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*German Tax and Legal News*

## **Dividends from French subsidiaries not subject to addback of 5% deemed nondeductible business expenses**

The Berlin tax authorities have issued a decree confirming that dividends paid by a French subsidiary to a German parent are 100% tax exempt and that the addback of 5% deemed nondeductible business expenses does not apply.

The tax authorities in Berlin issued a decree on 29 August 2014 confirming that dividends paid by a French subsidiary to its German parent company that holds at least 10% of the shares of the French company is 100% tax exempt at the level of the German parent. The application of 5% deemed nondeductible business expenses does not apply because of a provision in the Germany-France tax treaty.

Under German tax law, dividends received by a German company from a (foreign or domestic) subsidiary technically are exempt from tax provided the parent company holds at least 10% of the subsidiary at the beginning of the relevant calendar year, although 5% of the distributed amount is added back to income as representing nondeductible business expenses. The application of the deemed nondeductible business expenses leads to an effective 95% participation exemption for dividends paid to a German corporate shareholder.

Article 20(1)(b) of the Germany-France tax treaty (elimination of double taxation) provides that an exemption will apply to the "net revenue" relating to dividends at the level of the German recipient. Other German treaties, however, refer to "net income" in the relevant article that allows the application of the 5% deemed nondeductible expenses based on German domestic law.

The decree issued by the tax authorities in Berlin confirms the priority of the tax treaty over the domestic rule providing for the 5% addback and disallows the application of the domestic rule.

Taxpayers with investments in French subsidiaries should benefit from this view and should be able to benefit from a full exemption for dividends.

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