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France Levies Surcharge on Dividends

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Refund Opportunity:

Effective August 17, 2012, the French government imposed a 3% surcharge (the "**3% Surcharge**") on dividends paid by any entity liable for French corporate income tax ("**CIT**"). This 3% Surcharge is, in substance, an additional tax imposed on French source dividends, raising the total CIT applicable to French source dividends to 36.90%.

U.S. and other non-French investors with a European holding company (an "**EU Holding Company**") which owns one or more French subsidiaries should quantify the amount of the 3% Surcharge and consider filing refund claims for that amount. We believe it is likely that the 3% Surcharge violates the European Union Parent-Subsidiary Directive (the "**EU Directive**").

Background:

U.S. investors who own French subsidiaries through an EU Holding Company (such as Luxembourg or the Netherlands) are now indirectly subject to the 3% Surcharge on any dividends distributed by the French subsidiaries. The use of an EU Holding Company is common both for U.S. and non U.S. tax reasons and generally allows U.S. investors to reduce withholding taxes on dividends received from their European subsidiaries.

Some EU jurisdictions (such as Luxembourg and the Netherlands) exempt dividends under a "participation exemption" regime and also offer beneficial tax treaties with other countries allowing for reduced rates of withholding. Dividends received by an EU Holding Company and reinvested outside the U.S. may achieve tax deferral from the U.S. corporate income tax.

The introduction of the 3% Surcharge reduces the effectiveness of these strategies but leaves unclear whether the 3% Surcharge can be credited against the U.S. corporate income tax.

The French taxation authorities have creatively used the term "surcharge" rather than the more accurate phrase of "withholding tax". Regardless of the terminology used to describe it, we believe that it is incompatible with the relevant provisions of the EU Directive on intra-group distributions. In our view, the 3% Surcharge is an additional withholding tax which violates the broad exemption available to qualifying dividends under article 5 of the EU Directive.

Recommendation:

U.S. based (and, more generally, non-French) groups should carefully review their structure and assess the potential impact of the 3% Surcharge. It should be noted that the filing of a refund claim is subject to a three-year statute of limitation, so any claim with respect to the 3% Surcharge paid in 2012 must be filed before December 31, 2014.

Paul Hasting's tax controversy team includes both U.S. and French tax lawyers who have extensive experience in the field of European Union tax litigation and are at your disposal to provide you further information on this issue.

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If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

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