

【表紙】

【提出書類】 外国会社臨時報告書

【提出先】 関東財務局長

【提出日】 2023年3月28日

【会社名】 ネットアップ・インク
(NetApp, Inc.)

【代表者の役職氏名】 エリザベス・オカラハン
エグゼクティブバイスプレジデント・チーフリーガルオフィサー・ア
ンド・コーポレートセクレタリー
(Elizabeth O'Callahan, Executive Vice President, Chief Legal
Officer & Corporate Secretary)

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【代理人の氏名又は名称】 弁護士 石川 耕治

【代理人の住所又は所在地】 東京都千代田区丸の内2丁目1-1
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G T東京法律事務所

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【事務連絡者氏名】 弁護士 松村 基弘
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【縦覧に供する場所】 該当事項なし

(注1) 本書中「当社」とあるのは、文脈上別段の解釈が必要な場合を除き、デラウェア州法に準拠して設立された「ネットアップ・インク」を意味する。

1【提出理由】

金融商品取引法第24条の5第4項および企業内容等の開示に関する内閣府令第19条第2項第14号に基づき、当社の連結子会社に対して提起された訴訟が解決したことを報告するため、本臨時報告書を提出いたします。

2【報告内容】

(1) Outline of the consolidated subsidiary against which the lawsuit was filed

Company name : NetApp Denmark ApS

Address: Vision Plaza East Boeing Avenue 300, 1119 PZ, Schiphol Rijk, Netherlands

Representative: George L.D. Thörig, Director

(2) Date the lawsuit was filed

May 28, 2021

(3) Outline of the entity who filed the lawsuit

Name : : Danish Ministry of Taxation

Address: Nicolai Eigtveds Gade 28, DK-1402 Copenhagen K, Denmark

Representative: Søren Lehmann and Tim Holmager

(4) Details of the lawsuit and the amount of damages claimed

In September 2010, the Danish Tax Authorities issued a decision concluding that distributions declared in 2005 and 2006 by our Danish subsidiary were subject to Danish at-source dividend withholding tax. We did not believe that our Danish subsidiary was liable for such withholding tax and filed an appeal with the Danish Tax Tribunal. In December 2011, the Danish Tax Tribunal issued a ruling in favor of NetApp. The Danish tax examination agency appealed this decision at the Danish High Court (DHC) in March 2012. In February 2016, the DHC requested a preliminary ruling from the Court of Justice of the European Union (CJEU). In March 2018, the Advocate General issued an opinion which was largely in favor of NetApp. The CJEU was not bound by the opinion of the Advocate General and issued its preliminary ruling in February 2019. On May 3, 2021, the DHC reached a decision resulting in NetApp prevailing on the predominate distribution made in 2005. The smaller distribution made in 2006 was ruled in favor of the Danish Tax Authorities. On May 28, 2021, the Danish Tax Authorities appealed the DHC decision to the Danish Supreme Court. On January 9, 2023, the Danish Supreme Court reversed the lower court's decision and ruled the 2005 dividend was subject to withholding tax while the smaller 2006 distribution would not be subject to withholding tax. The Danish Supreme Court ruling on the distributions declared in 2005 and 2006 is non-appealable. During the third quarter ended January 27, 2023, we recorded \$69 million of discrete tax expense, which includes \$23 million of withholding tax and \$46 million of interest, associated with the Danish Supreme Court ruling.

(5) Date of resolution of the lawsuit

January 9, 2023

(6) Details of the resolution of the lawsuit and the amount of damages to be paid

On January 9, 2023, the Supreme Court ruled that withholding taxes must be paid.

During the third quarter ended January 27, 2023, we recorded \$69 million of discrete tax expense, which includes \$23 million of withholding tax and \$46 million of interest, associated with the Danish Supreme Court ruling.