Global Tax Alert

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.



While Section I of the updated guidance refers to the scope of the exemption, Section II relates to the relief mechanisms (relief-at-source and reclaims) available regarding the exemption and the role of local paying agents and is open to public consultation until 15 September 2020.

Clarifications regarding the scope of the exemption with respect to non-EU/EEA CIVs

Section I of the updated guidelines notably address the situation of non-EU/EEA CIVs and list the following criteria as items to consider regarding the comparability of non-EU/EEA CIVs with French funds:

- ▶ Purpose of the CIV
- ► Lack of control of the fund by unitholders
- ► Approval, authorization, registration and supervision of the fund
- ▶ Information to be provided to investors before any subscription
- Fund management
- ► Existence of an independent depositary
- ► Investment and risk-sharing policy
- ► Certification of accounts

The guidance also indicate that the French tax authorities must be able to strictly verify the similarity of French CIVs and foreign CIVs. To this end, a form BOI-FORM-00089 must be completed by applicants and supported by specific documentation. In addition, the stipulations of the

administrative assistance agreement signed between the country where the CIV is established and France as well as their implementation effectively allow the French tax administration to obtain from the authorities of this country the information necessary to verify compliance by the concerned CIV with the conditions of the exemption.

Relief mechanisms (relief-at-source and reclaims) available regarding the exemption

The guidance provides for the obligations of the CIVs to benefit from the exemption both at source and through reclaim, including in terms of the forms and documentation support that should be provided to the various financial intermediaries involved in the chain of payment. Regarding non-EU/EEA CIVs, the guidance indicates that when the comparability of the CIV with a French CIV has been recognized by the French tax authorities in the context of a favorable reclaim decision, a CIV can then obtain relief at source under a simple presumption. Provided that the relevant characteristics are not modified, this simple presumption applies for each distribution made between the date of the decision to refund the withholding tax and 31 December of the second year following the decision.

The guidance further describes the procedure to follow (this involves notably providing form BOI-FORM-00089 and a copy of the favorable decision) as well as the obligations and liabilities of the French paying agents in this respect, in terms of controls and reporting to the French tax authorities.

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