



30.1.2015

NOTICE TO MEMBERS

Subject: Petition 0162/2012, by Johannes Juijn (Dutch), on discrimination against foreigners in real estate transactions in France

1. Summary of petition

Petitioner complains that, as a foreigner, he had to pay higher costs than a French citizen when selling his house in France. Petitioner was confronted with a document from SARF (Société Accréditée de Représentation Fiscale) that he had to sign under penalty of cancellation of the transaction. It involved a procedure for determining the increase in value of the house. The French pay EUR 680 for this service, while foreigners must pay approximately EUR 2 700. Petitioner is of the opinion that this practice is discrimination by the French authorities and requests that it be abolished.

2. Admissibility

Declared admissible on 8 June 2012. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 27 February 2013

French law stipulates that, when selling a property, non-residents (natural and legal persons) must appoint a tax representative in France who is then jointly liable for payment of capital gains tax¹. A number of French companies have been granted official accreditation to act as

¹ This obligation is laid down in the General Tax Code (Article 244a A of and Article 171(c) of Annex II to the General Tax Code, GTC). Article 171(c) states that persons liable for the tax provided for in Article 244(a) A of the General Tax Code must appoint, for the purpose of dealings with the tax collection authority, a representative domiciled in France who

tax representatives.

The Commission has raised doubts as to whether the obligation to appoint a tax representative in France is consistent with European law. In its judgment of 5 May 2011 in Case C-267/09 (the Commission v Portugal), the Court of Justice ruled that national legislation requiring non-residents to appoint a tax representative should be seen as a restriction on the free movement of capital, which is prohibited in principle under Article 63 TFEU and Article 40 EEA on the grounds that it imposes an additional administrative and financial burden on taxpayers.

On the basis of that judgment the Commission intends to open infringement proceedings (as provided for in Article 258 TFEU) in response to the French authorities' refusal thus far to bring their rules into line with EU law.

The Commission also understands that the petitioner was informed that the use of SARF's services was mandatory and that a failure to comply would result in the sale of his property being cancelled. The Commission has discovered that SARF is a private company which has not been granted any exclusive rights by the French authorities; there are therefore no grounds for making the use of its services mandatory. As previously mentioned, non-residents are required to appoint a tax representative, who may be:

a company or body which has already been granted official accreditation by the tax authority;

a bank in France;

the buyer of the property if his/her domicile for tax purposes is France;

any other person whose domicile for tax purposes is France.

What is more, there are no rules governing payment for the services provided by bodies acting as tax representatives. The cost of these services is therefore set by means of individual contracts. It would therefore appear that the obligation to employ the services of a particular businessperson or entity is inconsistent with French law.

Conclusions

The Commission will keep the petitioner informed about developments concerning the infringement proceedings.

Secondly, if the petitioner feels that he has been the victim of unlawful practices (either on the grounds that he was wrongly forced to use a particular service provider or to pay charges he regards as incommensurate with the service provided), he should petition the French anti-fraud and consumer protection body or bring the matter directly before the French civil courts. The Commission is not competent to intervene in matters concerning two private parties.

undertakes to complete the necessary formalities and pay the tax on their behalf, including, where necessary, the fine provided for in Article 1761(1) of the code.

4. Further Commission reply, received on 31 May 2013 (REV)

The Commission is pleased to inform the Committee on Petitions that it has decided to open infringement proceedings [No 2012/2215] against France under Article 258 TFEU, having sent a letter of formal notice to this effect on 25 April 2013. The French authorities now have two months to submit their comments to the Commission.

On the basis of this information – or in the absence of any information – the Commission will decide on the action to be taken.

5. Further Commission reply, received on 29 November 2013 (II)

In their reply of 22 July 2013 to the letter of formal notice sent by the Commission in the context of the infringement proceedings launched under Article 258 TFEU, the French authorities claimed that the requirement for non-residents to appoint a tax representative in France in respect of the payment of capital gains tax does not constitute a breach of EU law.

Once it has examined the French authorities' reply in detail, the Commission will be in a position to decide whether to continue the proceedings.

6. Further Commission reply, received on 31 January 2015 (III)

In response to the infringement proceedings opened by the Commission, the French authorities have begun the legislative process to do away with the requirement for non-residents to appoint a tax representative in France.

Article 62 of the Amending Finance Act for 2014 (No 2014-1655 of 29 December 2014), published in the Official Gazette of the French Republic of 30 December 2014, abolishes the requirement to appoint a tax representative altogether, thereby putting an end to the discrimination against non-residents.

The new provisions have thus resolved the complaints raised by the Commission in the aforementioned proceedings against France.