

## TAX ALERT

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### Opportunities for tax claims following recent Administrative Court rulings

- **3% tax on dividends**

This tax, provided for by Article 235 ter ZCA of the French Tax Code, applies to all distributed income paid by a French company (excluding SMEs within the meaning of European legislation), and notably to the redistribution of dividends that the company receives from its subsidiaries established in France or in another Member State of the EU.

The Court of Justice of the European Union (CJEU) has declared this provision to be contrary to article 4-1 of the parent-subsidiary directive.<sup>1</sup>

Pursuant to this decision, the French Administrative Supreme Court (Conseil d'Etat) has asked the French Constitutional Court (Conseil Constitutionnel) to rule on whether the 3% tax on dividends is in conformity with the French Constitution.

- Who is impacted by this decision?

All French companies that have paid the 3% tax on dividends since 2015.

- When should a claim be filed with the French Tax Administration?

We strongly advise you to file a claim before the date of the French Constitutional Court decision, that is no later than the October 7 2017, and in any case before December 31 2017 for any payment of the 3% dividend tax in 2015.

- **Long-term capital gains related to transfer of shares and the 12% portion of costs and expenses**

Under Article 219 I. a. quinquies of the French tax code, the disposal of participating interests is exempt from long-term capital gains, subject to adding back to the taxable profit a portion of expenses and costs equal to 12% of the gross amount of those exempted capital gains on disposal.

To this end, the French tax authorities have been applying the 12% portion of expenses and costs to total gross long-term capital gains, even in cases where long-term capital losses over the same financial year have exceeded aggregate capital gains.<sup>2</sup>

The French Administrative Supreme Court (Conseil d'Etat), in a decision on June 14 2017, ruled in favor of the taxpayer and cancelled these French administrative guidelines.

The situation is now clear: the 12% portion of costs and expenses does not have to be reintegrated by companies if total gross capital loss exceeds total gross capital gains over the same financial year. A net capital gain is now required to reintegrate this 12% portion of costs and expenses.

- Who is impacted by this decision?

Companies that have unduly reintegrated the 12% portion of costs and expenses when total gross capital loss exceeded total gross capital gains over the same financial year.

- When should a claim be filed with the French Tax Administration?

For the 2014 fiscal year, companies have until December 31 2017 to bring a tax claim. Claims can also be made for fiscal years 2015 and 2016.

- **Foreign tax credits and possibility of deduction**

The French Administrative Supreme Court<sup>3</sup> has aligned the tax treatment of French tax credits and foreign tax credits. Tax credits for investment income that has been subject to foreign withholding taxes may be deducted from the corporate income tax (CIT) payable by the beneficiary, whether the CIT is payable at the standard rate or at the reduced rate.

- Who is impacted by this decision?

Companies that have been unable to deduct their global tax credits resulting from foreign withholding tax from CIT "available" and payable at the reduced rate, for fiscal years 2014, 2015 and 2016.

The deduction is limited to the theoretical tax that would have been payable in France.

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For any further information or request, please contact us at [contact@harlaylaw.com](mailto:contact@harlaylaw.com)

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<sup>1</sup> CJEU, May 17 2017, C 365/16, AFEP and others

<sup>2</sup> BOI-IS-BASE-20-20-10-20, February 3 2016

<sup>3</sup> CE, June 26 2017, n°406437



## Harlay Avocats

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