



6.5.2019

NOTICE TO MEMBERS

Subject: Petition 2657/2013 by Denis Dugré (French), on the collection by the French State of taxes on the real estate income of a person who is not a tax resident of France

Petition No 0443/2016 by Jean Doignie (French) on France's failure to execute a judgment given by the Court of Justice of the EU on a tax matter

1. Summary of petition 2657/2013

The petitioner complains that the French State collects the CSG (*contribution sociale généralisée*) and CRDS (*contribution au remboursement de la dette sociale*) taxes on the real estate income of a person who is not a tax resident of France and who is not covered by any social protection measure in France.

Summary of petition 0443/2016

The petitioner contests a tax equivalent to a social security contribution imposed on a real estate sale. He considers that the French authorities have failed to comply with the judgment in Case C-623/13, *Ministère de l'Économie et des Finances v. Gérard de Ruyter*. He also draws attention to the numerous changes made to tax regulations, which confuse taxpayers.

2. Admissibility

Petition 2657/2013 declared admissible on 24 November 2014.
Petition 0443/2016 declared admissible on 15 September 2016.
Information requested from Commission under Rule 216(6).

3. Commission reply, received on 18 December 2015

Petition 2657/2013

The European Commission is aware of the problem raised by the petitioner and has received many similar complaints. In 2013, the Commission launched an infringement procedure against France (case No 2013/4168) for the levy in France of the ‘contribution sociale généralisée’, ‘contribution au remboursement de la dette sociale’ and other social levies on income from real estate of persons who are covered by the social security system of another Member State.

However, the Commission could not take any concrete action in this infringement procedure until the Court of Justice of the European Union ruled in case C-623/13, De Ruyter, which intervened in February 2015. In this ruling, the Court held that the French levies have, when they contribute to the financing of compulsory social security schemes, a direct and relevant link with some of the branches of social security listed in Article 4 of Regulation (EEC) No 1408/71 (now Article 3 of Regulation (EC) No 883/2004) and thus fall within the scope of the regulation. The Court made clear that these levies are indeed social security contributions. By imposing such contributions on persons who are covered by the social security system of another Member State, France is therefore infringing Article 11(1) of Regulation (EC) No 883/2004. Based on this article, a person is subject to the legislation of only one Member State at a time and should not contribute to two social security systems in the same period of time.

On 18 June 2015, the Commission sent a letter of formal notice to the French Government, asking it to submit its observations on this issue. France replied on 26 October 2015 and informed the Commission of the measures it intends to adopt to put an end to this infringement. These measures concern on one hand the reimbursement of sums already levied (in infringement of EU law); on the other hand, a draft proposal to change the French legislation so as to allocate said contributions to two special funds destined to finance special non-contributory cash benefits. In this way, France considers that the said contributions cannot be considered social security contributions covered by Regulation (EC) No 883/2004 and therefore can be levied.

The Commission is currently analysing the French reply in order to check if such amendments would indeed put an end to the infringement.

Conclusion

The European Commission will keep the Committee of Petitions informed on the progress of the infringement procedure against France. However, it could be useful to inform the petitioner that proceedings launched by the Commission against a Member State for breach of EU law have no automatic or immediate impact on the rights of individuals and do not serve to resolve individual cases. It may be in the interest of the persons concerned not to wait for the outcome of the infringement procedure against France, but to take legal advice on the means of redress available at national level. Indeed, national courts are primarily responsible for ensuring the correct application of the EU law in a Member State. A person may get reimbursement of the sums paid only by filing a claim with the administrative authorities and/or with the French courts, based on national law and within the deadlines set by French law.

4. Commission reply (REV.), received on 30 November 2016

Petition 2657/2013

In its previous communication, the Commission informed the Committee on Petitions about the measures proposed by France as a follow-up to the ruling of the Court of Justice of the European Union (CJEU) in case C-623/13, *de Ruyter*, EU:C:2015:123.

The new French law which changes the allocation of the levies concerned into two special funds financing non-contributory benefits entered into force on 1 January 2016.

The Commission is in close contact with French authorities in order to clarify all the technical aspects regarding this law and to make sure it complies with the EU law.

A decision on the infringement procedure has not been taken yet.

Conclusion

The Commission will keep the Committee on Petitions informed about the progress of the infringement procedure against France.

5. Commission reply, received on 21 December 2016

Petition 0443/2016

In its replies to petition 2657/2013, the Commission informed the Committee on Petitions of the measures proposed by France as a follow up to the ruling of the Court of Justice in case *de Ruyter*¹.

The new French law changing the allocation of the levies related to two special funds financing non-contributory benefits entered into force on 1 January 2016.

The Commission is in close contact with French authorities in order to clarify all the technical aspects regarding this law and to make sure it complies with the EU law.

A decision on the next steps in this case has not been taken yet, but the Commission will keep the Committee on Petitions informed about the progress of this case.

6. Commission reply (REV II.), received on 31 July 2017

Petitions 2657/2013 and 0443/2016

Both petitions concern the levy of social security contributions in France on income from real estate in the case of persons not covered by the French social security system.

The infringement procedure No 2013/4168 against France for failure to comply with the principle of a single social security legislation applicable, as provided for in Article 11 of Regulation (EC) No 883/2004 on the coordination of social security systems, is still open. Based on this principle, a person should pay social security contributions in one single Member State at a time. Therefore, France can levy contributions that directly finance its social security system only on the income of persons who are covered by its social security

¹ Case C-623/13, *de Ruyter*, EU:C:2015:123.

system.

In case C-623/13, *de Ruyter*, EU:C:2015:123, the Court of Justice of the European Union (CJEU) clearly stated that levies on income from real estate or other types of income not linked to professional activities are considered social security contributions within the meaning of EU law, provided that they directly finance the national social security system. In its previous communication on petition 2657/2013, the Commission informed the Committee on Petitions of the measures proposed by France as a follow-up to the ruling in this case.

On 10 May 2017, the CJEU confirmed in case C-690/15, *de Lobkowicz*, EU:C:2017:355, that EU officials, similarly to other mobile workers, should not pay contributions in two systems at the same time (the EU and the French social security system). This would be contrary to the Protocol attached to the Treaty on the rights and privileges and the Statute of EU officials.

The Commission is in close contact with French authorities in order to ensure compliance with the EU law on this issue, as interpreted by the Court of Justice.

Conclusion

The Commission will keep the Committee on Petitions informed about the progress of the infringement procedure against France.

7. Commission reply (REV III.), received on 31 October 2018

Petitions 2657/2013 and 0443/2016

In its previous reply, the European Commission informed the Committee on Petitions that a French law changing the allocation of the levies concerned to two special funds financing non-contributory benefits entered into force on 1 January 2016.

The Commission is still analysing the technical aspects of that law. Therefore, a decision on the infringement procedure has not yet been taken.

Moreover, in early September 2018, the Commission was informed by the French authorities that they were working on a draft legislation aiming to ensure the compliance of the French system with EU law.

Conclusion

The Commission will keep the Committee on Petitions informed about the progress of the infringement procedure against France.

8. Commission reply (REV. IV), received on 6 Mai 2019

Petition 2657/2013 and 0443/2016

The Commission's observations

On 22 December 2018, the French parliament adopted law 2018-2013 on the financing of social security for 2019. In the framework of that law, some provisions revoke the collection of the CSG (*contribution sociale généralisée*) and the CRDS (*contribution au remboursement de la dette sociale*) on income of persons insured under a social security system other than the French one.

The assessment of law 2018-2013 demonstrates that French law does not infringe EU law any longer which implies that the Commission is taking the relevant steps to close infringement 2013/4168.

The Court of Justice of the European Union in cases *de Ruyter* (C-623/13) and *Dreyer* (C-372/18) has stated that the law in force before the entry into force of law 2018/2013, which entitled the levy of social security contributions on income from real estate of persons who do not reside in France and who are not covered by the French social security system, constitutes a breach of EU law.

In this context, the Commission would like to stress that it is national courts and administrative bodies that are primarily responsible for ensuring that the authorities of the Member States comply with European Union law. It is also and only national courts which have the power to order a Member State to make good the loss sustained by individuals as a result of the infringement of European Union law attributable to it.

Conclusion

The Commission intends to close infringement 2013/4168 and, in view of the above, the petitioner is encouraged to initiate or pursue any means of redress available at national level to claim damages for the social security contributions unduly levied until the end of 2018.