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EUROPEAN COURT OF JUSTICE'S DECISION ON NON-RESIDENT TAXATION: REMOVAL OF THE SOCIAL-SECURITY CONTRIBUTIONS OF 15,5% ON REAL ESTATE INCOME?

The Payment of social-security contributions of 15,5% on real estate income or other income from assets in France is considered by a recent decision of the European Court of Justice as an unequal treatment for EU non-residents. The contribution should soon be declared illegal by the French Supreme Administrative Court.

Until now the French tax authorities considered that the real estate income or income from other assets received in France by non-residents or French residents working in another member state should be subjected to social contributions including "CSG" (General social contribution levied for the benefit of National Family Allowances Fund of 8,2%), "CRDS" (social debt repayment contribution of 0,5%), a social levy of 4,5%, an additional contribution of 0,3% and a solidarity levy of 2%. This represents a total of **15,5% on the income**.

Since the decision of the European Court of Justice issued on February 26th, 2015[1], non-residents or residents in France who are subject to the social security scheme of another member state of the EU will not have to pay the social-security contributions.

Pursuant to Article 13 of European Regulation n°1408/71 on the application of social security schemes to employed persons (hereafter the "European Regulation"), **the legislation of a single Member State is to apply in matters of social security.**

Seized by a request for a preliminary ruling concerning the interpretation of the European Regulation, the Court decided that all the French social-security contributions adding up to 15,5% are to be considered having a direct and relevant link with the types of social security listed in the European Regulation and thus fall within the scope of Article 13 of the European Regulation.

Thus if a EU resident is subject to a social security scheme in another member state, his income -also from real estate- should not be subject to a social contribution in France.

The Court of Justice already had to decide whether French social-security contributions on employment income constitute income taxes or a social contribution (Commission vs. France, C-34/98 and C-169/98). The Court found that the contributions were allocated specifically and directly to the financing of the French social security scheme and concluded that they fall within the scope of the European Regulation.

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1 http://curia.europa.eu/juris/document/document.jsf?text=&docid=162537&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=143682

However, the French government has introduced the social-security contributions on real estate income since 2012.

In the recent decision the Court goes a step further and clarifies that **even if the social contributions are not levied on employment income but on income from assets, the principle of the legislation of a single member state is still to apply.**

Consequently, investors residing in France or abroad who are subject to social-security in another member state and who paid the social levies since 2012 can **claim the repayment of these social contributions.**

The French tax authorities still wait for the French Supreme Administration Court (Conseil d'Etat[2]) to rule over this case before drawing the legal consequences of the European Court of Justice's decision.

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[2] Link to the Conseil d'Etat website: The Conseil d'État : Home