

Source: Daily Tax Report: News Archive > 2016 > August > 08/16/2016 > Federal Tax & Accounting > Foreign Income: U.S. Treatment of Tax Credits in French Accord Questioned

158 DTR G-1

Foreign Income

U.S. Treatment of Tax Credits in French Accord Questioned



By Matthew Beddingfield

Aug. 15 — The IRS is taking advantage of taxpayers and their inability to claim foreign tax credits on income earned while living in France, despite the agency not being able to show the official French position on the applicable totalization agreement, according to tax practitioners.

The U.S. Court of Appeals for the D.C. Circuit Aug. 5 sent a case back to the U.S. Tax Court, instructing the court to look at the full text of the totalization agreement between the U.S. and France to determine whether two French taxes were "social security" taxes for which U.S. taxpayers couldn't claim a credit.

The case, *Eshel v. Commissioner*, dealt with whether la contribution sociale generalisee (CSG) and la contribution pour le remboursement de la dette sociale (CRDS) were amendments to France's social security laws, making them ineligible for foreign tax credits under Section 317(b)(4) of the Social Security Amendments of 1977 (152 DTR K-1, 8/8/16).

Government in Error

According to the D.C. Circuit, the government committed "legal error" when it determined the status of French laws "by resorting to American dictionaries" to determine whether the two taxes adopted after the signing of the U.S.-French agreement constituted amendments or supplements to French social security taxes covered in the agreement.

Stuart Horwich represents the Eshels, who are dual U.S.-French citizens. He told Bloomberg BNA that an official decree from the French government on its position of the taxes was much easier for the IRS to obtain than for him to obtain as a private litigator.

Horwich, principal at Horwich Law, explained that he has been working on the *Eshel* case for the last eight years with France's "best informed tax advisers," and that he was "gratified that the D.C. Circuit recognized that the IRS position in the litigation has been lacking in proper foundation."

Horwich said the Internal Revenue Service has put taxpayers on notice, auditing and penalizing them for taking the foreign tax credit, and that what the government put forth in evidence equated to a "because I say so" argument, calling it "shocking."

Chance to Clarify

Beth Paul Saunier, owner of BPS Tax Services in Paris, told Bloomberg BNA that she welcomed the D.C. Circuit opinion as a chance to clarify a confusing tax situation for American taxpayers on remand.

Saunier said that American taxpayers living in France use foreign tax credits to reduce their U.S. tax liability and want to apply CSG and CRDS payments toward their credit amounts. U.S. taxes imposed on those living abroad can become significant, Saunier said, especially in France, where generous severance packages are includible in worldwide income for U.S. tax purposes, and no foreign tax credit is available to claim to offset the amounts owed.

"The CSG and CRDS are still assessed on the severance amounts, usually at around an 8 percent range, which would potentially go a long way to offset U.S. tax," Saunier said.

Regarding the evidence in the *Eshel* case, Saunier said she felt the Eshels put forth several pieces of high-level evidence on the French government's position, including an official French government decree, embedded in an administrative ruling, stating that the French would give a foreign tax credit to Americans for the CSG or CRDS.

Working Credit Systems

"The controversy here really is on the wages, the actual employee wages are where the numbers get really big," Saunier said. "It's bizarre that Americans working in the United Kingdom, Germany and Canada can have the credits work themselves out, while Americans working in France need to worry about CSG and CRDS because they aren't explicitly covered in the treaty."

According to Saunier, it is imperative for the parties to address the other country's position on the tax credit, and the "absence of evidence speaks volumes" in the Service's arguments.

Horwich, who plans to file a motion for reconsideration arguing that a Tax Court remand isn't required, said: "It is a poor reflection of the Commissioner's litigation position that 8 years after announcing that CSG and CRDS are not creditable taxes, the Commissioner was not able to offer any credible legal foundation for his position."

No Justification

Snapshot

- Attorney questions IRS handling of "hapless taxpayers" regarding tax credits
- Lack of access to official government decree poses challenge to private litigator

"It's just disappointing to see a government willing to extract thousands of dollars from taxpayers without it being justified," Horwich added.

If the D.C. Circuit refuses to reconsider its remand order, Horwich said, he is confident that the Eshels will be able to demonstrate that CSG and CRDS are creditable taxes.

"But we hope that the government will see common sense and spare all parties further litigation while at the same time providing a workable procedure for the thousands of similarly situated taxpayers who have overpaid their U.S. taxes as a result of the IRS's position these last several years," Horwich said.

The Department of Justice declined to comment on the issue.

To contact the reporter on this story: Matthew Beddingfield in Washington at mbeddingfield@bna.com

To contact the editor responsible for this story: Ryan Tuck at rtuck@bna.com

Contact us at <http://www.bna.com/contact-us/> or call 1-800-372-1033

ISSN 1947-3923

Copyright © 2016, The Bureau of National Affairs, Inc. Reproduction or redistribution, in whole or in part, and in any form, without express written permission, is prohibited except as permitted by the BNA Copyright Policy.