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Contribution of 3 %: the priority preliminary rulings on constitutionality (“QPC”) can be ceased

About the decision of the Council of State (« Conseil d’Etat ») CE, 8 déc. 2017, STE SOPARFI

After the decision of the Constitutional Council (« Conseil constitutionnel ») of October 6, 2017 (Cons. const., 6 oct. 2017, n° 2017-660 QPC, SOPARFI: Dr. fisc. 2017, n° 41, comm. 501, note N. Jacquot et P. Mispelon. – M. Pelletier, La fin de la contribution de 3 % sur les montants distribués : Dr. fisc. 2017, n° 41, act. 539), the decision of the Council of State (« Conseil d’Etat ») on the appeal for excess of pending power before it and which had given rise to the transmission of the priority preliminary rulings on constitutionality (“QPC”) was less expected (V. dans le présent numéro CE, 8e et 3e ch., (...)).

Nevertheless, one question still should be settled, even if in fact there was no any debate: the one that rises from the other versions of the first paragraph of the article I 235 ter ZCA, since the Constitutional Council (« Conseil constitutionnel ») did not mention that the applicable version is the one issued by the Amending Financial Law (« la loi de finances rectificative ») 2015.

Thus, the other versions of the text were still, theoretically, in force.

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The Council of State (« Conseil d'Etat ») has restrained the priority preliminary rulings on constitutionality (“QPC”) in its decision of transmission of July 7 the latest to the version of the 2015 of the text about contribution of 3 % (CE, 8e et 3e ch., 7 juill., 2017, n° 399757, Sté SOPARFI: Dr. fisc. 2017, n° 29, comm. 409, concl. R. Victor. – N. Jacquot et P. Mispelon, Autre QPC passée, la contribution de 3% bientôt trépassée ? : Dr. fisc. 2017, n° 28, act.402).

It has indirectly estimated that the subject of BOFiP appeal had aimed only this part of the text.

Nevertheless, the entity SOPARFI tried to by-pass the obstacle by the deposit of the 3rd priority preliminary rulings on constitutionality (“QPC”).

It estimated actually that the unity of the consecutive versions of the first paragraph of the article 235 ter ZCA which were in fact commented by BOFiP were attacked because in every paragraph it specified that the contribution should be applied to the distribution payed beginning from August 17, 2012.

Through deposit of this another priority preliminary rulings on constitutionality (“QPC”) which was aiming exclusively the 2012 version of the text establishing the contribution (and that could be followed by the other priority preliminary rulings on constitutionality (“QPC”) on the other version of the text), the entity wanted to give an occasion to the Council of State (« Conseil d'Etat ») to take quickly a position relative to the application of the decision the Constitutional Council (« Conseil constutionnel ») concerning the previous versions of the text, being, nevertheless in doubts if the priority preliminary rulings on constitutionality (“QPC”) will be rejected.

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