

Chilean Dividends May Not Benefit from Same Treatment as French or EU Dividends, French Court Says

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Report from our correspondent Pierre Burg

Dividends received by a French parent company from fully-owned Chilean subsidiaries may not benefit from the same exemption rules as those applicable to dividends received from fully-owned French or EU subsidiaries. The Paris Administrative Court of Appeal rendered this solution in a judgement dated 10 November 2023 (Case No. [21PA01640](#), *Minister of the Economy and Finances v. Legrand SA*).

This holds despite article 22(1)(b) of the [France-Chile tax treaty](#) providing that Chilean-source dividends shall be exempt in France "under the same conditions as if the company paying the dividends were a resident of France or another Member State of the European Union".

The Court ruled that the treaty provisions aim to eliminate the double taxation of Chilean-source dividends through a means equivalent to the French parent-subsiary regime. This regime allows an exemption of 95% of dividends (i.e. the taxation is limited to 5% of the dividends), if the parent company owns at least 5% of the capital and voting rights for at least 2 years.

According to the Court, however, the treaty provisions do not aim to extend to Chilean-source dividends the French tax-consolidation rules, which (during the year at issue, i.e. 2015) neutralized the 5% add-back and led to a full exemption of dividends distributed within a French tax-consolidated group.

Per an ECJ judgement of 2 September 2015 ([Groupe Steria \(Case C-386/14\)](#)), the neutralization of the 5% add-back was extended to dividends received by a French parent company from fully-owned subsidiaries established in other EU member states. This extension aims to prevent discrimination against the freedom of establishment.

The Court implicitly considered that article 22(1)(b) of the France-Chile tax treaty does not oblige the French tax authorities to apply the same treatment to Chilean-source dividends, only to grant the benefit of the parent-subsiary regime (i.e. a 95% exemption). The Court justified its interpretation by a reference to the parliamentary documents (*travaux préparatoires*) concerning the French law authorizing the ratification of the France-Chile tax treaty, as well as the absence of any provisions in the treaty explicitly extending the benefit of French tax-consolidation rules to Chilean-source dividends.

Effective as of 1 January 2016, dividends received by a French parent company from a fully-owned French or EU subsidiary are no longer fully exempt but such dividends may benefit from a reduced 1% add-back, i.e. 99% of the dividends are exempt (rather than 95% of the dividends under the parent subsidiary regime). In application of the judgement of the Paris Court, Chilean-source dividends may not benefit from the 99% exemption but only from the 95% exemption.

Note: The judgement of the Paris Court is not final, as it may still be challenged by the taxpayer before the Supreme Administrative Court (*Conseil d'Etat*). Subsequent developments, if any, will be reported in due course.

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