

Charles Hamer Financial Services

INDEPENDENT FINANCIAL ADVISERS

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PRELEVEMENTS SOCIAUX – HAVE WE NOW REACHED A CONCLUSION?

Finally, on 27th July 2015 the French Supreme administrative court – the *Conseil d'Etat* – formally recognised¹ the ruling from the Court of Justice of the European Union (CJEU) published on the 26th February 2015, finding in favour of the taxpayer – M. De Ruyter - whose case was what led to the CJEU referral.

▪ **The Conseil d'Etat decision was clear cut:**

Prélèvements Sociaux are social charges falling within the scope of EU regulations governing the application of national social security legislation, irrespective of the nature of the income to which they are attached.

By reference to these EU regulations, *Prélèvements Sociaux* can only be charged on investment income or gains (*revenus du patrimoine*) if the individual receiving such income or gains is, at that time, subject to French social security legislation.

On this basis then, French sourced investment income and gains ***can only be charged to Prélèvements Sociaux if the recipient meets any of the following criteria at the time:***

1. They are French (tax) resident, inactive – to the extent that they are not employed or pursuing an activity whose nature is such that it falls within scope of French compulsory National Insurance Contributions – **and not in receipt of a State pension from another EU state**, or
2. They are French (tax) resident, inactive – to the extent that they are not employed or pursuing an activity whose nature is such that it falls within scope of French compulsory National Insurance Contributions – **and in receipt of a French State pension**, or

¹ Conseil d'Etat decision no. 334551 of 27 Juillet 2015

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3. Whether or not they are French resident, they are employed in France or pursuing a professional activity in France in a manner which renders the activity subject to compulsory French national insurance contributions under the terms of the EU regulations on social security. **This would include, for example, any business exercised as an Autoentrepreneur.**

Otherwise the individual concerned can claim to be exempt from *Prélèvements Sociaux*.

- **So the case is won then. Will inappropriately charged *Prélèvements Sociaux* be automatically rebated?**

At this point in time, unfortunately not:

For cases where *Prélèvements Sociaux* have already been collected, the onus still remains with the individual to submit a formal claim proving that their status at the time fell within scope of EU regulations on Social Security and that such status left them outside the scope of *Prélèvements Sociaux*.

For cases where *Prélèvements Sociaux* have yet to be collected – e.g. pending property sales – there is still no statutory provision automatically exempting the recipient from *Prélèvements Sociaux*. Instead, until this is the case, they (or their notaire) will have to apply to the tax office requesting the exemption and providing the necessary proof of status to allow the tax office to concede.

Information to date suggests that the statute will only be changed in late December this year, via the *Loi de Finances Rectificative 2015*, but even from that time taxpayers will still have to demonstrate their exempt status.

For individuals who have already paid *Prélèvements Sociaux*, any general statutory change in the *Loi de Finances Rectificative 2015* will come too late: it will only simplify the processing of claims. As there is no known plan to automatically rebate all non residents paying *Prélèvements Sociaux* it will still be necessary to make the claim.

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What does this mean in practice?

For those who paid *Prélèvements Sociaux* 2012 and have not already submitted a claim, unless there are special dispensations introduced via the *Loi de Finances* which override standard reclaim deadlines, the opportunity to make a successful claim is now passed.

Meanwhile for those who paid in 2013 as a result of a sale in that year or an *avis d'impot* issued in 2013 there is still time to make a claim, **but the deadline of 31st December 2015 is fast approaching.**

All in all then, the sole difference brought about by the *Conseil d'Etat* decision is that the French tax office no longer has any excuses to avoid rebating qualifying claims: whereas pre the 27th July it was not clear cut that a claim would be successful, the decision introduces the knowledge that if the claim is properly packaged it will be accepted in due course.

Meanwhile, for existing appeals made in December last year, we expect to start seeing rebates being agreed during the 4th quarter of this year, once the French holiday season is over and tax offices fully operational again.

2. TIME LIMIT FOR MAKING YOUR APPEAL

The judgement from the European Court of Justice and its acceptance by the *Conseil d'Etat* 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 ***31st December of the second year following the year of payment*** of the *Prélèvements Sociaux*

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APPLYING THE TIME LIMITS IN PRACTICE:

The following tables summarise the deadlines for making an appeal according to the nature of the income and the date it occurred.

Table 1: Appeal Deadline for *Prelevements Sociaux* paid on sale of French property

<u>Year of Transaction</u>	<u>Year tax Paid</u> (year of assessment)	<u>Deadline</u>
<u>2012</u>	<u>2012</u>	<u>31/12/2014</u>
<u>2013</u>	<u>2013</u>	<u>31/12/2015</u>
<u>2014</u>	<u>2014</u>	<u>31/12/2016</u>
<u>2015</u>	<u>2015</u>	<u>31/12/2017</u>

Table 2: Appeal Deadline for *Prélèvements Sociaux* paid on Rental Income from French property

<u>Year of Income</u>	<u>Year tax Paid</u> (year of assessment)	<u>Deadline</u>
<u>2012</u>	<u>2013</u>	<u>31/12/2015</u>
<u>2013</u>	<u>2014</u>	<u>31/12/2016</u>
<u>2014</u>	<u>2015</u>	<u>31/12/2017</u>
<u>2015</u>	<u>2016</u>	<u>31/12/2018</u>

Table 3: Appeal Deadline for *Prélèvements Sociaux* paid on all other Investment Income and capital gains by French tax residents

<u>Year of Income</u>	<u>Year tax Paid</u> (year of assessment)	<u>Deadline</u>
<u>2012</u>	<u>2013</u>	<u>31/12/2015</u>
<u>2013</u>	<u>2014</u>	<u>31/12/2016</u>
<u>2014</u>	<u>2015</u>	<u>31/12/2017</u>
<u>2015</u>	<u>2016</u>	<u>31/12/2018</u>

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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 obtain supporting documentation from the relevant French authorities, 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 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:

- A. If the appeal successfully recovered £2,000, our fee would be:
 $£250 + £250$ (£2000 x 10% 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 / 01844 218956) or
Emilie Mengin (info@charleshamer.co.uk / 01844 218277)