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Live in U.S., Paid French Social Tax? You Might Get Refund

By Rick Mitchell and Hamza Ali Posted July 8, 2019, 8:15 PM

- Some refunds could be "massive," tax attorney says
- Applies to tax paid on passive, as well as earned, income

Residents in the U.S., not just France, can claim refunds for social contribution taxes they paid on a wide range of French-sourced income—passive as well as active—according to tax professionals.

The refunds became possible after the agency said it would stop denying foreign tax credits for two French social taxes, known as CSG and CRDS, that U.S. taxpayers paid on French-sourced income. The change, described in a June 13 court filing and announced in a June 26 statement, reversed the IRS's decade-long opposition to offsetting such taxes.

The original U.S. Tax Court case, *Eshel v. Commissioner*, dealt with taxes paid by dual U.S.-French citizens living and working in France. The IRS's policy change means U.S. residents, too, can claim refunds, practitioners said.

The refunds are available for social taxes paid on certain passive investment income—rental income from real estate, interest, dividends, and more—as well as employment income earned in France, Paris-based Dentons partner Jessie Gaston and other practitioners said.

A U.S.-based investor receiving dividend payments on stock held in French power company EDF, for example, can claim the tax credit on those levies paid to France, Gaston said.

Daniel Bell, a Washington-based tax attorney at McDermott Will & Emery, said U.S. taxpayers who paid those taxes on passive investment income and employment income should consider claiming the refunds. "They're potentially massive, because it's a dollar-for-dollar credit, subject to the standard 904 rule tax credit limitations," he said.

The IRS said June 26 that U.S. taxpayers can file for refunds for tax years going back to 2009.

French Expats Also Qualify

Christina Melady, a partner at Deloitte Taj who heads the firm's global employer services department in France, said the taxes, and consequently the refunds, also apply to French expatriates who live in the U.S. but have a home in France that they earn rental income from.

"The tax also applies to anyone who pays U.S. and French tax on income, this can either be a French national with a green card or a U.S. citizen resident in France," she said.

In some cases, U.S. employers are eligible for the refunds because they had programs to smooth out their expat employees' French tax bills—keep them close to what employees would pay in the U.S.—according to CPA Steven Horton, owner of Paris-based tax preparation company Horton Tax Services.

Frederic Bosc, a Paris-based tax attorney at Weil, Gotshal & Manges LLP, said refund claims by U.S. tax residents who have earned passive income from French real estate seem "likely, and legitimate."

Claiming Refunds

For taxpayers earning employment, professional, and passive investment income while living in France, the IRS refunds can be claimed back to 2009. For passive investment income earned by U.S.-resident taxpayers, the refunds can be claimed back to 2012, the year French law changed to apply CSG and CRDS to passive income earned by non-residents, said Marie Lynn Simmons, a global mobility services partner at KPMG Avocats France.

"We are now identifying clients who were audited for 2009, so that we can file amended returns to recover erroneously assessed taxes," Horton said. For the first six clients, the company had already identified around $200,000 of refund potential, not including interest.

Horton estimated the U.S. government might have to pay refunds to 3,000 to 4,000 U.S. taxpayers who paid French social taxes on employment and other professional income for tax years 2009 to 2018.

Simmons said via email that, "In the case of some of our clients for whom we're amending tax returns going back to 2009, the total refunds will be well into the six figures."

Bell said it's not yet possible to estimate the number of U.S. taxpayers who could claim the refund on French social taxes they've had to pay on passive income from investments. "The cases and circumstances, and amounts, are all very different," he said.

Bosc agreed that it's too early to estimate refund totals for passive income.

Simmons said passive income is assessed 17.2% in social surtaxes, including 9.2% of gross income for CSG, and 0.5% for CRDS, for a total of 9.7%, plus 7.5% in additional levies that don't qualify for the U.S. tax credit. Employment income is subject to 9.2% CSG on 98.25% of gross salary under 162,096 euros and on 100% of gross salary over that threshold. The CRDS on salary is 0.5% assessed on the same basis.

The levies on self-employment income allow for deducting expenses.

Risks of Filing Amended Returns

Simmons said KMPG is advising clients that it could take a significant amount of time, several months, for the IRS to process their amended tax returns. "But we hope that since this is a high-profile issue that the IRS will expedite these amended returns."

Both Bell and Melady warned that there are risks in filing amended returns.

“There are two sides to the coin, because it reopens the assessment period, so all the items on your tax return would then be potentially subject to questioning,” said Bell. He added, “But as long as you’re confident on how you reported those items previously, it’s probably not going to have any practical impact.”

Bosc said French tax specialists had long been warning clients about the IRS position on CSG and CRDS, which they considered odd, but strictly a matter of U.S. law. “From my point of view, the IRS change of position was overdue, and returns matters to normal,” he said.

IRS About-Face

The IRS made its policy change after losing a 2016 case, *Ory and Linda Eshel v. Commissioner of Internal Revenue*, at the U.S. Court of Appeals for the District of Columbia Circuit, to two U.S. taxpayers who had been denied the credit on their French employment income.

The 1987 France America totalization agreement, aimed at stopping double taxation of social security payments, didn’t include contribution sociale généralisée (CSG) and contribution pour le remboursement de la dette sociale (CRDS), two taxes launched in 1990 to fill a gap in France’s social welfare budget.

Nevertheless, the IRS decided in 2008 that the levies were social security taxes, and, consequently, not eligible for foreign tax credits. The U.S. Tax Court upheld the IRS position in a 2014 Eshel decision, but in 2016 the D.C. Circuit Court of Appeals reversed, finding that only the French government could decide if the levies were not social security taxes under the agreement.

“We knew that the French government was not going to buckle on their view that this was an income tax,” said Horton, who had the Eshels as clients. He said many of his clients consulted London-based American lawyer Stuart Horwich, who represented the Eshels in the court case.

Horwich urged U.S. taxpayers to claim refunds on the tax amounts paid on their French earnings. “Any of these residents who filed a tax claim in the past 10 years will be able to apply for a refund, but it will mean you have to affirmatively ask for your money back.”

To contact the reporter on this story: Rick Mitchell in Paris at correspondentsbloomberglaw.com and Hamza Ali in London at hali@bloombergtax.com

To contact the editors responsible for this story: Meg Shreve at mshreve@bloombergtax.com; Penny Sukhraj at psukhraj@bloombergtax.com; Vandana Mathur at vmathur@bloombergtax.com

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