Laga

Employment, pensions & benefits
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Newsflash

Alignment of French Social Surtaxes with EU Legislation

Overview

In order to make French social surtaxes (CSG, CRDS and “prélèvement social”), which are levied on investment income, compliant with EU legislation, the French State Secretary for the Budget announced in early October that the Social Security Financing Act for 2016 would change their allocation in the French budget. He also confirmed that the necessary steps had been taken to ensure the refund of additional social taxes that were incorrectly levied in the past.

Social Surtaxes under French law

Taxpayers subject to French income tax (residents or non-residents, on their French source income) are currently liable to social surtaxes at a flat tax rate of 15.5% on investment income (particularly interests and dividends, rental income and some capital gains).

Contradiction with EU law: CJEU case law recognised by the French “Conseil d’Etat”

Considering these taxes are used to directly finance the French social security system, the European Court of Justice (CJEU) ruled that the taxes had a direct and sufficiently relevant link to French social security. However, in a cross border situation within the EEA, an employee cannot be subject to the social security scheme of more than one Member State. Therefore, the CJEU stated on 26 February 2015 that investment income should not be subject to French social surtaxes when the taxpayer is affiliated to a non-French EEA social security scheme.

The French “Conseil d’Etat” (Administrative Supreme Court) has already recognised this ruling in French tax law. It confirmed that the principles highlighted by the European Court must be applied, and that consequently, no social surtaxes should be levied in France on investment income whose beneficiaries are subject to another EEA social security scheme.

The Government's response

Although the French tax authorities had initially informed taxpayers that social surtaxes would remain payable while the Government was still considering its position (2015 French income tax bills were all issued with social surtaxes included), the early October announcement confirms that the necessary steps have finally been taken to ensure that unduly levied social surtaxes would be refunded.

Recommendations

In light of the above facts, Laga recommends that taxpayers, who have paid the social surcharge while subject to a non-French EEA social security system, keep filing refund claims. Given the applicable statute of limitations, tax years 2012, 2013, and 2014 are still open.

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