

Supreme Administrative Court Renders Follow-Up Decisions to ECJ Decision in *Manitou BF and Bricolage Investissement France* (Joined Cases C-407/22 and C-408/22)

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On 18 July 2023, the Supreme Administrative Court (*Conseil d'Etat*) rendered its follow-up decisions to the ECJ decision in *Manitou BF and Bricolage Investissement France* (Joined Cases [C-407/22](#) and [C-408/22](#)) of 11 May 2023 (see [ECJ Decides That Exemption of Intra-Group Dividends under Tax Integration Scheme Is Not Compatible With EU Law: Manitou BF Bricolage Investissement France \(Joined Cases C-407/22 and C-408/22\) \(Direct Tax\) \(11 May 2023\)](#)).

The issue in these cases was whether the French rules on consolidated tax groups, which in the years at issue (respectively 2011 and 2012) allowed for a full exemption of dividends received by the French parent companies belonging to a French consolidated tax group, created a discrimination with respect to dividends received by parent companies that fulfilled all conditions to belong to a consolidated tax group but deliberately decided not to belong to it.

In line with the ECJ decision, the Supreme Administrative Court ruled that the French rules were not compatible with the freedom of establishment (article 49 of the [Treaty on the Functioning of the European Union \(TFEU\)](#)), in so far as they treated dividends received by the French parent companies from non-resident subsidiaries differently, depending on whether the parent companies decided to be a member of a French consolidated tax group. The Supreme Administrative Court, therefore, confirmed the lower court's decisions which ruled in favour of the two companies.

The decisions are available under No. [454107](#) (*Manitou BF*) and No. [458579](#) (*Bricolage Investissement France*), in French only.

Note: Following the ECJ decision in [Groupe Steria \(Case C-386/14\)](#), the French legislation was amended, but it still provides for a different treatment of dividends received by parent companies that may belong to a consolidated tax group but that deliberately decided not to belong to it. This raises questions on the compatibility of the current French legislation with EU law.

