

Constitutional Court Finds Withholding Tax on Dividends Paid to Non-Resident Loss-Making Companies in Line with Constitution

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The Constitutional Court (Conseil constitutionnel) has upheld the constitutionality of withholding tax (WHT) applicable to dividends paid to non-resident companies despite the distinction in treatment compared to resident companies in loss situations.

The Constitutional Court was asked to rule whether the constitutional principle of equality prohibits the current difference of treatment between:

- loss-making companies established in France, which are not taxed concerning the year in which they receive dividends to the extent that the corporate income tax only applies if the taxpayer realizes a profit; and
- loss-making companies established outside the European Union and holding a participation considered a "direct investment", which are immediately subject to WHT without the option for a temporary refund.

The Constitutional Court considered that the WHT serves the purpose of ensuring tax recovery from non-resident taxpayers, and it affirmed the continued validity of this purpose even after the judgement of the ECJ in case [C-575/17](#) (Sofina and others).

Additionally, the Constitutional Court ruled that a distinction in circumstances exists between resident and non-resident companies regarding tax recovery, and the difference in treatment directly stems from this distinction in circumstances.

The decision of the Constitutional Court (No. 2023-1063 QPC, Compagnie Gervais Danone) is available [here](#) (in French only).