GIDE
GIDE LOYRETTE NOUEL

client alert

TAX | FRANCE | 16 SEPTEMBER 2015

TAX CONSOLIDATION

The differentiated taxation of dividends received by parent companies of tax-consolidated groups according to where their subsidiaries are established is contrary to EU law.

On 2 September 2015, the Court of Justice of the European Union (CJEU) handed down a judgment in the *Stéria* case that will impact the tax regime applicable to consolidated groups.

This judgment has repercussions for both past and future situations.

The CJEU has ruled that the difference in treatment resulting from the neutralisation of the taxable proportion of costs and expenses on dividend distributions within a tax-consolidated group is discriminatory and contrary to the freedom of establishment, in that dividend distributions from subsidiaries resident in other EU or EEA Member States cannot benefit from the same regime.

Whereas dividends distributed within a tax-consolidated group are fully exempt from corporate income tax as from the second year of the distributing company's consolidation, distributions from subsidiaries that would be eligible to join such group if they were not established in a different EU or EEA Member State are only 95%-exempt. The CJEU has held that the resulting disadvantage for French parent companies with subsidiaries in other EU or EEA Member States constitutes an obstacle to freedom of establishment.

What are the consequences of this judgment?

This judgment confirms that French parent companies are entitled to claim a refund of the corporate income tax paid on the proportion of costs and expenses (5%) added back for dividends received from subsidiaries resident in other EU or EEA Member States, in cases where said subsidiaries would be eligible to join the tax-consolidated group if they were French-resident. Such claims must be filed within two years of payment of the tax.

The French Parliament should act upon this judgment by amending the tax regime for intra-group distributions. The amendments will no doubt form part of the finance bills to be enacted at the end of this year. It is important to prepare for these developments, which may have far-reaching consequences: the neutralisation of the proportion of costs and expenses should either be extended to all European-source dividends or else abolished for intra-group distributions. If the French government chooses to abolish the full exemption for French-source dividends within tax-consolidated groups, the cost of intra-group distributions would increase significantly, prompting reconsideration of group structures.

Lastly, this judgment casts further doubt on the compatibility with EU law of the French 3% contribution on distributions (French Tax Code, Art. 235 *ter* ZCA) when applied to distributions that would be exempt if made within a tax-consolidated group. This is particularly the case for EU or EEA parent companies that would be eligible to set up a tax-consolidated group if they were French-resident.

Our tax team remains at your disposal for any further information on these issues.

CONTACTS

OLIVIER DAUCHEZ
tel. +33 (0)1 40 75 61 35
dauchez@gide.com

CHRISTIAN NOUEL
tel. +33 (0)1 40 75 61 21
nouel@gide.com

LAURENT MODAVE
tel. +33 (0)1 40 75 29 65
modave@gide.com

You can also find this legal update on our website in the News & Insights section: **gide.com**

This newsletter is a free, periodical electronic publication edited by the law firm Gide Loyrette Nouel (the "Law Firm"), and published for Gide's clients and business associates. The newsletter is strictly limited to personal use by its addressees and is intended to provide non-exhaustive, general legal information. The newsletter is not intended to be and should not be construed as providing legal advice. The addressee is solely liable for any use of the information contained herein and the Law Firm shall not be held liable for any damages, direct, indirect or otherwise, arising from the use of the information. In accordance with the French Data Protection Act, you may request access to, rectification of, or deletion of your personal data processed by our Communications department (privacy@gide.com).