



25.3.2010

NOTICE TO MEMBERS

Subject: Petition 1162/2009 by Brian Cave (British), on discriminatory treatment of certain categories of British pensioners who live in France

1. Summary of petition

The petitioner explains that, as a retired teacher residing in France, he is discriminated against in terms of income tax. The petitioner, who benefits of a British Government pension, maintains that he is paying higher income taxes than both French nationals with the same income and other categories of British nationals residing in France who do not receive Government pensions. According to the petitioner, the discriminatory treatment arises from the enforcement of the French legislation adopted in order to implement the Double Taxation Convention between the United Kingdom and France.

2. Admissibility

Declared admissible on 27 November 2009. Information requested from the Commission under Rule 202(6).

3. Commission reply, received on 25 March 2010.

The petitioner (British) is a retired teacher who is currently resident in France. He receives a UK government pension which, pursuant to Article 19(2) of the UK/France Double Taxation Convention¹, is subject to a withholding tax at source in the United Kingdom. As the

1. The Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal

petitioner's pension is not subject to taxation in France, the French Government does not take into account the tax withheld by the UK when it takes a decision on the granting of certain tax advantages, such as a tax allowance¹ for the employment of an employee at home that French legislation² grants to persons who are resident for tax purposes in France. The petitioner considers that he is subject to discrimination on grounds of nationality compared with:

– French citizens (who are in a similar situation), because he is not eligible for these tax benefits in France;

– other British citizens residing in France and receiving private pensions, since Article 19 of the Convention does not apply to them.

The UK/France Convention for the avoidance of double taxation

Article 19 – Government Service

'[...] 2. Pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a local authority thereof, or, in the case of France, a statutory body, to an individual in respect of services rendered to that State, authority or statutory body shall be taxable only in that State. However, such pension shall be taxable only in the other Contracting State if the individual is a resident and a national of that State without being also a national of the first-mentioned State.'

In this specific case, the UK state pension paid to the petitioner (a British national) is taxable only in the UK. If, on the other hand, the same pension had been paid to a French national residing in France, it would have been taxable in France.

The Commission notes that, in line with the OECD Model Tax Convention, Article 19(2) of the UK/France Convention establishes a differentiated tax system depending on the public nature of the pension and the nationality of the recipient.

In this regard, the Commission refers to the case-law of the Court of Justice in the field of taxation relating to the compatibility with EU law of any treaty provisions which '*lay down different connecting factors depending on whether the taxpayer [...] is a teacher [...] or not, or is employed in the private or the public sector. Taxpayers in the latter category are in principle taxed in the paying State unless they have the nationality of the other Contracting State without being at the same time nationals of the first, in which case they are taxed in their State of residence.*' According to the Court, '*Although the criterion of nationality appears as such in [...] Article [...] for the purpose of allocation of fiscal jurisdiction, such differentiation cannot be regarded as constituting discrimination prohibited under Article 48 of the Treaty. It flows, in the absence of any unifying or harmonising measures adopted in the Community context [...] from the contracting parties' competence to define the criteria for allocating their powers of taxation as between themselves, with a view to eliminating double*

Evasion with respect to Taxes on Income and on Capital Gains, with Protocol, was signed in London on 19 June 2008, entered into force on 18 December 2009 and was published in the Official Journal of the French Republic on 9 January 2010.

1. In France, an allowance in respect of tax paid in another country is not possible.

2. Article 199o of the General Tax Code.

taxation' (judgment of 12 May 1998 in Case C-336/96 Gilly, paragraphs 29 and 30).

Furthermore, the Commission notes that the French measure granting a tax allowance for the employment of an employee at home, from which the petitioner contends that retired British nationals living in France are unfairly excluded, is not applicable, in any event, to French pensioners on a low income (and who, in accordance with French law, are not required to submit a tax return). It is apparent from the written question¹ submitted by the French Senate to the French Minister for the Budget that a tax allowance could be granted only as a tax deduction on personal income. If the pensioner concerned was not taxed on personal income, no deduction was possible. In the final analysis, low-income pensioners were not eligible for tax assistance for the employment of an employee at home. This tax measure did not seem fair because low-income pensioners found it difficult to pay an employee, and yet they were very often obliged to hire someone because of their own poor health².

In the light of the above, it appears that, under EU legislation, the French measures in question are not discriminatory.

Since the Commission considers that the French measures in question do not infringe EU law or the free movement of persons (Article 45 of the TFEU), it does not intend to open infringement proceedings against France. The Commission proposes that Parliament inform the petitioner accordingly.

1. Written Question No 08053 by Mireille Schurch on the extension to pensioners of tax credit for the employment of employees at home, published in the Official Journal of the French Senate of 26 March 2009.

2. The reply from the French Ministry of Economic Affairs, Industry and Employment (published in the Official Journal of the French Senate of 18 June 2009) states that, given its cost, and in a difficult fiscal environment, this measure had been reserved for persons who were employed or seeking work. Financial assistance to help cover the cost of service-sector jobs offered by individuals should not be assessed solely through the tax allowance referred to but also in terms of welfare benefits paid by the State and local authorities.