

Application of social security contributions to non-residents

Personal taxation in France differs from its neighbours states in that is relatively low income tax, especially in the first brackets, but coexistence of social contributions, the weight of which has continued to increase.

These contributions consist in the CSG and CRDS on one side and the solidarity contribution levied on investment means.

Two social contributions are levied on the basis of two main categories of income, namely :

- Employment and replacement income: this includes wages, self-employed income and pensions.
- Income from assets and investments: this includes income from property, life annuities for valuable consideration, income from movable assets, capital gains from the sale of securities or company rights, as well as investment income, which includes interests and capital gains on the solde of real estate.

The CSG rate is 9.2%. The CRDS rate is 0.5%. Reduced rates varying from 3.8% to 8.3% on certain replacement incomes.

In addition, income from assets and investments is subject to a solidarity levy of 7.5%, giving a total charge of 17.2%.

At least for taxpayers resident in France, as the application to non-resident taxpayers has been widely discussed.

A distinction should be made here between, on the one hand, residents of a Member State of the European Economic Area (Norway, Iceland and Liechtenstein) and Switzerland and, on the other hand, residents of a third country.

I- Against residents of the European Union and the European Economic Area (Norway, Iceland and Liechtenstein) and Switzerland.

A- No liability to CSG and CRDS

The European Regulation of 14 June 1971 on "the system of coordination between social security schemes" provides that social security contributions are levied by the State of employment of workers in the European Economic Area and only by it. This is known as the principle of the unicity of social security. In other words, **only the State of employment is entitled to collect contributions that are intended to finance a social security scheme.**

On the basis of this European regulation, the ordinance of 2 May 2001 provides that **only individuals who meet two conditions are subject to the CSG and CRDS on earned income and replacement income.**

These persons must be both :

- **Be resident in France for income tax purposes and**
- **dependent on a French compulsory health insurance scheme**, which means that they are subject to the social security legislation applicable in France.

As a result, **there is no liability to CSG or CRDS on earned income or replacement income if the person in question is domiciled for tax purposes outside France or is covered by a health insurance scheme in another Member State of the European Economic Area.**

As regards income from capital or assets, the CSG and CRDS also affect non-resident taxpayers when they are taxable in France on their French-source property income or capital gains.

However, the Court of Justice of the European Union has again ruled that these social security contributions also fall within the scope of the Regulation of 14 June 1971 and are therefore also subject to the principle of a single social legislation (Court of Justice of the European Union, 26 February 2015, de Ruyter).

The following are therefore exempt from paying the CSG and CRDS:

- workers domiciled in France and exercising their activity in the territory of another State, provided that they are not covered by a compulsory French health insurance scheme;
- posted workers carrying out their activity in France and subject to the social security legislation of their State of origin, i.e. the State in which the company or organisation which usually employs them and on whose behalf they have been sent to France is established. This exemption applies only to the period of secondment;
- expatriate workers affiliated to the voluntary sickness and maternity insurance and work accident insurance scheme managed by the Caisse des Français à l'étranger (CFE) provided for in Articles L. 762-1 et seq. of the Social Security Code ;
- non-resident taxpayers taxable in France on their French-source property income or capital gains.

B- But a liability to the solidarity contribution

Taxpayers who are not resident in France for tax purposes but who **are resident in the European Economic Area still have to pay the 7.5% "solidarity levy on income from assets and investment products"** which is allocated to the State budget.

This levy concerns real estate income (property income and BIC) received since 1 January 2018 and capital gains on real estate since 1 January 2019.

C- Challenging social security levies

Despite these now well-established principles, the French tax authorities generally subjects all income to social security contributions, including against non-resident taxpayers.

If you believe that you have been unduly subject to social contributions other than the solidarity levy, we invite you to contact our lawfirm, which will take care of **filing a claim with the tax authorities** so that they can reimburse you the amount of social security contributions that you have wrongly paid.

To do this, you should send us :

- the tax notice showing the said deductions; and
- a proof of affiliation to the social security system of a State belonging to the European Economic Area, other than France.

The period for lodging a claim expires on 31 December of the second year following the year of collection. Thus, the CSG and CRDS that would have been wrongly applied to property income earned in 2020 and collected in 2021 can be contested until 31 December 2023.

II- Residents of third countries are fully subject to social security contributions.

It has been questioned whether a taxpayer established in a third country, not a member of the European Economic Area, and affiliated in that country to a compulsory social security scheme could also obtain a discharge of the social contributions to which he had been subject on the income from assets or investments by invoking the principle of free movement of capital.

The ECJ answered in the negative, considering that there was no discrimination contrary to the principle of free movement of capital insofar as residents of a third State and those of a Member State of the European Union are not placed in a comparable situation since only residents of the Member States of the Union benefit from the principle of the unicity of social security legislation (Court of Justice of the European Union, 18 January 2018, Jahin).

Thus, **residents of third countries receiving income from assets or investments in France are subject to all social security deductions (CSG, CRDS and solidarity contribution) on this income in France** if they do not benefit from the principle of a single social security legislation. They may therefore be subject to double taxation.

In particular, since the Brexit, British residents may be affected if they sell their secondary residence in France.