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PRELEVEMENTS SOCIAUX
YET MORE DEVELOPMENTS VIA THE
LOI DE FINANCEMENT DE LA SECURITE SOCIALE 2016

Following procedural instructions being issued by the central tax office (« Bercy ») existing appeals are now starting to make headway – even if in some cases this is simply a matter of agreeing with the local tax office the documentation needed to justify the claimants status as being subject to UK national insurance legislation before finalising the acceptance of the claim and making the payout.

For those readers who have paid *Prélèvements Sociaux* in 2013 but have not yet submitted an appeal, you are almost out of time as 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 practical intents and purposes – other than for existing clients - we at Charles Hamer are now concentrating on making appeals for those who have suffered Prélèvements Sociaux in 2014 and 2015.

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

So much for the good news.

Looking forward, the issue is not over. For 2016 and for the foreseeable future *Prélèvements Sociaux* are back on the agenda as never before.

<u>2016 and beyond: *Prélèvements Sociaux* Revisited</u>

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?

<u>Unfortunately not.</u>

In the 2016 Social Security Finance Act, (art. 24 L*oi de Financement de la Sécurité Sociale / LFSS 2016*), the Govt. Has included a change in the financial focussing of *Prélèvements Sociaux* so that all components will finance the general social security budget as opposed to specific contributory dependent elements of it. 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.

<u>The Act is relevant for all income and gains made in 2016</u> whether by residents or non residents and irrespective of the taxpayer's National insurance status.

<u>It will also apply to 2015 income classed as "Revenus du Patrimoine"</u>. This category includes the following:

- Rental income from unfurnished lettings unless the income is from directly owned UK property: this is applicable to both French residents and non residents.

And for French residents only:

- Non professional furnished lettings[1] unless the income is from directly owned UK property.
- Capital gains from the disposal of shares and options other than shares in property companies when the gain assessed to tax under the private property asset capital gains tax rules.
- Income from purchased life annuities

[1] Professional furnished lettings including chambres d'hote and auto-entrepreneur activities are already within scope of Prélèvements Sociaux by vittue of their being classed as earned income.

It will not apply in 2015 to income classed as "Produits de Placement". This category includes:

- Capital gains from the disposal of private property and shares in property companies assessed to tax under the private property asset (i.e. land and buildings) capital gains tax rules.
- Profits or gains realised on encashment or withdrawal from an EEA based Assurance-vie, investment bond or contrat de capitalisation.
- Dividends
- Interest

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

Meanwhile, it needs to be noted that the change in financial allocation giving rise to the revised scope for Prélèvements Sociaux only applies when it is levied against unearned income. It does not extend to earned income which currently remains outside the scope of Prélèvements Sociaux if the taxpayer does not generate earned income in France. This is because earned income – including pensions - is still protected by the CJEU judgement of 15/02/2000 (case C-34/98).

What this boils down to is that for those French residents with entitlement to a UK state pension, either preserved or in payment, and/or entitlement to a private sector pension taxable in France it will often still make sense to avoid starting a professional activity in France (this includes an Auto-Entrepreneur activity) and to access French state sponsored healthcare via the *CMU* (*Couverture Maladie Universelle*), when relevant, as a means to bridge any gap in UK cover between leaving the UK and reaching UK state pension age and entitlement to French healthcare by reference to an S1 issued from the UK.

This rule of thumb will not be true for all scenarios – living in France without pursuing a professional activity subject to French NIC may simply be unsustainable for some. Nonetheless it does make absolute sense to make a long term value for money judgement on this issue.

We at Charles Hamer have the modelling tools to help you make this strategic judgement via a cost only or a cost / benefit analysis.

For more information on this service, our fees and the information needed from you to carry this out please contact:

Jon Pawsey by email as follows; jon@charleshamer.co.uk.

But even that is not the end of it!

The rationale behind the Government's thinking that a change in allocation of the *Prélèvements Sociaux* gets around the 26/02/2015 CJEU judgement is controversial at best. During the passage of the Bill through parliament this article was rejected by the *Sénat* for reasons that it fails to address the principles laid down by the judgement.

There is quite a possibility then that the new state of affairs will be challenged once again either by the EU Commission itself or as a result of a case being passed on to the CJEU by the French court. If so, then there may be future scope to appeal and recover *Prélèvements Sociaux* levied under the new rules.

We will keep our eyes peeled for future developments and keep you posted... but for the time being we hope to change the subject for our 2016 Bulletins: I'm sure it's not just us who are fed up with the subject!