Deloitte.

International Tax

France Tax Alert

2 December 2015

Measures proposed to bring tax consolidation rules in line with EU jurisprudence

Contacts

Patrick Fumenier
pfumenier@taj.fr

Marie-Pierre Hôo
mhoo@taj.fr

Taj is a member firm of Deloitte Touche Tohmatsu Limited

France's amended finance bill for 2015 has been updated to include an amendment released on 30 November 2015, which aims to revise the tax group consolidation regime to comply with the decision issued by the Court of Justice of the European Union (CJEU) in the *Groupe Steria* case on 2 September 2015 (for prior coverage, see the tax alert dated 3 September 2015). The CJEU held that the French tax consolidation rules violate the freedom of establishment principle in the Treaty on the Functioning of the European Union because a domestic tax group of French companies can obtain certain tax benefits for dividends that are not available to tax-integrated parent companies with subsidiaries established in other EU member states.

The scope of the proposal in the amended finance bill is more limited than had been anticipated by some practitioners, since the benefit it would introduce would be available only with respect to dividends received by French companies that are members of a tax consolidated group from other French companies within the same tax group or from qualifying 95%-owned EU/European Economic Area (EEA) subsidiaries.

The amended finance bill for 2015, first released by the government on 13 November 2015, also includes measures to bring France's participation exemption for inbound dividends and its withholding tax exemption for outbound dividends distributed to EU companies in line with EU rules (i.e. recent decisions of the CJEU, decisions of the European Commission and the amendments to the EU parent-subsidiary directive). (For prior coverage, see the tax alert dated 19 November 2015.)

A final vote on the amended finance bill for 2015 is expected by the end of December 2015. If approved, the proposed tax consolidation rules would be applicable to fiscal years beginning as from 1 January 2016.

Background

Under French tax law, when a French parent company receives dividends from a subsidiary, the dividends are 95% tax exempt under the domestic participation exemption (provided certain requirements are met). The remaining 5% is deemed to represent nondeductible costs relating to the exempt dividends and is taxed at the standard 33.33% corporate tax rate (a 3.3% social surcharge also applies to

large companies, as well as a 10.7% temporary surtax for financial years ending on or before 30 December 2016, resulting in an effective corporate tax rate ranging from 34.43% to 38%). However, a special rule provides that the 5% deemed expenses may be deducted from profits if a French parent company and its French qualifying subsidiaries are members of the same tax consolidated group; thus, a full exemption may be obtained for intragroup dividends.

Since only French companies may be members of a French tax consolidated group, tax-integrated parent companies with subsidiaries established in other EU member states may not benefit from the full exemption and there is no possibility to deduct the 5% deemed expenses. In such cases, up to 5% of the dividends received from EU subsidiaries are subject to tax, while dividends received from a French tax-integrated subsidiary would be tax exempt.

The CJEU held that the French tax consolidation rules represent a restriction of the principle of freedom of establishment and that the rules make it less attractive for companies with EU subsidiaries to exercise that freedom, deterring companies from setting up subsidiaries in other EU member states. The CJEU also held that the difference in treatment may not be justified by the need to safeguard the balanced allocation of taxing power between EU member states or by the need to safeguard the cohesiveness of the French tax system.

Proposed changes

To comply with the CJEU's decision in the *Groupe Steria* case, the proposed amendment to the tax consolidation regime would amend the tax treatment of dividends received by members of a French tax consolidated group as follows:

- The full exemption provided for under the existing tax consolidated group regime rules would be abolished. Dividends received within a tax group instead would be entitled to the standard participation exemption under the normal rules, i.e. a fixed percentage of deemed expenses still would be taxable.
- The percentage of deemed taxable expenses would be reduced from 5% to 1% if certain conditions are fulfilled. The 1% deemed expenses would be available when companies that are members of a tax consolidated group receive dividends from (1) French companies within the same tax consolidated group (i.e. intragroup dividends); or (2) EU companies or companies incorporated in the EEA that have concluded a tax treaty with France, if the EU/EEA company would fulfill the conditions for being a member of the French tax group if it were established in France. To qualify for the 1% deemed expenses, the distributing company would have to: (a) be subject to a corporate income tax in its country of residence that is equivalent to the French corporate income tax; (b) be at least 95% directly or indirectly owned by its French parent company for the entire fiscal year concerned; (c) have a 12-month fiscal year; and (d) open and close its fiscal year at the same time as the members of the French tax consolidated group.

As a result, dividends received by French group companies from other French members of the same group and from qualifying EU/EEA companies would be 99% exempt from tax, with the remaining 1% deemed expenses subject to the corporate income tax rate.

Comments

As currently drafted, the proposed amendment would not change the normal domestic participation exemption regime, i.e. the deemed taxable expenses would remain at 5% of the dividends received by parent companies that are not members of a tax consolidated group.

It should be noted that the proposed tax consolidation rules would not apply to dividends distributed by non-EU/EEA companies, regardless of whether the recipient company is member of a French tax consolidated group.

The potential consequences of the proposed changes should be analyzed by affected groups.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. Please see **www.deloitte.com/about** for a more detailed description of DTTL and its member firms.

Deloitte provides audit, consulting, financial advisory, risk management, tax and related services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries and territories, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte’s more than 210,000 professionals are committed to becoming the standard of excellence.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the “Deloitte network”) is, by means of this communication, rendering professional advice or services. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

© 2015. For information, contact Deloitte Touche Tohmatsu Limited.