

Clarification of the calculation of the withholding tax of foreign companies

The methods of calculating the withholding tax (*retenue à la source*) payable by foreign companies that make profits in France via a permanent establishment have given rise to two important decisions of the Council of state.

In accordance with the provisions of Article 115 of the General Tax Code of France, (hereinafter CGI), profits made in France by foreign companies through a permanent establishment are presumed to be distributed to partners who do not have a tax domicile or registered office in France, and therefore are subject to the withholding tax referred to Article 119 bis, 2 CGI.

This deduction is provisionally liquidated on the total amount of French results available. It can therefore, at the request of a foreign company, be recalculated on the basis of the actually distributed amounts.