

# Newsalert

## EU Direct Tax Group

NA 2009 / 002



17 February 2008

### EU Direct Tax Group

*The EUDTG is one of PwC's Thought Leadership Initiatives and embedded in the International Tax Services Network. The EUDTG is a pan-European network of EU tax law experts and provides assistance to organizations, companies and private persons to help them to fully benefit from their rights under EU law.*

### French Supreme Court decides on the compatibility of withholding tax due by EU pension funds on French dividends

In a decision dated 13 February 2009, the Supreme Administrative Court ruled that the tax treatment of French dividends received by French pension funds under domestic tax law should be extended to EU non-profit organizations of the same nature.

According to the French Tax Code and the Administrative guidelines, French pension funds ("*Caisse de Retraite et de Prévoyance*") are considered as non-profit organizations for tax purposes, and are therefore exempt on dividends received from French companies.

Four Dutch pension funds have asked to nullify French Statements of Practice issued in 2005 which refused to exempt Dutch pension funds from withholding tax on French source dividends.

The Supreme Court stated firstly that this withholding tax is in breach with the EC free movement of capital where EU pension funds are able to show that they are in similar situation as French "*Caisse de Retraite et de Prévoyance*". It is noticeable that the French Court referred explicitly to the ECJ Stauffer case (C-386/04, 14 September 2006) in its recital.

The Supreme Court continued by noting that this discrimination is not justified, as the French tax authorities did not bring any valid arguments (nor the need to preserve the coherence of the tax system, neither to efficiency of tax audit). Thus, the Supreme Court nullified the above-mentioned Statements of Practice.

It should be noted that the same Dutch pension funds have pending cases before the French Supreme Court on the tax levy that applies in France to EU pension funds on capital gains arising from the disposal of French real estate companies shares.

This ruling brings crucial arguments to pending litigations in France and may open new opportunities for claims.

It also supports the complaints that PricewaterhouseCoopers, together with the European Federation for Retirement Pension, submitted to the Commission, claiming that dividend distributions to EU pension funds should not be subject to a less favourable tax treatment than dividend distributions to domestic pension funds.

### \* connectedthinking

© 2009 PricewaterhouseCoopers. All rights reserved. PricewaterhouseCoopers refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity. \* connectedthinking is a trademark of PricewaterhouseCoopers.

While every attempt has been made to ensure that the contents of this Newsalert is correct, PricewaterhouseCoopers advises that this Newsalert is provided for general guidance only and does not constitute the provision of legal advice, accounting services, investment advice, written tax advice or professional advice of any kind. The information provided should not be used as a substitute for consultation with professional tax, accounting, legal or other competent advisers.

For more detailed information, please do not hesitate to contact your local PwC contact person or a member of the EUDTG.

Nicolas Jacquot

+33 1 56 57 40 33

nicolas.jacquot@fr.landwellglobal.com

Emmanuel Raingeard

+33 1 56 57 40 14

emmanuel.raingeard@fr.landwellglobal.com

Should you be interested in receiving the free bi-monthly newsletter, then please send an e-mail to [eutdg@nl.pwc.com](mailto:eutdg@nl.pwc.com), with "subscription EU Tax News".