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# FRENCH FINANCE BILL 4TH JULY 2012 – PROJET DE LOI DE FINANCES RECTIFICATIVE 2012

As you may be aware the French Government yesterday published a Finance Bill which – if passed into law as presented - has an impact on the tax treatment of non French residents who own property in France.

The aim is for the Bill to be passed into law by the end of July, with the elements becoming effective from the 1st August 2012.

There are 2 related proposals to increase the total tax rate applied to the taxation of profits from the rental and sale of second homes in France.

1. An increase in tax on rental income from 20% to 35.5%
2. An increase in capital gains tax from 19% to 34.5%

In both instances the increase in tax rate is 15.5%. The simple reason for this is that the proposal is to extend an existing tax which applies to French tax residents to non French residents.

This tax, known as "Prélèvements Sociaux" (Social Contributions) is a flat 15.5%.

It is important to note that presently this is only at the proposal stage and there are grounds for optimism that it will be dropped by the time the bill is enacted:

## EU LEGISLATION

Existing case history from the European Court of Justice (CJCE) suggests that the main components of Prélèvements Sociaux fall within the scope of EU Social security legislation.

The design of current EU Regulations 83-2004 and 987-2009 is for EU residents at any one time to be covered by (contribute to and benefit from) the social security legislation of just one EU state.

For example, if an individual is resident and working in the UK, they will normally be subject to the social security legislation of the UK, paying Nic in the UK and receiving state sponsored insurance benefits from it.

This suggests then that if Prélèvements Sociaux are indeed classed as a social security contribution as opposed to an income or capital tax, it does not fall within the scope of the French legislation to levy Prélèvements Sociaux on individuals resident in another EU state if they are not already contributing to or covered by the French social security system

There is however still a degree of doubt as to whether an all encompassing interpretation of Prélèvements Sociaux as being social security contributions is valid:

The relevant case histories of previous EU Court decisions relating to Prélèvements Sociaux and NI Contributions have concerned earned income (salary, pensions, trading profits) rather than investment income. Furthermore the decisions refer to EU social security regulations which have since been replaced and upgraded

It is important to note that rental profits and capital gains are normally classed as investment income, (although there are exceptions).

The question then is whether the nature and scope of Prélèvements Sociaux changes from social security legislation to tax legislation when it is applied to different types of income.

## POSSIBLE BACK DOWN

Nonetheless, at this stage we are fairly confident that the degree of negative reaction these proposals have already generated at State level will result in their being withdrawn.

For example, we understand that the UK Treasury has said that it would challenge the proposals if they were found to go against EU rules.

Meanwhile, there is a risk to the French treasury of rising to the challenge and taking the case to the European Court:

Currently Prélèvements Sociaux are automatically charged on unearned income received by foreign nationals resident in France, without reference being made as to whether or not they are members of a French State social security system. If – as a result of a challenge to these latest proposals – the CJCE was to judge that Prélèvements Sociaux to be within the scope of social security legislation in all instances, then the loss of revenue to the French treasury, as a result of such unearned income no longer being so taxed and reclaims submitted for inappropriate taxation of previous years, would dwarf the €50 million annual income currently expected to be generated by the measure.

Matters are likely to develop rapidly on this subject and as soon as we have any further information on this we will update you accordingly.