IRS CONCEDES DECADE-LONG FRENCH TAX CREDIT CASE

French-resident Americans due millions in refund

June 13, 2019 - LONDON: Today, the IRS admitted in the United States Tax Court that it wrongly collected too much U.S. tax from French-resident Americans, ending a decade-long legal saga for the U.S. tax collector.

The IRS' concession could lead to thousands of French-resident Americans claiming millions of dollars back from the US Government in wrongly paid taxes.

Following its announcement on the U.S. French embassy website in 2008 that certain French taxes could not be credited against U.S. tax liabilities, the IRS engaged in an aggressive audit program to compel French resident U.S. taxpayers to comply. In response to the auditing of their 2008 and 2009 tax returns, two French resident U.S. citizens, Ory and Linda Eshel, filed a case against the IRS, sparking a 7-year legal battle.

The taxes in question, the *contribution sociale généralisée* ("CSG") and the *contribution pour le remboursement de la dette sociale* ("CRDS") have been levied against French-resident individuals since the early 1990s. Before the 2008 announcement, U.S. citizens residing in France had to pay U.S. tax on their French income, but were able to offset the amount of tax owed with their French income taxes, including CSG and CRDS. By reversing its position, the IRS typically cost Americans thousands of dollars per year as CSG and CRDS amounted to approximately 10 percent of a French resident's income that was not available as a credit against U.S. taxes.

The IRS prevailed in the initial Tax Court litigation in 2014 by asserting that CSG and CRDS were social security taxes (which are not creditable), rather than income taxes for which a credit is allowed. The Court of Appeals reversed the Tax Court's decision and ruled that the IRS's position was ill founded and based upon an erroneous reading of a social security agreement between the United States and France.

The Court of Appeals sent the case back to the Tax Court for further factual development and the IRS's concession today admits that, based upon diplomatic correspondence between the U.S. State Department and the French Government, CSG and CRDS are creditable income taxes and not social security taxes.

Stuart Horwich, the London-based attorney representing the Eshels, stated "I have fought the IRS for over 10 years on this issue and have consistently been stonewalled. The IRS knew its position was unjustifiable yet continued to drag their feet at every opportunity. I am delighted that common sense has finally prevailed although this concession is long overdue."

All is not lost for taxpayers who under IRS guidance did not claim a foreign tax credit for CSG and CRDS. As Mr. Horwich points out, "the statute of limitations to claim CSG and CRDS as a foreign tax credit is ten years, so we anticipate filing large numbers of refund claims to recover taxes that the IRS should never have collected."

The IRS declined to comment on the outcome of the case.

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