

EU Addresses France's Denial of Refunds, Carryforwards From Other States

POSTED ON SEP. 4, 2017

By

 **J.P. FINET**
Contact Author

The European Commission's reasoned opinion asking France to amend its rules on calculating personal income taxes on income earned in other member states is meant to address the position of the French tax authorities to deny any refund or carryforward, a French practitioner told

Tax Analysts.

The [reasoned opinion](#) issued by the commission on July 13 asked France to amend rules stating that resident taxpayers earning part of their income in another European Economic Area member state cannot benefit from the same personal and family tax advantages applicable to income earned in France. It noted that under French rules, a taxpayer is unable to benefit from any refunds or deferrals of tax credits for income from foreign sources when the individual is in deficit.

The provisions at issue put France in breach of its obligations under the Treaty on the Functioning of the European Union and the EEA agreement on the free movement of works, the right of establishment, and the free movement of capital, the opinion says. It concludes by saying that if French authorities fail to comply within two months, the case will be brought before the Court of Justice of the European Union.

Philippe Derouin, a Paris-based attorney, explained that the reasoned opinion is a follow-up to a formal notice the commission sent to France in October 2014 that criticized the French practice on three points. He said two of them have been addressed by the 2015 amendments to the [French administrative guidelines](#) on the computation of credit relief on foreign-source income and by the April 17, 2016, ruling by the Paris Administrative Court of Appeals in *M.B.*

"The third point relates to the absence of refund or deferral of foreign tax credits when the individual taxpayer is in a global deficit position for the year when the foreign income was realized or received," Derouin said. "This point was not addressed by the French tax authorities, whose position is to deny any refund or carryforward, a position currently challenged by an increasing number of individual and corporate resident taxpayers."

Derouin noted that in a June 27, 2016, decision regarding the French corporate taxpayer Faurecia, the Conseil d'État's ruled out any refund of foreign tax credits. He pointed out that shortly before the reasoned opinion was issued, the Conseil d'État had referred a question on the carryforward for corporate taxpayers to the French Constitutional Council in *Banque Populaire Caisse*. It should decide the issue by the end of September.

DOCUMENT ATTRIBUTES

MAGAZINE CITATION

TAX NOTES INTERNATIONAL, SEP. 4, 2017, P. 938
87 TAX NOTES INTERNATIONAL 938 (SEP. 4, 2017)

TAX ANALYSTS DOCUMENT NUMBER

DOC 2017-67332
