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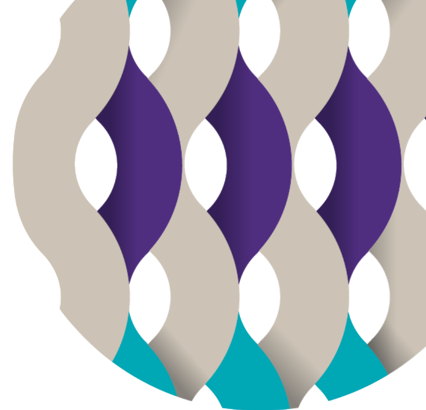

Changes regarding social taxes on French real estate income and capital gains on properties owned in France – Opportunity for tax claims in France

March 2019

The 2019 Social Security Budget Act deletes partially the social taxes on French real estate income and capital gains on properties owned in France **for taxpayers affiliated to a social security regime of an UE Member State other than France or an EEA Member or Switzerland.**

Background

The taxpayers affiliated to a social security regime of an UE Member State other than France or an EEA Member or Switzerland have been subject to social taxes on real estate income and capital gains on properties located in France since 2012. This taxation caused legal disputes.

In 2015 the European Court of Justice and the "Conseil d'Etat" (the French highest jurisdiction) called into question the levying of social taxes on capital income arising in France for them (De Ruyter case[1]). The courts decided that these taxpayers could not be liable for French social taxes as these taxes have a direct and relevant link with some of the branches of social security listed in the EU Regulation on coordination of social security regimes providing that EU residents must contribute to only one social security regime[2].

[1] ECJ, 26 February 2015, case C-623/13, de Ruyter, followed by Conseil d'État ruling no. 334551 on 27 July 2015
[2] Regulation no 1408/71 of 14 June 1971 modified on the application of social security schemes to employed persons and their families moving within the Community

Following the judgements of the European Court of Justice and of the "Conseil d'Etat", the 2016 Social Security Budget Act reallocated these social taxes to remove them from the scope of the EU Regulation.

ECJ, 26 February 2015, case C-623/13, de Ruyter, followed by Conseil d'État ruling no. 334551 on 27 July 2015

Regulation no 1408/71 of 14 June 1971 modified on the application of social security schemes to employed persons and their families moving within the Community.

As of 2016, the social taxes -which overall rate is 17.2%- included then:

- **A 9.9% general social security contribution,** mainly allocated to the old age solidarity fund;
- **A 0.5% social security debt repayment contribution,** allocated to the social security debt redemption fund;
- **A 0.3% additional contribution,** allocated to the national solidarity fund for autonomy;
- **A 4.5% social levy on income from personal assets and investment products,** allocated to the old age solidarity fund and the national solidarity fund for autonomy;
- **A 2% solidarity levy,** which was allocated to the old age solidarity fund and allocated to the State as of 2018.

In 2018, the Administrative Appeal Court of Nancy found that despite the reallocation some of these social taxes still fall within the scope of the Regulation[3].

Consequences

In order to prevent legal disputes, the 2019 Social Security Budget Act cancelled social taxes - except the solidarity levy allocated now to the State - for taxpayers affiliated to the social security regime of an UE Member State other than France or an EEA Member or Switzerland.

As of 2018 for rental income and as of 2019 for capital gains

Individuals affiliated to a social security regime of an UE Member State other than France or an EEA Member State or Switzerland are subject to the solidarity levy (2%) only on their French real estate income and capital gains on properties owned in France, instead of the 17.2% overall rate.

The rate of this solidarity levy increased to 7.5%. Nevertheless, this results in savings for the taxpayers.

Individuals who are affiliated to the social security regime of another country than the countries mentioned above remain subject to all the social levies at an overall rate of 17.2%.

[3] Administrative Appeal Court of Nancy ruling no. 17NC02124 on 31 May 2018

➢ **Past years - Claims**

Due to the judgement of the Administrative Appeal Court of Nancy, that should be confirmed by the "Conseil d'Etat", non residents[4] affiliated to a social security regime of an UE Member State or an EEA Member State or Switzerland should send a claim to the French tax administration as from now to ask for a reimbursement if they paid undue social taxes:

- On their French real estate income earned in 2017 and 2016 (deadline to submit the claim is 31st December 2019 for the 2016 income);
- On capital gains on properties owned in France realized in 2017 and 2018.

If you are qualified for a reimbursement, we can help you file those claims. Feel free to reach out to us for any further information on this matter.

These claims can also be made by French tax residents who are affiliated in another UE Member State or EEA Member or Switzerland in accordance with the EU regulation (i.e. French crossboarder employees). The taxpayers who contribute to a social regime in a third State are still taxed at 17.2% (ECJ, 18 January 2018, C-45/17.

[4] These claims can also be made by French tax residents who are affiliated in another UE Member State or EEA Member or Switzerland in accordance with the EU regulation (i.e. French crossboarder employees). The taxpayers who contribute to a social regime in a third State are still taxed at 17.2% (ECJ, 18 January 2018, C 45/17)

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