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## **Withholding tax under article 182 B to the test of the equality principle and the right of defence.**

Generally moved aside by the International Convention Against Double Taxation – or reduced to 5% or 10% for the royalty tax, the withholding, provided by the article 182 B of the French General Tax Code (CGI) for the services remunerations, rendered by the non-residents is applied at the full rate in the absence of the convention.

The recent decisions and current numerous adjustments show that this in the case, when the convention is denounced or when the foreign tax payer cannot enjoy the advantages provided by the later, he should be liable to tax in his State of residence.

The withholding is, thus, payable on the gross sum at the tax rate of  $33,1/3\%$  -  $33,1/3/66,2/3=50\%$  in the event of the auditing, or the rate on the basis superior to the corporate tax, to which the entities-tax payers would be liable if it were established in France. The purpose of the present

article is to show, in the light of the recent decisions, that

this disadvantageous treatment is not compatible with the equity principle and that the right of defence requires that tax payer should be invited to participate in the rectification process before the taxation is applied towards the established debtor, or who has an activity in France.

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