



TAX ALERT

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The ECJ paves the way for claiming a refund of the withholding tax levied in France on dividends (and other revenues) paid to non-resident loss-making companies.

BDO Avocats can assist your clients to file the refund claims.

In a decision dated November 22, 2018 (C-575/17), pursuant to a preliminary ruling in interpretation submitted by the French Supreme Tax Court, the European Court of Justice (ECJ) ruled that the withholding tax levied on dividends paid to non-resident loss-making companies constitutes an unjustified restriction on the free movement of capital.

The ECJ found that a dividend paid abroad is subject to immediate and systematic taxation via withholding tax, whether or not the parent company is beneficiary. Conversely, when such a dividend is paid to a French loss-making parent company, it becomes taxable only when the parent company subsequently becomes beneficiary, and may even be definitively exempted if its activity ceases before becoming beneficiary. As a consequence, a loss-making French parent company benefits from a cash flow advantage or even an exemption as opposed to European loss-making parent companies. This system introduces a difference of treatment contrary to the free movement of capital.

This decision provides relevant arguments for claiming a refund of the withholding tax levied on dividends (and other revenues) paid to non-resident loss-making companies.

What companies are concerned?

The loss-making foreign companies, members of the European Union, which paid withholding tax in France may ask for their refund. Under some conditions, this possibility can be extended to all foreign loss-making companies (i.e. even if the company is resident in a third country).

Given the drafting of the decision, it seems that the possibility to claim for a refund of WHT can also be extended to other types of revenues levied in similar circumstances.

Lastly, French loss-making companies, which suffer from withholding tax in an EU member state, can claim for its refund on the ground of this decision near the local tax Authorities.

What is the delay to file the refund claims?

The claims must be filed no later than 31 December of the year following the one in which the withholding tax was levied (e.g. before 31 December 2018 for withholding taxes levied in 2017). An administrative tolerance allows to extend this deadline by one year provided that the claim is filed by the paying entity.

We invite you to forward this opportunity to your clients.

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