

FINANCE ACT FOR 2025 – STRENGTHENING ANTI-ABUSE PROVISIONS AGAINST DIVIDEND STRIPPING SCHEMES

The Finance Act for 2019 originally introduced anti-abuse measures in French domestic tax law under Article 119 *bis* A of the French tax code ("**FTC**") to combat dividend stripping schemes put in place to avoid withholding tax on French source dividends. While the French tax authorities ("**FTA**") have been trying to tackle transactions of this nature over the last few months through various proceedings, those anti-abuse measures proved to lack efficiency, notably due to their scope considered too narrow. In this context, the Finance Act for 2025 intends to considerably strengthen the legal means to address those schemes, namely through (i) including the concept of "*beneficial ownership*" in the general provisions governing the French withholding tax on dividend distributions (art. 119 *bis* of the FTC) and (ii) widening the scope of the anti-abuse rules (art. 119 *bis* A of the FTC).

1. INCLUSION OF THE CONCEPT OF "*BENEFICIAL OWNERSHIP*" IN THE GENERAL PROVISIONS GOVERNING FRENCH WITHHOLDING TAX (ART. 119 BIS OF THE FTC)

France generally levies a withholding tax on distributions made by French companies to non-residents (standard rate is 25% but it may vary depending on (i) the status of the recipient and (ii) applicable double tax treaties). Technically, these provisions apply where the recipient is non-resident, without referring to the concept of beneficial owner of the dividends. Regardless, in the context of internal cum-cum transactions, the FTA took the view that those general provisions shall be interpreted in such a way that the withholding tax would also be triggered in case where a non-resident would be the beneficial owner of the dividend received by a French resident, thereby allowing the FTA to levy such withholding tax on so-called "*manufactured*" dividends. Nonetheless, the French Supreme Court (*Conseil d'Etat*) ruled that the provisions of Article 119 *bis* cannot be construed this way, leaving the FTA with no other route than the

abuse of law procedure to challenge those schemes (when the conditions for the anti-abuse measures are not satisfied)¹.

Against this background, the Finance Act for 2025 intends to include the concept of "*beneficial owner*" within the provisions of Article 119 *bis* of the FTC, with a view to giving legal grounds to the FTA to tackle cum-cum transactions more efficiently.

2. SIGNIFICANT ENLARGEMENT OF THE SCOPE OF THE ANTI-ABUSE MEASURES

2.1. Original scope of the anti-abuse measures

The initial language of the anti-abuse mechanism (i.e. before the amendments made by the Finance Act for 2025) results in treating certain payments made to non-residents, whatever their nature, as dividend distributions for the purposes of the French withholding tax. Those payments are treated as such under the following circumstances:

- the payments are made in the context of a temporary transfer of securities or any transaction giving rise to the right or obligation to repurchase/resell the securities (the transaction); and,
- the transaction is completed within a period of less than forty-five days, including the dividend distribution date.

Those provisions also include a safe harbor rule authorizing the beneficiary of the payment to get a refund of the withholding tax when it is established that the (i) main purpose and (ii) main effect of the transaction do not seek the avoidance of the withholding tax.

The scope of those anti-abuse rules is significantly widened by the Finance Act for 2025.

2.2. Wider scope of the anti-abuse measures

Firstly, under the new law, not only may certain payments be regarded as dividend distributions for the purposes of French withholding tax, but also, more generally, any value transfer (*transfert de valeur*) made in correlation to a standard dividend distribution. In this regard, the concept of "value transfer" (*transfert de valeur*) is defined as the portion of the dividends effectively received by a non-resident, in any form, directly or indirectly, notably through a combination of various transactions. The purpose of introducing such concept is to encompass far more trades that were not captured by the original language of the anti-abuse provisions (e.g. more complex transactions involving equity-linked derivatives instruments).

Secondly, in addition to introducing the concept of "value transfer", the new provisions remove the condition relating to the 45-day period, resulting in capturing transactions involving the payment of manufactured dividends regardless of their maturity period.

Finally, the new language of Article 119 *bis* A specifies that both the beneficiary and the person in charge of the withholding tax payment may benefit from the safe harbor rule.

¹ Conseil d'Etat, 8 December 2023 n°472587 – Fédération bancaire française.

2.3. Inclusion of a dedicated anti-abuse mechanism for external cum-cum trades

Unlike internal cum-cum trades, external cum-cum trades take advantage on withholding tax exemptions provided for by double tax treaties (where, conversely, internal cum-cum trades rely on the fact that no withholding tax is levied on pure domestic distributions). In order to prevent schemes of this nature, the new rules specifically provide for the application of French withholding tax on distributions, payments or value transfer made to a person established or tax resident in a State having entered into a double tax treaty providing for no withholding tax or a withholding tax exemption. On the other end, the taxpayer may get a refund of such withholding tax by demonstrating that all the conditions required for the benefit of the relevant tax treaty are satisfied in practice. In other words, the principle is to (i) first pay the withholding tax and then (ii) claim it back, subject to be in a position to effectively rely on the tax treaty. In this perspective, the French Supreme Court (*Conseil d'Etat*) considered that this withholding tax should be levied as a precautionary measure, i.e. even in situations where it would ultimately not be due².

While the French Supreme Court (*Conseil d'Etat*) made clear that those provisions intend to target and capture external cum-cum transactions, it is worth noting that the current language of the law is very broad.

Those provisions will enter into force as from 1 January 2026 so hopefully the conditions and circumstances governing their application, including in particular the potential ability to rely on domestic exemptions, will be clarified by the FTA in the meantime.

3. ENTRY INTO FORCE

- The provisions related to internal cum-cum schemes will enter into force the day after the publication of the Finance Act for 2025 in the French Official Journal. The same applies to the inclusion of the beneficial ownership clause in Article 119 *bis* of the FTC; and
- The provisions related to external cum-cum schemes will enter into force as from 1 January 2026.

² Opinion of the French Supreme Court (*Conseil d'Etat*) dated 27 January 2025.

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