

French Tax Authorities release new guidelines on dividend withholding tax exemption for foreign collective investment vehicles

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The French Tax Authorities have amended their guidelines related to the withholding tax exemption set forth by Article 119 bis 2 of the French tax code (FTC) on French dividends paid to certain nonresident regulated collective investment vehicles (CIVs). As background, this exemption (Article 119 bis 2 of the FTC) was implemented on 17 August 2012. It was enacted following the European Court of Justice (ECJ) Santander decision that considered the previous French withholding tax provisions as contrary to European Union (EU) law.

The updated guidelines contain details on the criteria to be used in order to perform the comparability analysis of CIVs located outside of the EU and the European Economic Area (EEA), such as Australian, Canadian or United States (US) funds (non-EU/EEA CIVs) vs. French UCITS (establishing such comparability is one of the conditions to qualify for the exemption) and clarify the process to be followed in order to benefit from the exemption and the corresponding roles and responsibilities of French paying agents.

This is a very important development regarding EU reclaims and the French exemption organized by the provisions of Article 119 bis-2 of the FTC. Indeed, the French tax authorities have recently issued a first set of favorable decisions on the reclaims applications filed by certain US Registered Investment Companies (US RICs) on the basis of the free movement of capital (Article 63 of the Treaty on the Functioning of the European Union) and the provisions of Article 119 bis 2 of the FTC.

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