

European Commission challenges France's 3% tax on dividend distributions

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In brief

The European Commission has launched an infringement procedure against France regarding the 3% tax on dividend distributions that entered into force in 2012.

The 3% tax applies to dividends and other distributions (including deemed dividends for French tax purposes) paid by French companies or French branches of non-European Union (EU) companies.

US multinationals doing business in France should consider filing a refund claim for any 3% tax they have paid. They should, however, be aware that the Commission may ask France to amend the legislation to comply with EU law, rather than simply repeal it.

In detail

Background

Certain dividend distributions and deemed dividend distributions for tax purposes paid since August 17, 2012, are subject to a 3% tax pursuant to Section Article 235 ter ZCA of the French tax code.

The tax applies to distributions made by companies subject to French corporate income tax and French branches of foreign companies not located in the EU.

However, distributions made within a French tax group and distributions made by 'Small or Medium Enterprises' (as defined by EU law) are exempt from the 3% tax.

The 3% tax does not apply to share capital redemption.

Infringement procedure

In response to a recent claim, the Commission has introduced an infringement procedure against France, regarding the 3% tax as noncompliant with EU Law.

France may now respond to the objections raised by the Commission.

If the Commission does not accept France's response, it may ask France to amend the 3% tax legislation and make the necessary changes to the French provisions to bring them into compliance with EU law.

If France fails to comply with that request, the Commission could refer the case to the Court of Justice of the European Union (ECJ).

Link with other EU cases

This developments comes just a few days after the Belgian Constitutional Court asked the ECJ for a preliminary ruling on the compatibility with EU law of the Belgian 'fairness tax,' which bears some similarities to the French 3% tax.

The takeaway

Some French taxpayers have begun legal challenges to the 3% tax based on alleged noncompliance with EU law.

In light of these developments, multinationals operating in France should consider filing a refund claim for any 3% tax they already have paid.

Let's talk

For a deeper discussion of how this might affect your business, please contact:

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