The Depository Trust Company

IMPORTANT

B#: 1508

DATE: February 22, 2001

TO: All Participants

CATEGORY: Dividends

FROM: Mario Zaccardi, Supervisor, Dividend Department

ATTENTION: Operations, Reorg & Dividend Managers, Partners & Cashiers

SUBJECT: Reduction in Avoir Fiscal Credit From 40% of Gross Dividend to 25% of Gross Dividend with Effect on Dividend Paid from January 1, 2000

Following publication of the French Finance Law 2001, in the December 30, 2000 Official Journal, the proposed change providing for the reduction in the *avoir fiscal* tax credit from <u>40%</u> to <u>25%</u> of a French gross dividend with effect for dividends paid on or after January 1, 2000 for <u>non-individual investors</u> became law. Although this change was effective from January 1, 2001, it has retrospective impact on reclaims of *avoir fiscal* made in respect of dividends paid on or after January 1, 2000.

Prior to January 1, 2001, in order for a corporate shareholders to benefit from the participation exemption regime applicable to dividends, a corporate shareholder was required to hold at least 10% of the share capital of the subsidiary at the time of the dividend distribution or alternatively, the value of the holding had to amount to at least 150 million FF. Post January 1, 2001, pursuant to the Finance Law 2001, the minimum shareholding to qualify as a parent corporate shareholder under the participation exemption regime has been reduced from 10% to 5% and the 150 million FF holding qualification has been abolished. Therefore, for example, a company with a shareholding in excess of 150 million FF but holding less than a 5% shareholding will no longer be entitled to benefit from the full rate of *avoir fiscal*.

The change affects treaty partners (including U.S. investors) whose treaties with France provide for a <u>refund</u> of the *avoir fiscal*. However, for <u>individuals</u> (i.e. non-French individuals) resident in countries whose treaties with France provide for a <u>refund</u> of the *avoir fiscal* and for <u>corporate shareholders resident in countries whose treaties also provide for a refund of the *avoir fiscal* and whose shareholdings amount to at least 5% of the paying company share capital, but not more than 10% of the paying company share capital</u>, the amount of the tax credit will continue to be 50% of the gross dividend. In order to benefit from the participation exemption regime a two year holding period is required.

The example below illustrates the 50% *avoir fiscal* structure for a U.S. resident individual or a U.S. corporate shareholder whose shareholdings meet the requirements of the participation exemption regime and for whom 15% (favorable) withholding tax was deducted on dividend payment date. Note that the 25% *avoir fiscal* structure is not applicable under this scenario.

	50% credit	25% credit
Gross dividend	100.00FF	N/A
Less: Non-resident withholding tax (15%)	(15.00)	
Net dividend received on payment date	85.00	
Avoir Fiscal refund	42.50	
[(50% of gross dividend) – 15% related withholding tax]		
Total amount received by U.S. resident individuals or U.S. corporate shareholders whose shareholdings meet the requirements of the participation exemption regime	127.50FF*	

*(85 + 42.50)

Note: For U.S. resident individuals or U.S. corporate shareholders whose shareholdings meet the requirements of the participation regime that are entitled to the *avoir fiscal* refund and were withheld at the unfavorable (statutory) rate of 25%, the calculation is as follows:

127.50FF = [75.00FF net dividend + 10.00FF excess withholding tax refund + 42.50 *avoir fiscal* refund]

Total amounts received under both the 15% and 25% scenarios are equivalent.

The example below illustrates the 40% (old method) and 25% (new method) *avoir fiscal* structure for a U.S. corporate shareholder whose shareholdings did not meet the requirements of the participation exemption regime and for whom the 15% (favorable) withholding tax was deducted on dividend payment date.

	40% credit	25% credit
Gross dividend	100.00FF	100.00FF
Less: Non-resident withholding tax (15%)	(15.00)	(15.00)
Net dividend received on payment date	85.00	85.00
Avoir Fiscal refund	34.00 *	21.25**
* [(40% of gross dividend) – 15% related withholding tax]		
**[(25% of gross dividend) – 15% related withholding tax]		
Total amount received by U.S. resident non-individuals or U.S. shareholders whose initial shareholdings had less than an initial purchase price of 150 million francs or whose share-holdings do not meet the requirements of the participation exemption regime	119.00FF*	106.25FF**

* (85.00 + 34.00)

**(85.00 + 21.25)

Note: For U.S. corporate shareholders whose holdings did not meet the requirements of the participation regime that are entitled to the *avoir fiscal* refund and were withheld at the unfavorable (statutory) rate of 25% the calculation is as follows:

Under the 40% (old method):
119.00FF = [75.00FF net dividend + 10.00FF excess withholding tax refund + 34.00 *avoir fiscal* refund]

Under the 25% (new method):
106.25FF = [75.00FF net dividend + 10.00FF excess withholding tax refund + 21.25 *avoir fiscal* refund]

Total amounts received under both the 15% and 25% scenarios are equivalent.

The examples below illustrate the 40% (old method) and 25% (new method) partial *avoir fiscal* structure for a U.S. pension fund or pension trust for whom the 15% (favorable) withholding tax was deducted on dividend payment date.

	40% credit	25% credit
Gross Dividend	100.00FF	100.00FF
Less: Non-resident withholding tax (15%)	(15.00)	(15.00)
Net dividend received on payment date	85.00	85.00
Avoir Fiscal Refund	12.00*	7.50**
* [(40% of gross dividend) – 15% related withholding tax] X 30/85		
**[(25% of gross dividend) – 15% related withholding tax] X 30/85		
Total amount received by U.S. pension funds/collective trusts	97.00FF*	92.50FF**
* (85.00 + 12.00)		
**(85.00 + 7.50)		

Note: For U.S. pension funds/pension trusts entitled to the *avoir fiscal* partial refund and were withheld at the unfavorable (statutory) rate of 25%, the calculation is as follows:

Under the 40% (old method):
97.00FF = [75.00FF net dividend + 10.00FF excess withholding tax refund + 12.00 *avoir fiscal* refund]

Under the 25% (new method):
92.50FF = [75.00FF net dividend + 10.00FF excess withholding tax refund + 7.50 *avoir fiscal* refund]

Total amounts received under both the 15% and 25% scenarios are equivalent.

THE EFFECT OF REDUCTION IN AVOIR FISCAL REPAYMENT ON TREATY PARTNERS <u>(OTHER THAN U.S.)</u> ENTITLED TO THE AVOIR FISCAL ARE AS FOLLOWS:

Japanese tax-exempt pension funds/pension trusts:	100.00FF = [85.00FF net dividend + 25(60/85) X .85}]
Dutch tax-exempt pension funds:	92.50FF = [85.00FF net dividend + 25(30/85) X .85}]
UK tax-exempt pension funds/pension trusts:	106.25FF = [85.00FF net dividend + {25(.85)}]
Canadian tax-exempt pension funds/pension trusts:	100.00FF = [85.00FF net dividend received + 15.00FF excess withholding tax refund]

It should be noted that different blocks of shares of the same company purchased over time can be added together to determine whether the 5% shareholding threshold has been met, provided that the shares are beneficially owned by the same claimant. The France – United States tax treaty specifically includes in Article 10(5)(b) as "dividends" – "depository receipts evidencing ownership of the shares in respect of which the dividends are paid, in lieu of the shares themselves." Additionally, Article 145-6 of the French Tax Code states that in order to benefit from the participation exemption regime both the voting rights and dividend rights must attach to the shareholding. Therefore, if a U.S. treaty entitled corporate shareholder owns both ordinary shares and American Depository Receipts evidencing shares of the same French distributing company and receives dividend and voting rights, such shareholder can combine the shareholdings to determine if the 5% threshold has been met.

The French taxing authorities also affirm that reclaims for mutual funds will be treated as reclaims from "non-individuals" regardless of whether its shareholders consist of both "individuals" (who are entitled to a 50% tax credit) and "non-individuals" (which are entitled to a 25% tax credit). Therefore, mutual funds will only be entitled to the 25% *avoir fiscal* credit for dividends paid on or after January 1, 2000.

Additionally, the French taxing authorities will not request new tax reclaim applications on dividends paid in 2000. The 25% *avoir fiscal* credit will be automatically applied where appropriate. The 40% *avoir fiscal* credit will still be applied to dividends paid before 2000 in those instances where the tax reclaim has not yet been processed.

Note that the *avoir fiscal* credit itself is subject to a 15% withholding tax. Thus, eligible recipients receive only 85% of the *avoir fiscal*. With respect to U.S. individual residents, such individuals will continue to receive an additional 42.50FF for every 100.00FF in gross dividend paid. Furthermore, the <u>total</u> cash amount received by U.S. investors will remain equal where French dividend payments are withheld at the unfavorable (statutory) rate or favorable (relief-at-source) rate.

The Depository Trust Company will be issuing additional Important Notices regarding the change to the French *avoir fiscal* calculation and how it will operationally affect Participants when making certifications via the Elective Dividend Service ("EDS").

Furthermore, DTC TaxInfo^{SM} – DTC's Foreign Tax Withholding Information System has been updated to reflect the rate changes applicable to the reduction in the tax credit ("*avoir fiscal*") from 40% to 25% of the gross dividend for dividends paid on or after January 1, 2000.

Questions regarding this Important Notice may be directed to Michael Ames or Mario Zaccardi of DTC's Dividend Department at (212) 855-4535/4540