Salaries tax: French Supreme Administrative Court refers to the CJEU the compatibility of French Salaries tax with the Parent-Subsidiary Directive

In a decision dated 7 July 2026 (No. 508049), the French Supreme Administrative Court (Conseil d'État) referred several preliminary questions to the Court of Justice of the European Union (CJEU) regarding the compatibility of the French Salaries tax regime with the EU Parent-Subsidiary Directive, notably where dividends received from EU subsidiaries are considered in the calculation of the Salaries tax liability ratio.

The Parent-Subsidiary Directive beyond Corporate Income Tax

As a reminder, the EU Parent-Subsidiary Directive (2011/96/EU) requires Member States to eliminate the economic double taxation of dividends received from subsidiaries established within the European Union, either through an exemption or a tax credit mechanism. Where an exemption regime is applied, Member States may nonetheless subject a limited portion of such dividends to tax, up to 5% of their amount, through the add-back of a flat-rate share of costs and expenses (QPFC).

The CJEU has progressively expanded the scope of the Parent-Subsidiary Directive, holding that its scope extends beyond CIT and may also apply to other taxes that result, directly or indirectly, in the taxation of dividends beyond the residual level of taxation expressly authorised by the Directive (see, in particular, *Banca Mediolanum*, joined Cases C-92/24 to C-94/24, 1 August 2025).

The implications of EU case law in French law

Following the Banca Mediolanum judgment, the Paris Administrative Court of Appeal held, in four decisions dated 19 December 2025 (Nos. 23PA03758 to 23PA03761), that the inclusion of exempt dividends in the French Business Contribution on the Added Value (BCAV) tax base applicable to credit institutions was contrary to the Parent-Subsidiary Directive.

According to the Court, France had already fully exercised the option granted by the Directive to subject up to 5% of exempt dividends to residual taxation, in particular through the flat-rate share of costs and expenses (QPFC) for CIT purposes and the French social solidarity contribution. Consequently, the inclusion of those dividends in the BCAV tax base resulted in an additional tax burden that was incompatible with the Parent-Subsidiary Directive.

Dividends included in the Salaries tax liability ratio

Under Article 231(1) of the French Tax Code, Salaries tax is levied on employers that are not subject to VAT on all of their turnover, or whose turnover subject to VAT represented less than 90% of their total turnover during the calendar year preceding the payment of salaries.

The tax base consists of the remuneration paid by the employer, to which a liability ratio is applied. This ratio is determined by comparing, in both the numerator and the denominator, all receipts and other income that did not give rise to a right to deduct VAT, namely income derived from transactions falling outside the scope of VAT or exempt from VAT. Dividend income is included in the calculation of this liability ratio, thereby potentially increasing the employer's Salaries tax liability.

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The Salaries tax liability ratio at the core of the preliminary question

The case referred to the CJEU concerns the calculation of the Salaries tax liability ratio, in which dividend income is taken into account when determining the taxable proportion of remuneration subject to Salaries tax.

Although dividends are not directly subject to Salaries tax, their inclusion in the numerator of the liability ratio may increase the amount of tax due.

The Conseil d'État has therefore asked the CJEU whether the objective of fiscal neutrality underlying the Parent-Subsidiary Directive precludes dividends received from subsidiaries established in the European Union from being taken into account, through the liability ratio, in determining the proportion of remuneration subject to Salaries tax. If so, the Court is also asked whether the Directive's 5% residual taxation allowance can still justify such treatment where the flat-rate share of costs and expenses (QPFC) is already included in the CIT base.

Key implications for taxpayers subject to Salaries tax

The outcome of these proceedings could have significant consequences for businesses subject to Salaries tax that receive dividends from subsidiaries established within the European Union, particularly holding companies. A favorable ruling from the CJEU could call into question the current method for calculating Salaries tax and pave the way for refund claims in respect of open tax years.

Pending the CJEU's decision, taxpayers should consider preserving their rights by filing protective claims.

Protective claims may already be filed in respect of Salaries tax due for FY 2023 (paid in 2024), as well as for subsequent years. Claims could also extend to earlier years where the company has been subject to Salaries Tax reassessments, to the extent that such reassessments have reopened the applicable limitation period.

It should be noted that claims relating to Salaries tax due for FY 2023 must be filed no later than 31 December 2026.

Contacts

Romain Dayan

Attorney-at-Law, Partner
Indirect Tax
E : RDayan@avocats-gt.com
T : +33 1 41 16 27 25

Robin Maubert

Attorney-at-Law, Partner
Indirect Tax
E : RMaubert@avocats-gt.com
T : +33 1 41 16 27 40

Thibaut Grange

Attorney-at-Law, Partner
Transaction Tax
E : TGrange@avocats-gt.com
T : +33 1 41 16 27 14

Laura Maison

Attorney-at-Law, Manager
Indirect Tax
E : LMaison@avocats-gt.com
T : +33 1 41 16 27 09

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Grant Thornton Société d'Avocats
29, rue du Pont
92200 – Neuilly-sur-Seine
France
www.avocats-gt.com
T : +33 (0)1 41 16 27 27
F : +33 (0)1 41 16 27 28
E : contact@avocats-gt.com

LinkedIn

Bureau de Lyon
Cité Internationale
44 quai Charles de Gaulle
69463 Lyon
T : +33 4 72 13 11 11

Bureau de Lille
91, rue Nationale
59045 – Lille, France
T : +33 3 20 30 26 26

Bureau de Toulouse
62, rue de Metz
31000 Toulouse
Tel : +33 5 62 71 94 08

Bureau de Valence
19B, avenue des Langories
26000 Valence
T : +33 4 28 99 10 60