



# NEWS INTERNATIONAL

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## Tax treatment of a German limited partnership from a French point of view

Dear Sir or Madam,

A German limited partnership ('Kommanditgesellschaft' - KG) is fiscally transparent, while the French equivalent - the 'Société en Commandite Simple' (SCS) is a hybrid: the limited partners' dividends are always subject to corporate tax at the SCS's level. The general partner's dividends, on the other hand, are taxed at the partner's level. However, the SCS can choose to be subject to corporate tax overall. It is then treated in the same manner as a corporation.

The distribution of dividends to the general partner is considered a withdrawal of profit if the SCS does not choose to be subject to corporate tax. The distribution of dividends to the limited partners, on the other hand, is treated as such for tax purposes. If the SCS chooses to be subject to corporate tax, the distribution will in any case be treated in the same manner as a dividend distribution by a corporation.

In a ruling dated 27 November 2019, Vorwerk Elektrowerke GmbH & Co. KG, the Conseil d'Etat addressed the following issue: a German GmbH & Co. KG held 100% of the shares in a French corporation. The limited partner was a second GmbH & Co. KG. The final partners of this two-tier structure were natural persons with residences in Germany. The French corporation distributed dividends. The French tax office then levied withholding tax.

In its ruling, the Conseil d'Etat initially established that a German KG is comparable to a French SCS. Owing to the loss situation of the German GmbH & Co. KG, the Conseil d'Etat applied the European Court of Justice's Sofina ruling (ECJ 22 November 2018, C-575/17) and concluded that the levying of French withholding tax was not compatible with European law.

Unfortunately, the rationale for the decision remains unsatisfactory and leaves many questions unanswered. However, it is important to note the obvious similarity between a German KG and a French SCS, and that the levying of withholding tax for distribution via a French subsidiary corporation is consistent with the double taxation agreement between France and Germany, but constitutes a breach of the free movement of capital if the KG is in a loss situation. The Conseil d'Etat thereby extended the Sofina ruling to include partnerships, as long as they are treated as corporations from a French point of view.

Best regards

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He focuses on international tax law and since 1997 counsels and assists French and international businesses and investment funds. He also counsels individuals with the management of French and international matters pertaining to their assets. Guillaume Rubechi has gained a sharp expertise in the field of international real estate investments and of international taxation of industrial groups (transactions, restructuring, international optimization of cash flows, transfer pricing...). He speaks fluently French, English and German.

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