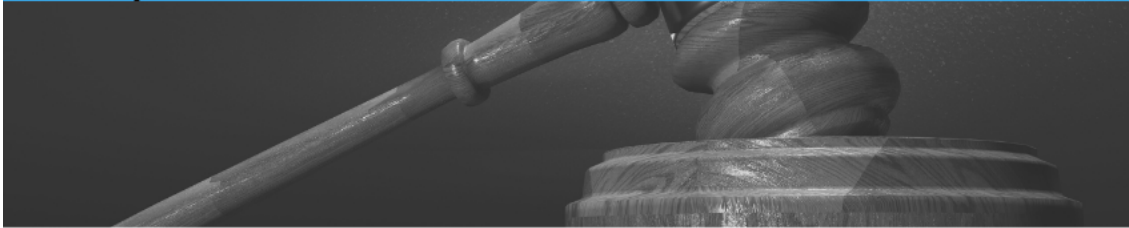


## EUROPEAN COURT OF JUSTICE UPDATE C-403/19 SOCIÉTÉ GÉNÉRALE



The CFE's ECJ TaskForce has issued an opinion statement analysing the decision of the European Court of Justice in Case C-403/19, *Société Générale*, concerning the calculation of the maximum amount of a foreign direct tax credit.

### CASE BACKGROUND

In *Société Générale*, SGAM Banque, a French company, received dividends in connection with securities lending and fund structuring transactions from companies established in Italy, the UK and the Netherlands. Each of the source States levied a dividend withholding tax on a gross basis, whilst France, as the State of residence, taxed the dividends under French corporate income tax on a net basis, i.e., after deduction of certain charges.

Under the applicable French tax treaties with Italy, the UK and the Netherlands and French domestic law, in order to offset double taxation, SGAM Banque was entitled to a foreign tax credit. However, following an audit by the French tax authorities, the credits for the tax years ending 2004 and 2005 were limited to the "maximum deduction", i.e., to the French corporate income tax corresponding to those dividends after deduction of relating charges (i.e., net basis taxation).

*Société Générale SA*, in its capacity as parent company of the tax-integrated group that includes SGAM Banque, challenged these assessments. It argued the French method for calculating the foreign tax credit placed cross-border dividends at a disadvantage compared to domestic dividends, as it did not allow for a credit that fully eliminated the double taxation on the dividends.

The disadvantage resulted from the fact that, under the French legislation, the net income for the calculation of the tax credit was a result of the deduction of charges against the gross amount of the dividends and, accordingly, SGAM Banque could not completely offset the foreign, gross-based withholding taxes levied in Italy, the UK and the Netherlands.

The issue before the Court (and common under all OECD patterned treaties) was: Is the resulting higher tax burden on foreign source dividends as compared with domestic source dividends an infringement on the free movement of capital under Article 63 TFEU?

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