

France: Modification in the application of the EU Parent-Subsidiary regime

Clearstream Banking¹ hereby informs customers that, following the “Denkavit International” decision of 14 December 2006, the French Tax Authorities have published a Statement of Practice, wherein they advise that they have decided to amend the transposition of the EU Parent-Subsidiary regime as of 1 January 2007.

Background

To date, the French dividend withholding tax regime, as modified by a transposition of the EU Parent-Subsidiary 90/435/EEC, allows a EU parent company to benefit from tax exemption when, under certain conditions, its participation in the capital (and voting rights) of the subsidiary company exceeds specific thresholds, as follows:

- 25% in 2003 and 2004;
- 20% in 2005 and 2006;
- 15% as from 1 January 2007;
- 10% as from 1 January 2009.

However, for a French parent company to benefit from such a similar exemption, this participation threshold is reduced to 5%.

According to the European Court of Justice, as stated in the “Denkavit International” decision, such difference in tax treatment based on the country of residence of the parent company constitutes a restriction on the freedom of establishment as provided for in Article 43 of the EC Treaty.

As a consequence, the French Tax Authorities have issued new guidelines in the form of a Statement of Practice (4 H-5-07), published on 10 May 2007, according to which the tax treatment of distributions of French-sourced income to European companies is modified as of 1 January 2007. Indeed, under certain conditions, an exemption from French withholding tax on French-sourced dividend income paid to a European company may apply.

Impact on customers

Following this new regime, a European parent company holding at least 5% but less than 15% of the capital of a French company paying dividends, and satisfying the substantive requirements defined by the Statement of Practice, can benefit from exemption through the procedure described in this Announcement.

For a European parent company holding 15% or more of the capital of a French company paying dividends, and satisfying the participation criteria of the EU Directive 90/435/EEC (Article 119 ter of the French Tax Code), the exemption through a reclaim procedure from which they could already benefit is maintained.

As a reminder, affected investors must provide Forms 5000 and 5001, box I from the latter duly completed and signed.

1. Clearstream Banking in this Announcement refers to Clearstream Banking Frankfurt (CBF). CBF is a Deutsche Börse Group company.

Substantive requirements

As defined by the recent Statement of Practice, for a European company receiving French-sourced dividend income, an exemption from French withholding tax may apply if the following conditions are fulfilled:

- The effective beneficial owner is a company located in another EU Member State or in another state that is part of the Economic European Area that has concluded a tax treaty with France that contains an administrative clause to prevent fraud and tax evasion.
- The company has held directly for an uninterrupted period of at least two years (or has committed to do so) at least 5% of the capital of the French company paying the dividends.
- The company benefits from a participation exemption regime in its country of residence and therefore cannot use the French domestic withholding tax that would otherwise have been applied as a tax credit.
- The transaction does not constitute an artificial arrangement.

Documentation requirements

The French Tax Authorities have not yet published the documentation that the European parent company will need to submit in order to demonstrate that it meets the requirements of the new regime. However, market players have discussed the setup of a temporary procedure until the official means of application are published by the French Tax Authorities.

It has been agreed that affected investors that want to obtain tax exemption will be required to submit to Clearstream Banking the following documentation, valid for one payment:

- A sworn attestation to the French Tax Authorities (attached at the end of this Announcement).

The original French version, printed under the parent company's letterhead, is required. (An English version is also attached at the end of this Announcement, for information purposes only.)

This attestation must be signed by an authorised representative of the parent company, who will attest, among other things, that the European parent company holds a participation of at least 5% of the capital (and the voting rights) of the French subsidiary company and that the French withholding tax cannot be credited against the tax due on dividends in its country of residence.

- An original attestation of residency issued by the tax authorities of the country where the European parent company is established.

Such attestation must be dated the year of the dividend payment.

- An original document, if applicable, stating:
 - The investor's commitment to keep the assets for an uninterrupted period of at least two years; and
 - The appointment of a fiscal representative.

An additional original must be sent directly to the Non-Resident Tax Office¹.

This document must be provided before the dividend payment date, whatever procedure - relief at source or reclaim - is then applied.

There is no specific format or template published by the French Tax Authorities. It can be a letter issued by the European parent company confirming its commitment to hold the shares and indicating the entity designated to act as its tax representative, plus a letter from the representative mentioning that it has been designated as a tax representative by the European company and has accepted the subsequent liabilities.

1. Non-Resident Tax Office: Direction des résidents à l'étranger et des services généraux, 10 rue du Centre, F-93465 Noisy le Grand Cedex.

Documentation deadlines

For exemption at source, per dividend payment:

- The above-mentioned documentation must be received at Clearstream Banking by 09:00 CET at the latest one business day before payment date.
- A specific instruction (via SWIFT MT565 or MT568) must be received at Clearstream Banking Frankfurt for CASCADE holdings by 10:00 CET one business day before payment date, containing the following information:

Account number; ISIN; payment date; the name of the European parent company that is the beneficial owner and its holding; and

The text "EU Parent-Subsidiary regime - Tax rate 0%".

For reclaim, per dividend payment:

- The above-mentioned documentation must be received at Clearstream Banking at least two months before the statutory deadline.
- The statutory deadline is two years after the end of the calendar year in which the dividend was paid.

Customers are reminded that, if an undertaking to maintain the holding for an uninterrupted period of two years or more was necessary at the time of the dividend payment, then this undertaking, as well as the appointment of a fiscal representative, had to be provided at that time.

N.B.: The Statement of Practice provides that, in particular cases, where the impossibility to offset all or part of the French withholding tax becomes apparent after payment of the dividend (for example, because of loss or liquidation), the refund of the part of the withholding tax that cannot be offset may be requested through the "Procédure en contentieux" only.¹

Clearstream Banking will continue to monitor further developments on this matter closely and will provide updated information to customers accordingly.

Further information

For further information, please contact the Clearstream Banking Tax Help Desk on:

E-Mail: tax@clearstream.com

Telephone: +49-(0) 69-2 11-1 3821

Fax: +49-(0) 69-2 11-61 3821

1. Reclaims must be sent directly to the Non-Resident Tax Office: Direction des résidents à l'étranger et des services généraux, 10 rue du Centre, F-93465 Noisy le Grand Cedex.

**Attestation pour une Société Mère résidente d'un Etat membre de L'EEE,
en vue d'obtenir une exemption d'impôts sur les dividendes de source française
distribués par la Société Filiale résidente en France**

En vue de bénéficier de la suppression de la retenue à la source prévue à l'article 119 bis 2 du code général des impôts sur les dividendes de source française distribués par la société résidente de France : _____

(raison sociale de la filiale) dont le siège est situé : _____

_____ (adresse complète de la filiale).

Je soussigné : _____ (nom du représentant de la
personne morale européenne bénéficiaire effectif des dividendes et raison sociale de cette dernière) dont le siège est situé

_____ (adresse complète de la personne morale européenne) atteste que cette personne morale est le bénéficiaire effectif
des dividendes et qu'elle répond aux conditions suivantes :

- a) avoir son siège de direction effective dans un Etat partie à l'accord sur l'Espace économique européen (ayant conclu avec la France une convention d'élimination des doubles impositions comportant une clause d'assistance administrative en vue de lutter contre la fraude ou l'évasion fiscale) et n'être pas considérée, aux termes d'une convention préventive de double imposition conclue avec un Etat tiers, comme ayant sa résidence fiscale hors de l'Espace économique européen ;
- b) revêtir l'une des formes énumérées sur une liste établie par l'arrêté du 24 mars 2006 complété par l'arrêté du 10 mai 2007 du ministre de l'économie, des finances et de l'industrie ;
- c) Rayer la mention inutile :
 - détenir directement, de façon ininterrompue depuis deux ans ou plus, 5% au moins du capital et des droits de vote de la société résidente de France qui distribue les dividendes ; ou
 - avoir pris l'engagement de conserver cette participation de façon ininterrompue pendant un délai de deux ans au moins et désigner un représentant qui est responsable du paiement de la retenue à la source ainsi que, le cas échéant, des pénalités mentionnées à l'article 1765 bis du code général des impôts ¹ ;
- d) cette participation n'a pas comme objet principal ou comme un des objets principaux de tirer avantage de l'exonération de la retenue à la source prévue au 2 de l'article 119 bis du code général des impôts ;
- e) être passible, dans l'Etat membre où elle a son siège de direction effective, de l'impôt sur les sociétés de cet Etat au taux normal, sans possibilité d'option et sans en être exonérée ;
- f) ne pas être en mesure d'imputer la retenue à la source française dans son Etat de résidence.

1. L'engagement et la désignation du représentant fiscal doivent parvenir au Centre des Impôts des Non-Résidents - 10, rue du Centre, TSA 30012, 93 465 Noisy Le Grand Cedex, France - et à l'établissement payeur en France avant la date de la première mise en paiement des dividendes qui suit la date d'inscription en compte des titres de la société distributrice.

J'atteste également : *(rayer la mention inutile)*

- qu'à ma connaissance cette personne morale n'est pas contrôlée directement ou indirectement par un ou plusieurs résidents d'Etats qui ne sont pas membres de l'Espace économique européen; ou
- qu'à ma connaissance cette personne morale est contrôlée directement ou indirectement par un ou plusieurs résidents d'Etats qui ne sont pas membres de l'Espace économique européen, mais que la chaîne de participation n'a pas comme objet principal ou comme un des objets principaux de tirer avantage de l'exonération de la retenue à la source prévue au 2 de l'article 119 bis du code général des impôts.

Je demande l'application de l'exonération de la retenue à la source pour le paiement de dividende suivant :

Nom de la société française distributrice des dividendes et code ISIN : _____

Date de la mise en paiement des dividendes : _____

Valeur du coupon unitaire : _____

Nombre de titres : _____

Pourcentage de participation : _____

Numéro de compte titre : _____

Je comprends que la présente attestation est requise par les dispositions de la législation fiscale de la République Française.

Fait le _____ (date) à _____ (lieu).

Signature et cachet du créancier ou de son représentant légal

English translation (for informatoin purposes only)

(To be produced on the letterhead of the EEA parent company)

Attestation for an EEA Parent Company to benefit from exemption of withholding tax on dividends from French-sourced income distributed by a French Subsidiary Company

In order to benefit from the exemption of the withholding tax provided for in the Article 119bis (2) of the French tax code on dividends from French-source distributed by the French resident company : _____

(corporate name of the subsidiary) whose registered office is located at: _____

_____ *(full address of the subsidiary).*

I, the undersigned : _____ *(name of the representative of the EU legal entity, beneficial owner of the dividends, and corporate name of the legal entity)* whose registered office is located at : _____

_____ *(full address of the EU legal entity)* certify that this legal entity is the effective beneficial owner of the dividends and that it fulfils the following conditions :

- a) has its effective place of management in a State that is part of the Economic European Area (having concluded a Tax Treaty with France containing a clause of administrative assistance to fight against the fraud or the tax evasion) and is not considered, under the terms of a Double Tax Treaty with a third State, to be resident for tax purposes outside the Economic European Area ;
- b) takes one of the forms listed in the order issued on 24 March 2006 completed by the order issued on 10 May 2007, by the Minister of the Economy, Finance and Industry ;
- c) *Cross out the statement that does not apply :*
 - has held directly, for an uninterrupted period of two years or more, at least 5% of the capital and the voting rights in the French resident company paying the dividends ; or
 - has made an undertaking to maintain this holding for an uninterrupted period of two years or more and to appoint a representative who shall be responsible for paying withholding tax and, where such is the case, the penalties referred to in Article 1765 bis of the French tax code ¹ ;
- d) this holding does not seek, as its main purpose or one of its main purposes, to take advantage of the withholding tax exemption provided for in Article 119 bis (2) of the French tax code ;
- e) is subject to corporate income tax in the Member State where it has its effective place of management, at a normal rate without the possibility of an option or of being exempt ;
- f) has no possibility of offsetting the French withholding tax in its State of residency.

1. The undertaking and the appointment of the fiscal representative must reach the non-resident tax centre - 10, rue du Centre, TSA 30012, 93 465 Noisy Le Grand Cedex, France - and the paying institution in France before the first dividend payment date following the book-entry registration of the shares of the distributing company.

I also certify that : *(Cross out the statement that does not apply)*

- to the best of my knowledge, this entity is not controlled directly or indirectly by one or more resident residents of countries that are not Economic European Area members ; or
- to the best of my knowledge, this entity is controlled directly or indirectly by one or more residents of countries that are not Economic European Area members but that this chain of holdings does not seek, as its main purpose or one of its main purposes, to take advantage of the withholding tax exemption provided for in Article 119bis (2) of the French tax code.

I request the application of the withholding tax exemption for the following dividend payment :

Name of the French company paying the dividends and ISIN Code : _____

Dividend payment date : _____

Dividend per share : _____

Number of shares : _____

Holding percentage : _____

Securities Account Number : _____

I understand that the present attestation is required by the provisions of the French tax legislation.

Date : _____

Place : _____

Signature and stamp of the beneficiary or his/her legal representative