Rectificative 2015), which are likely to be drafted and debated in August after the Conseil d'Etat has issued its advice to government

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## **2. TIME LIMIT FOR MAKING YOUR APPEAL**

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, confirmed by the Central French Tax office is:

The *31<sup>st</sup> December of the second year following the year of payment* of the Prélèvements Sociaux

### **APPLYING THE TIME LIMITS IN PRACTICE:**

#### **SALES AND REVENUE ARISING IN 2012**

For non residents, Prélèvements Sociaux were first introduced for capital gains arising from 17/08/2012 onwards and from 01/01/2012 for unfurnished rental income. For French residents Prélèvements Sociaux had been ongoing for many years beforehand.

In the case of the sale of French property, because Prélèvements Sociaux were paid at source via the notaire, **the expiry date for any appeal on a property sale made in 2012 has now expired, (it was 31/12/2014).**

However, since Prélèvements Sociaux in respect to income received in 2012 were not paid (in most cases) until 2013 - on receipt of a tax assessment - **Prélèvements Sociaux attached to income can still be reclaimed if the appeal is submitted prior to 31/12/2015**

### **SALES & REVENUE ARISING IN 2013:**

The appeal period is still open for both 2013 sales and revenue.

For **Capital Gains** in this year the appeal **must be made no later than 31<sup>st</sup> December 2015.**

For Prélèvements Sociaux attached to **income** received in this year the deadline for the appeal is **31<sup>st</sup> December 2016**

### **SALES AND REVENUE ARISING IN 2014:**

Similarly, the deadlines for Capital Gains made in 2014 is 31<sup>st</sup> December 2016 whilst for income the deadline isn't until 31<sup>st</sup> December 2017

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### **3. PREPARING AND MAKING THE 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 relevant cut off date of 31<sup>st</sup> 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:**

**A).** If the appeal successfully recovered £2,000, our fee would be:

$$£250 + £250 (£2000 \times 10\% \text{ being less than } £250) = £500$$

**B).** If the appeal successfully recovered £6,000, our fee would be:

$$£250 + £600 = £850$$

**C).** 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](mailto:jon@charleshamer.co.uk) / 01844 218956) or Emilie Mengin ([info@charleshamer.co.uk](mailto:info@charleshamer.co.uk) / 01844 218277).**