OPTION
FINANCE

Monday 29th November, 2010

REAL ESTATE NEWSLETTER

Dossier on
Finance leasing of immovable property

Recent developments

Editorial
Finance leasing of immovable property

We have decided to devote the major part of this new issue of the Real Estate Newsletter to finance leasing of immovable property.
One can but acknowledge, and this is especially so in times of crisis, that enterprises have a tendency to resort back, although not ever having really abandoned these solutions, to financing their real estate assets through finance leasing operations. The benefits are widely-known: minimum initial input, long-term financing, financed real estate asset retained as security by the financial-lessor but, on the other hand, generally greater cost of credit than traditional bank financing.
The structure is complex in that it mixes asset financing and holding until the outcome of the contract and the various tax rules adopted since the law of 29 December 1989, which admittedly had the objective of aligning the tax treatment of the financial-lessee on that of an indebted asset owner, did not really bring this dual nature to an end, maintaining a difference between the holding of a financial lease on immovable property and that of an immovable until the outcome of the operation.
We thus thought it necessary to recall first of all, in a reference table, the main rules of taxation of the lessor and of the lessee at the various stages of the contract's life in terms of corporate income tax, VAT and registration duty.
We will also analyse how the holding of a financial lease can influence, on the one hand, the qualification of a company having regard to the concept of real estate predominance, both in matters of transfer tax and capital gains and thus lead in certain circumstances to an exemption on capital gains, and on the other hand, the taxation of enterprises in matters of local tax and in particular of the new Territorial Economic Contribution, or yet still of the taxes on real estate appreciation created by the laws of 3 June 2010 related to the "Greater Paris Area" and of 12 July 2010 embodying a national undertaking for the Environment.
The international aspect has not been left out, due to the discrepancies of interpretation that international tax treaties can give rise to having regard to the flows generated by these contracts, which can entail for instance dual taxation or dual exemption mechanisms in respect of the rental charges collected.
However, a dossier devoted to finance leasing of immovable property would be incomplete without developments on certain market specific issues, such as operations combining financial leases and building leases, financial leases and commercial leases or yet still financial leases and property development contracts or delegated project ownership contracts.
Finally due to the draft finance law and social security financing law, we will address finally the inexorable escalation in real estate taxation for individuals and the amendments to tax liabilities in the field of town planning. ■

Richard Foissac, Partner

Panorama of tax liabilities related to finance leasing

By **Gaëtan Berger-Picq**, *partner specialized in VAT issues, and in particular with respect to real estate matters.*
gaetan.berger-picq@cms-bfl.com

Christophe Frionnet, ***partner*** *specialized in tax issues. He provides advisory services in particular to businesses for all of their dealings and lectures on real estate tax issues at Paris University – Paris I.*
christophe.frionnet@cms-bfl.com

and **Christophe Lefaillet**, *partner, specialized in corporate law and in tax law (registration duty and Wealth Tax). He focuses more specifically on merger and acquisition transactions in the real estate sector.*
christophe.lefaillet@cms-bfl.com

For an enterprise wanting to finance building acquisitions via third party debt, this contract will enable the lessee, throughout the whole of its term, to be in a situation, from a tax standpoint, which is virtually identical to that of a tenant. Contrarily to a traditional loan, the capital necessary to the financing and the related expenses are, in most cases, immediately deductible over the term of the contract, as any ordinary rent. However, at the time of the acquisition of the building during or on the outcome of the financial lease, an add-back will be entered for the purpose of placing the latter, in terms of profit tax, back into the same situation as if it had purchased the property from the start.

Depending on the situation and the corresponding tax cost, financial-lessees can sometimes be led to check whether or not it is in their interest to wait until the end of the contract to proceed with the acquisition, or even to consider the opportunity of transferring the contract prior to its expiry, when they do not intend to keep the immovable asset. In these case scenarios the implications in terms of transfer tax should also be taken into account.

Moreover, the rules applicable in VAT matters since 11 March 2010 now enable to overcome the uncertainty applying to the transfer to the financial-lessee of a VAT residue which is deductible at the time of exercise of the option immediately followed by a sale of the building to a third party. Through the effect of opting for the voluntary taxation of sales of buildings which have been completed for more than five years, the exit regime will thus be considerably secured from a legal standpoint: taxation will enable eluding refund-transfers. ■

DOSSIER – Finance leasing of immovable property

	Conclusion and life of the contract	Exercise of option after the five year period	Transfer of lessee's rights (during the contract)
Profit tax	**Financial-lessor** ● Depreciation period of the buildings: standard rule of law or term of the contract. ● Taxation of rent and penalty rent. **Financial-lessee** ● Absence of elements to be entered as assets ● Tax deductibility of possible pre-rent (due during the construction period) ● Deductibility of rent over the term of the financial lease. Exception: for offices in the Ile de France region completed since 31 December 1995 (save for certain zones), the fraction of rent related to the land is not deductible (but possibility to define with the financial-lessor in priority the appropriation of rent over the developed part).	**Financial-lessor** ● Outflow of asset deductible accordingly to net book value, minus the price of the option (possibility to anticipate the outflow in the form of a provision, failing depreciation over the term of the contract). **Financial-lessee** ● Add-back (into the result subject to corporate income tax at the full rate) of a fraction of the rent paid and deducted during the contract. In practice, this is the difference between the theoretical net book value of the building (based on the normal tax depreciation period as if the financial-lessee had been the owner from the start) and the price of the option. Exceptions: - "ex-SICOMI" contracts more than fifteen years old entered into prior to 1996 (add-back capped at the cost price of the land); - contracts more than fifteen years old for SME located in certain zones (no add-back) ● Entry of the building on the assets side for the price of the option but increase of the depreciable tax basis accordingly to the add-back (and subject to cost price of the land) ● If building resold: capital gains subject to corporate income tax at the full rate (the add back will be taken into account to calculate the tax cost price of the building)	**Financial-lessor** ● Neutral, authorisation according to the terms of the contract. **Assignor financial-lessee** ● Assignment capital gains generally equal to the price of assignment of the contract (unless contract acquired from a previous lessee) subject to corporate income tax at the full rate. Exception: reduced rate of 19% if assignment prior to 1st January 2012 to certain types of entities (SIIC, OPCI, etc). **Assignee financial-lessee** ● Entry of the price of the contract on the assets side, with the possibility of a depreciation over the remaining term of the contract ● At the time of the option: same tax add-back to be operated (such as described above) but pro rata to the assignee's term of holding of the contract in relation to the whole term of the contract.
VAT	● Financial lease is analysed as a rental carrying a call option ● Exemption in principle of rent applying to bare premises ● Option possible for rentals of premises other than residential or agricultural ● In the event of option, taxation on the amount of rent ● VAT deductible by the financial-lessee if it assigns the building to operations giving rise to deduction	● Principle of exemption from VAT on sales of buildings which have been completed for more than five years ● Possible refund of a fraction of the VAT previously deducted by the financial-lessor. Deadline for adjustment now equal to the term of the financial lease contract (no longer in twentieths) ● Possibility for the financial-lessor to opt for the voluntary taxation of the sale under VAT ● Taxation on the total price if the financial-lessor benefited from rights to deduct at the time of the acquisition of the building. Taxation on the margin in the contrary case. ● No refunds by the financial-lessor in the event of taxation of the sale by option ● Possible additional deduction by the financial-lessor, calculated according to the term of the contract (no longer in twentieths) ● The potential transfer of rights to deduct VAT in favour of the financial-lessee is conditional upon the capitalization of the building and its assignment to taxable activities or assimilated.	● Acquisition of a financial lease of immovable property broken down into two operations: - acquisition of an in principle right of use taxable under VAT. By virtue of an administrative tolerance, no taxation under VAT if payment of transfer tax at the proportional rate; - acquisition of a call option: assimilated to the acquisition of the building itself - exemption for a building completed for more than five years, save opting for voluntary taxation (taxation over the full price or on the margin) - taxation over the full price for a building completed for five years or less than five years.
Registration duty Land registration tax Registrar's fees	● Publication at the land registry office of financial lease contracts the term of which exceeds twelve years in consideration for land registration tax of 0.715%. This tax will be liquidated on the basis of the accrued amount of rent minus the fraction of the amount thereof corresponding to interest expense, which must be indicated separately in the financial lease contract.	● Payment of registration duty at the standard rate (generally 5.09%) at the time of the acquisition by the financial-lessee of the building under financial lease further to exercise of the option, save: - If the purchaser enters into the covenant to resell, the rate will be 0.715% (article 1115 of the Tax Code) - if the purchaser enters into the covenant to build within a deadline of four years, only the fixed duty of 125 euros will be due (article 1594 O-G of the Tax Code) ● The taxable base of duty will be calculated on the basis of the option price and not of the fair market value of the building, save: - if the contract, more than twelve years long, has not been published at the land registry office within three months from its date (concerns contracts concluded between 1st January 1996 and 15 February 1997 which were not published prior to 31 May 1997 and all contracts concluded after 15 February 1997) - if the purchaser enters into the covenant to resell (ruling of *Cour de cassation* of 18 December 2001, no. 2190 FD, Société Loisirs 2000).	● Acquisition of a financial lease of immovable property breaks down into two operations: - acquisition of a right of use subject to transfer duty on the basis of article 725 of the Tax Code (3% for the fraction comprised between 23,000 and 200,000 euros and 5% beyond this. - acquisition of a call option right (fixed duty of 125 euros unless the proportional duty contemplated in article 725 is due for a higher amount).

Financial leases and building leases: a well balanced legal and tax mechanism

By **Didier Gingembre**, *general manager and partner specialized in tax law, providing both tax advisory and litigation services in all activity sectors. He is reputed for his expertise in real estate matters, in particular by property developer companies and property companies.*
didier.gingembre@cms-bfl.com

and **Jean-Luc Tixier**, *partner, specialized in real estate law and public law. He provides advisory services to a great many commercial and industrial corporations, as well as property developers in the field of planning law, construction, sales, commercial leases, long-term leaseholds and building leases. He is co-author of the Mémento Francis Lefebvre entitled "Baux Commerciaux" (commercial leases), "Gestion Immobilière" (real estate asset management) and "Urbanisme Construction" (planning and construction). He lectures at Paris University (Paris I).*
jean-luc.tixier@cms-bfl.com

The conclusion of a building lease is often contemplated within the framework of a financial lease on immovable property; both contracts will then be closely tied together.

Most commonly, the future financial-lessee, already the owner of the land base, will grant such a lease to its financial-lessor, who will thus be the building lessee throughout the term of the financial lease, which is, hypothetically speaking, inferior to that of the building lease.

Both contracts are combined in a same single operation. The building lease agreement, a necessary accessory, will yield to the financial lease agreement, the head agreement. Admittedly, the latter reprocesses components borrowed from other contracts but constitutes above all a specific legal institution; as a consequence, not all of the provisions or consequences of the contracts that are thus used will be applicable.

"A financial lease agreement can be supported by a building lease within the framework of a controlled legal and tax regime."

This indivisibility of the components implemented in the financial lease leads to the situation where neither the subject matter nor the consideration of each contract implemented (sale, rental, building lease) may be appraised separately and will be so appraised taking into account this single global operation. The building lease is thus exclusively used here as a constituent component of a temporary floor area in favour of the financial-lessor, regardless of the characteristic possibilities of its outcome. Upon expiry thereof, the latter are ancillary to the main point which is formed by the transfer of title in favour of the financial-lessee in this sole capacity. The conclusion of a building lease carries a twofold consideration: enabling the financial leasing operation to be structured (hence this ancillary character in the event of a favourable outcome of the contract), constituting a security for the financial-lessor (provisional title to the development financed) despite the absence of a transfer of title to the ground in its favour.

Due to the identity between the building lessor and the financial-lessee, when the latter exercises the option the lease will terminate as a result of the concurrent holding by the financial-lessee of the capacity as lessor and lessee. From a tax standpoint, the consequences of the operation are not different to those of the exercise of an option under a financial lease which is not supported by a building lease: potential add-backs are incurred with respect to the taxable income of the financial-lessee (in an amount which depends on the characteristics of the financial lease and on the nature of the building developed, and which compensate for the initial deduction of rents), and transfer tax is in principle limited on the basis of an option price which is symbolic or moderate.

The termination of the building lease as a result of the concurrent holding by the financial-lessee of the capacity as lessor and lessee shall not entail on its part any direct tax cost, as qualifying no acquisition whatsoever by the lessor of the buildings, of which it has beforehand become the owner through exercise of the option under the financial lease.

This system combining a financial lease and a building lease, which appears thus consistent both from a legal and tax standpoint, is based on the strict control of the terms thereof: financial-lessee enjoying capacity as building lessor, exercise of the option under the financial lease prior to the expiry of the building lease. The cost of the termination of the building lease can be much higher in a case scenario where the building lessor is separate from the financial-lessee as in such a case the building lease will undergo a more classic outcome (taxation of the recovery by the lessor of the constructions free of charge), with respect to which the earlier close-out of a financial lease will remain indifferent. ■

Connections between finance leasing of immovable property and the mandatory regime governing commercial leases

By **Aline Divo**, *associate specialized in real estate law. She focuses on all aspects of real estate law and in particular on negotiation and litigation in the field of commercial leases, both on the side of tenants and the on the side of landlords. She lectures on the topic of commercial leases at Paris University - Paris I and at the Paris Bar School.*
aline.divo@cms-bfl.com

and **Charlotte Felizot**, *real estate associate. She focuses on all aspects of real estate law and in particular on commercial leases, residential and professional leases, co-ownership, construction and construction insurance. She lectures on the topic of preliminary contracts and residential leases at Paris University - Paris X.*
charlotte.felizot@cms-bfl.com

In the context of the relations between financial-lessor and financial-lessees, the mandatory regime governing commercial leases is excluded on the grounds in particular that a financial lease on immovable property is not a contract for the rental of an immovable asset. It results that the financial-lessee, which does not pay its rent, can not rely on article L.145-41 of the Commercial Code to require a judge to suspend the effects of a termination clause included in a financial leasing agreement (Paris, Court of Appeals, 14th Chamber, section A, 4 October 2006, SARL *L'Immobilière de l'Huisne* v. *Fructicomi*).

On the other hand, in the event of a sub-rental, it is accepted that the mandatory regime governing commercial leases may be applied in the context of the relations between financial-lessee and its sub-tenant, if the criteria for the application of the mandatory regime are satisfied (*Cour de cassation*, 3rd civil chamber, 10 December 2002, *Altis* v. *Société Pressing François*). Therefore, the sub-tenant will need to provide evidence of a lease applying over a building or over premises in which it operates a business concern which is proprietary to it. The sub-rental will then be analysed as a commercial lease even if its term is inferior to nine years. Benefiting from security of tenure, the sub-tenant will be entitled to claim from the financial-lessee an eviction indemnity in the following cases: refusal to renew the sub-rental agreement upon expiry thereof; voluntary or judicial termination of the financial lease for any reason whatsoever; financial-lessee's failure to exercise the option to purchase.

In order to avoid the payment of an eviction indemnity in the event of termination of the financial lease, the financial-lessee may ask the financial–lessor to consent, in advance, to the assignment of the financial leasing agreement to the sub-tenant in the event where the risk of termination of the financial lease should be incurred.

"In the context of the relations between financial-lessee and its sub-tenant, the mandatory regime governing commercial leases will apply if the criteria for the application of the mandatory regime are satisfied."

Likewise, no eviction indemnity will be due if the sub-rental constitutes a short term lease contemplated by article L.145-5 of the Commercial code, such lease being a standard civil lease. This is why, in practice, certain financial-lessees chose to revert to this system. Let us recall briefly that this type of lease has to be entered into for a maximum term of twenty four months (and not for twenty three months as many continue to believe). The sub-tenant may only claim an eviction indemnity from the financial-lessee if, upon expiry of the short term lease, it remains and is left in possession of the premises. Indeed in such a situation a new lease will arise, subject to the mandatory regime governing commercial leases, subject however to the general criteria for the application of the mandatory regime being satisfied. The short term lease is not to be confused with precarious occupancy agreements, which must be justified by objective reasons of precariousness, the case scenario of non-exercise by the financial lessee of the option to purchase not constituting such a reason.

We would underline that there is no relation pertaining to a rental of a building between the financial-lessor and the sub-tenant. The mandatory regime governing commercial leases is thus excluded from the relations between these two parties. Thus, the sub-tenant shall not be entitled to claim against the financial-lessor the benefit of a direct right to the renewal of the lease as contemplated in article L.145-22 of the Commercial Code: the termination of the financial lease agreement will entail automatically the termination of the sub-rental agreement. The sub-rental agreement being unenforceable against the financial-lessor, the sub-tenant may not remain within the premises as from the date at which the financial-lessee loses the use of the building. We would add that the financial-lessor need not inform the sub-tenant of the breach of its contractual relations with the financial-lessee. ■

Real estate predominance and finance leasing of immovable property

By **Richard Foissac**, *partner, specialized in tax matters, he deals in particular with acquisitions and restructuring of listed and unlisted real estate groups and provides advisory services in the context of their transactions. He lectures in tax law at the Universities of Paris I and Nice Sophia-Antipolis.*
richard.foissac@cms-bfl.com

And **Isabelle Prodhomme**, *Corporate-M&A associate. She covers all issues related to cooperative and restructuring transactions, in particular in real estate matters.*
isabelle.prodhomme@cms-bfl.com

Predominantly real estate holding companies receive specific treatment under French tax law, as concerns essentially the assignment of their securities having regard to transfer tax and the taxation of capital gains, but also in matters of Wealth tax or of the 3% tax. Assignments of the securities of a company whose assets are essentially made up of real estate rights or assets are subject to a transfer tax of 5% applied to the price of assignment, without cap or relief, or to the fair market value of the securities if such should reveal to be higher. For the appraisal of the predominant character of the real estate assets, the issue is to determine whether the holding of a finance lease on immovable property is assimilated to the holding of a building. In this respect, article 726 of the Tax Code specifies that are predominantly real estate holding entities, those legal persons, French or foreign, unlisted on the stock exchange, and whose assets are, or were during the course of the year prior to the assignment of the holdings concerned, essentially made up of buildings or real estate rights located in France or of holdings in French or foreign legal persons unlisted on the stock exchange, being themselves predominantly real estate holding entities. Concurring with the decisions of the *Cour de cassation* (rulings of 7 April 1998 and 23 April 2003) which analysed a financial lease agreement as a rental followed, as the case may be, by an assignment, the tax authorities implied, in a set of guidelines dated 7 January 2005, that financial leases were excluded from the category of *in rem* real estate rights, which means that these constitute non immovable assets. The same consequences may be drawn in terms of Wealth tax of non residents as concerns the taxation of the securities of French predominantly real estate holding companies (Article 750 ter of the Tax Code) or yet still in terms of 3% tax on account of the exemption contemplated by Article 990 E 2 A of the Tax Code addressing companies which are not predominantly real estate holding companies.

Having regard to capital gains, it has only been for the regime of the professional capital gains of enterprises and in particular for the taxation of capital gains on the assignment of the securities of predominantly real estate holding companies that the holding of rights pertaining to a financial lease have been taken into consideration, the statute (Article 219 I, a sexies-0 bis of the Tax Code) making reference to "the rights pertaining to a financial lease agreement entered into according to the terms contemplated in paragraph 2 of article L.313-7 of the Monetary and Financial Code."

For the other definitions of real estate predominance, applicable for the regime of taxation of real estate capital gains of individuals (Article 150 UB of the Tax Code) or yet still of non-residents (Article 244 bis A of the Tax Code), the financial lease on immovable property remains to be a non immovable asset.

"It is only for the regime of the professional capital gains of enterprises that the holding of rights pertaining to a financial lease have been taken into consideration."

Finally, in a traditional respect, the definition of predominantly real estate holding companies retained by international tax treaties also excludes, from among immovable assets, financial leases for immovable property. It is with regard to this situation that the impact of "lease back" operations needs to be appraised, by operation of which enterprises can refinance their real estate assets by means of the assignment to one or more financial leasing companies followed by the retrieval of said assets under a financial lease. These operations will have the effect of reducing the real estate ratio of the companies as the amount of real estate assets decreases, whereas the overall assets recorded in the balance sheet remain unaltered. Being recalled that the optional averaging mechanism for capital gains on assignments within the framework of a "lease back" operation that enterprises benefit from, over the term covered by the contract or fifteen years if this is higher, should be extended, whereas in principle it should end as of 31 December 2010, the interest that lies in these operations can be fully appreciated. ■

"Building on one's own behalf" with the best suited contract

By **Julia Pelpel-Moynot**, associate specialized in real estate law. She focuses on the various aspects of real estate law (commercial leases, co-ownership, construction, sales) providing both advisory and litigation services. She lectures on the topic of commercial leases at Paris University - Paris I and X.
julia.pelpel-moynot@cms-bfl.com

According to the Monetary and Financial Code, financial-lessors build "on their own behalf" buildings (article L.313-7 2°). The financial-lessor is thus the project owner with respect to the operation. However, from a legal standpoint, the project owner is that party against whom the sub-contractor acts directly in the event of a contractor's failure to pay, if the criteria under the law of 31 December 1975 have been complied with. It will benefit from the decennial warranty claim against developers (Articles 1792 et seq. of the Civil Code) and from the action for indemnity against the construction-damage insurer (Article L.241-1 of the Insurance Code). It will bear the burden of the risks attaching to the construction process as concerns in particular deadlines and price.

However, financial lease agreements have, above all, an exclusively financial calling. The financial-lessor will finance the execution of works defined by the financial-lessee in order to respond to its specific needs, the financial-lessor exercising no control regarding the relevance thereof.

This is why, in practice, the construction of a building, financed under a financial leasing operation, will be combined with a contract, the aim of which is to rid the financial-lessor of the contingencies and risks related to the construction process. Generally, the delegation mechanism will be chosen: the financial lease will include a delegated project ownership agreement, by virtue of which the financial-lessor will grant a mandate to the financial-lessee to define the building project, to represent it with respect to third parties, to select contractors, to accept the development, and to be personally responsible for any legal recourse against the builders and insurers. The financial-lessee will have waived all rights against the financial-lessor concerning all defects or defective works affecting the real estate asset

The validity of these clauses has been duly confirmed. Recent case law has yet again illustrated that they are only efficient where clearly drafted (*Cour de cassation*, 3rd civil ch., 6 July 2010, no.09-12323; *Cour de cassation*, 3rd civil chamber, 8 September 2010, no.09-14967).

Is delegated project ownership the most appropriate form of contract for conducting works financed under a financial lease? If the intention of the parties is to protect the financial-lessor and to fix the cost of the works financed under the financial lease, delegated project ownership will show limits. The main one being the possibility of a price overrun.

The principal of the delegated project owner has to perform the covenants entered into on its behalf and must pay third parties, even if this payment corresponds to an overrun of the price agreed to between the financial-lessor and the financial-lessee. How does one justify an application for the repayment of these monies to the financial-lessee to the extent where the works carried out will fall into the ownership of the financial-lessor? This poses various difficulties in a financial operation where the price of the works enables the rent to be determined upstream. In this regard, the financial-lessor will prefer another type of mandate, defined in article 1831-1 of the Civil Code: the property development contract. This contract includes an obligation to achieve a given result for the developer both as regards price and deadline. This will avoid thus the issue related to price overrun. In addition, according to the Civil Code, the developer will guarantee the performance of the obligations placed on the burden of those persons with whom it has entered into contractual relations.

"Is delegated project ownership the most appropriate form of contract for conducting works financed under a financial lease ?"

Finally, choosing the appropriate construction contract will contribute to the success of a financial lease agreement. Judges are not bound by the terms of the qualification that the parties to a contract have decided to apply. Judges' power of interpretation consists of identifying the intention of the parties to the instrument. It is therefore essential to draft this contract with care. ■

The interest that lies in reverting to financial leasing in matters of local taxes having regard to recent legislative amendments

By **Cathy Goarant-Moraglia**, *tax partner. She is active within the framework of the management of local taxes encumbering real estate programs, as well as within the framework of major restructuring operations or marketing processes. She also conducts assignments related to due diligence, assistance, technical consultancy and defence of undertakings in all business sectors.*
cathy.goarant@cms-bfl.com

Companies outsourcing their real estate assets via specific purpose companies, which may have used a financial lease, have to incorporate several legislative amendments which restrict to a certain extent the interest that lies behind the mechanism. Indeed, if a financial lease has no incidence in matters of real estate valuation for commercial premises, this is not the case for industrial premises.

1. In matters of real estate tax on developed property

The rules presiding over the determination of the cadastral rental value of assets subject to real estate tax on developed property vary according to the nature of the immovable property concerned. Only industrial premises come within the accounting method defined in article 1499 of the Tax Code and are valued on the basis of the data appearing in the balance sheet of the proprietary enterprise. However, concerning assets acquired further to the exercise of an option, article 1499-0 A of the Tax Code specifies that the rental value of industrial premises, financed under a financial lease and acquired by the financial-lessee, can not be, for the taxation established in respect of the following years, inferior to that retained in respect of the acquisition year. This same article also provides, when said real estate assets are the subject of a financial lease or rental agreement in favour of the person who assigned them, that their rental value can not be, for the taxation established in respect of the following years, inferior to that retained in respect of the year of assignment.

To sum up, these provisions lead to blocking the historical cost price such as this appeared in the accounts of the financial-lessor or of the previous owner, without any reference possible either to the price of the option or to the price of the assignment.

"Although the administrative authorities are aware of the economic inconsistency of the afore-mentioned rules, it remains that they are of legislative origin, so that any evolution in this domain depends on the good will of the legislator."

We would specify in an ultimate respect that this mechanism applies to taxation established as from 2009 and only to acquisitions and assignments of assets occurring since 1st January 2007.

2. In matters of territorial economic contribution

Up until 31 December 2009, specific purpose companies having as their sole activity the sub-rental of bare buildings and not implementing significant material or intellectual resources were excluded from the scope of application of business tax, to the extent where their activity was considered as being purely a private estate activity (*Conseil d'Etat* 12 October 1994, no.122532 *SCI du Chêne vert*; *Conseil d'Etat* 3 October 2003, no.246855, *SCI Caladoise*).

Since 1st January 2010, the activities carried on by these companies is deemed to be so in a professional capacity; they are liable for the territorial economic contribution (CET) to the extent where professional premises are concerned (this time whether concerning commercial or industrial premises) and where the rent collected exceeds 100,000 euros per annum. If the taxation of these companies under corporate real estate contribution (*CFE*) remains limited to a minimum fixed *CFE*, this alteration of the scope of application of the *CET* creates significant tax friction in matters of Levy on the Added Value of Enterprises (*CVAE*), to the extent where the rent collected by the company exceeds 500,000 euros.

Indeed the added value produced by these specific purpose companies will correspond globally to the rent collected, that is to say their turnover (subject to a cap on added value at 80 or 85% of the turnover depending on whether or not the latter exceeds 7.6 million euros), to the extent where they are not authorised to deduct the rental charges paid over to the financial-lessor.

Although the administrative authorities are aware of the economic inconsistency of the afore-mentioned rules, it remains that they are of legislative origin, so that any evolution in this domain depends on the good will of the legislator. ■

Taxes on real estate appreciation: is financial leasing penalized?

By **Agnès Rivière-Durieux**, *tax associate specializing on issues of income tax and corporate income tax related in particular to real estate.*
agnes.riviere@cms-bfl.com

The law of 3 June 2010 related to the "Greater Paris Area" and that of 12 July 2010 embodying a "National Undertaking for the Environment" (known as the *Grenelle 2* law) introduced into the Tax Code various presumptive taxes on the capital gains realized on sales of buildings located within the vicinity of new transport infrastructures created in the Ile de France region (the law on the "Greater Paris Area") or outside the Ile de France region (*Grenelle 2 law*). Applying as of right or on an optional basis, the purpose of these taxes is to finance public transport infrastructure projects. The "Greater Paris Area" taxes apply during a fifteen year period as from the Declaration of Public Utility or as from the declaration of the project. The term of application of the "*Grenelle 2*" taxes will be determined by the authorities in charge of organising transport without being able to exceed a period of fifteen years. The taxes, the rate of which will vary without exceeding 15% will have as their chargeable event each assignment for valuable consideration of buildings taking place during the course of the period of application (excluding exemption cases). The taxes are based on an amount equal to 80% of the difference between, on the one hand the price of assignment and, on the other hand, the price of acquisition of the building, plus transfer taxes and the cost of certain works. The cost price will be the subject of a discount to actual value. The expressions of "price of assignment" and "price of acquisition" are those defined by the statutes which govern real estate capital gains realized by individuals. In the event of acquisition for valuable consideration, the price to be retained is the price which was effectively paid by the assignor, such as this was stipulated under the terms of the deed. If a building assigned by an enterprise was acquired by means of a financial lease, the price of acquisition thus defined will correspond to the price of exercise of the option to purchase, which is an extremely low price compared to that which would be mentioned in a deed for the same asset financed through a traditional mortgage. Save legislative amendment or administrative forbearance, enterprises financing their assets under financial leases will therefore be taxed more heavily than those choosing a traditional mortgage.

Within the framework of the regime applying to capital gains on movable assets realized by individuals, the administrative authorities have accepted to retain as the price of acquisition for a leisure boat acquired
within the framework of a hire purchase agreement, the price of exercise of the option to purchase marked up by the instalments paid during the course of the hire as rental instalments, without this sum being able to exceed the value of the boat at the date of conclusion of the contract (tax ruling of 6 September 2005 no.2005 /15 FI).
If this position could have been dictated by the fact that the rental instalments on the boat were not accepted as deductions from taxable income, we consider however that an identical solution should prevail for the application of these taxes on real estate appreciation: the stakes behind these taxes are indeed not in any way comparable to those prevailing in matters of profit tax, for which it is easily conceivable that a same rental instalment can not impact taxable results twice.
The legitimacy of the "Greater Paris Area" and "*Grenelle 2*" taxes lies in the truth that the creation of a public transport infrastructure entails a sharp rise in prices of nearby land.

"To the extent where the objective is to tax capital gains induced by the creation of a transport infrastructure, it would be unacceptable to include in the base of the tax that fraction of capital gains which is only realized due to the choice of the financing solution for the building."

To the extent where the objective is to tax capital gains induced by the creation of a transport infrastructure, it would be unacceptable to include in the base of the tax that fraction of capital gains which is only realized due to the choice of the financing solution for the building: thus one can but hope that the legislator or the administrative authorities will accept, for the calculation of the taxable base of these taxes, that the price of acquisition of a building financed under a financial lease will effectively include the fraction of rental instalments which will have been taken into account for the purpose of determining the price of the option. ■

Cross-border financial leasing of immovable property: an "optimising" but extremely complex transaction

By **Julien Saïac**, *international tax partner. He deals more specifically with issues related to international restructuring and to real estate investment.*
julien.saiac@cms-bfl.com

International financial leasing transactions will often give rise to differences of interpretation between States regarding the qualification thereof. These differences can act as a source of tax optimisation for enterprises.

Indeed, each State will interpret freely the stipulations of tax conventions without the analysis of the other State necessarily being taken into account. Thus, for the application of a tax convention which is compliant with the OECD model, any term which is not defined will have the meaning that it is ascribed by the law of the State which is applying the convention. This can lead to situations of dual exemption of income (see Malet ruling, *Conseil d'Etat*, 26 February 1992). The Luxembourg-France tax treaty offered thus an illustration of this principle prior to entry into force of the addendum of 24 November 2006 on 1st January 2008. Indeed, up until this date, in certain cases, the capital gains on the assignment of a building located in France and held by a company residing in Luxembourg was not taxable either in France or in Luxembourg, on account of a difference of interpretation of the treaty by the Supreme Courts of both States.

Even if transactions applying to goods (in particular related to transport) are more common place, international financial leasing of immovable property is no exception to the rule. Let us take the example of a credit institution in State A entering into a financial lease agreement applying to a building located in State B with an enterprise also located in State B. Let us suppose that the applicable treaty provides that the income a resident of State A draws from real estate assets situated in the other State are taxable in this other State, in other words, that real estate income is taxable in the place where the building is situated.

"International financial leasing transactions can lead to differences in interpretation of tax treaties."

Hypothetically speaking, the legislation of State A provides that rent received by the financial-lessor is to be analysed as "real estate income" within the meaning of the tax treaty. These are therefore taxable exclusively in the State where the building is situated, i.e. State B.

Let us now imagine that the legislation of State B has an economic approach to financial leasing agreements and considers that the rent paid by the financial-lessee covers partly the purchase of the real estate asset and partly the financing granted by the bank. The "interest" part of the rent is thus not considered as "real estate income" by State B and the latter thus refers the responsibility of taxing this financial income to State A. However, as mentioned above, State A does not tax this cash flow. There is therefore a dual exemption in this case. The reverse case scenario could lead to double taxation and a tax treaty would probably be necessary to remedy this.

The question of depreciation methods also raises queries. Let us suppose that the civil law of country A recognizes the bank as the owner of the real estate asset and grants it the right to depreciate this asset right up until the possible exercise of the option to purchase by the financial-lessee. For its part, State B considers that the financial-lessee is the "economic owner" of the asset under lease and also grants the right to the latter to depreciate this asset. This being said, the legislation of State B, which governs the taxation of both the financial-lessee and the lessor in respect of the income on the building, will generally provide that only one of the two parties will be entitled to depreciate the asset (here, the financial-lessee). ■

Taxation of real estate capital gains realized by individuals: the future is looking bleak

By **Jacqueline Sollier,** partner, specialized in tax law, providing both tax advisory and litigation services, in particular within the framework of acquisitions and the restructuring of real estate groups. She lectures at Paris University Panthéon-Assas, Master 2, private and professional asset management.
jacqueline.sollier@cms-bfl.com

Real estate capital gains realized by individuals have seldom been central to the legislator's preoccupations. Apart from the reform of 1976 which introduced the principle of taxation of these capital gains, only the reform of 2004 was worthy of being reported having regard to the number of adjustments it made to a mechanism which had until then proved to be extremely stable.

This reform of 2004 profoundly changed the applicable rules by placing the notary at the heart of the declaratory system (capital gains are calculated and the tax paid through him), by simplifying the terms of calculation and by reducing significantly the rate of taxation (a proportional rate of 16% replacing the progressive income tax rate).

To date, real estate capital gains benefit from taper relief at the rate of 10% per year of holding beyond the fifth, and are therefore totally exempted from tax where these are realized more than fifteen years after the acquisition. In the contrary case (sale within the fifteen years), such will bear a proportional taxation of 16%, plus social security deductions at the global rate of 12.1%, i.e. an overall taxation of 28.1%

The drafts currently under discussion before Parliament risk changing the situation dramatically and, this time, with an exclusively budgetary objective.

The draft finance law for 2011 is contemplating increasing the proportional rate of taxation from 16 to 19% as from 1st January next, i.e. an increase of more than 20%! For its part, the draft social security financing law for 2011 is contemplating significantly increasing the level of social security deductions.

"The drafts currently under discussion before Parliament risk changing the situation dramatically and, this time, with an exclusively budgetary objective."

The rate of the latter would be increased from 12.1% to 12.3% and, above all, they would be calculated
prior to the application of the 10% taper relief per year of holding, which would ipso facto put an end to the exemption which benefited capital gains realized after a period of fifteen years. Thus, capital gains realized after fifteen years, today exempted from any taxation, will tomorrow be taxed at the rate of 12.3%!

One can only hope that the *Sénat* (upper house of Parliament) will follow the *Assemblée nationale* (lower house) which rejected an amendment which purported to increase to 17.1% (instead of the 12.3% proposed by the government) the rate of social security deductions applicable to income on private estate. ■

Planning tax reform definitively aimed at simplification and sustainable development

By **Vanina Ferracci,** associate specializing in public law. She provides services in the fields of planning and development law both to corporations and to local authorities.
vanina.ferracci@cms-bfl.com

The current system of planning taxes, including eight taxes and nine contributions, has become complex and somewhat unintelligible, and is moreover now ill-adjusted to the objectives of the Grenelle roundtable process for the environment. The prime objective of the reform is thus to simplify current legislation, by reducing the number of taxes and by harmonising the new taxes created, but also to act against urban sprawl, whilst maintaining constant tax pressure.

Two taxes have been created: development tax (*TA*) and the low density deduction (*VSD*). These will enter into force on 1st March 2012.

1. Definition, scope of application and determination of development tax

Development tax (*TA*) will replace local facilities tax (*TLE*), the additional tax on TLE (*TC-TLE*), the county tax in favour of the CAUE (local architectural, planning and environmental councils) (*TDCAUE*), the county tax on sensitive natural zones (*TDENS*) and the contribution for overall development programs (*participation pour PAE*)[1]. It will include two fractions (a municipal fraction and a county fraction) and in the Ile de France region a third fraction (the regional fraction). This tax will apply as of right, for the municipal fraction in those municipalities which have a *PLU* (local zoning plan) or a *POS* (urban development plan) and in *communautés urbaines*, and by deliberation in other municipalities and Public Establishments for Inter-municipal cooperation (*EPCI*). This tax will apply upon a deliberation of the regional council in municipalities of the Ile de France region for the regional fraction and, by deliberation of the county council, in those municipalities of the county for the county fraction. This tax will be due by the beneficiary of the authorisation to build or to develop, and will be established on the basis of the construction, reconstruction or extension of buildings.

Terms of calculation

[presumptive value x floor area of the construction] x [rate defined by the local authorities]

- is to be understood by "floor area of the construction" the sum of the enclosed and covered floor areas, with a height exceeding 1.80 metres, calculated as from the bare inside face of the façades of the building, after deduction of empty areas and cavities.

- the presumptive value is 680 € per sq m in municipalities of the Ile de France region, and 600 € per sq m in other municipalities (relief in the amount of 50% is contemplated in favour of housing, in particular of social housing, and of certain activities).

For developments which do not create any construction areas (for instance are considered as such, simple leisure accommodation, swimming pools, wind turbines, photovoltaic panels, uncovered parking spaces), presumptive bases are determined by the statute.

- the rate will be decided on by the beneficiary authorities: from 1% to 5% for the municipality, adjustable depending on the sector of the territory; 2.5% at most for the county and 1% at most for the Ile de France region. It may be extended to 20% in certain sectors delimited by a reasoned deliberation, entailing then the suppression of certain contributions (among which the Contribution for Connection to the Public Sewage System (*PRE*), the Contribution for Non Creation of Parking Spaces (*PNRAS*), and the Contribution for Roadways and Networks (*PVR*)) and the compulsory institution of a minimum density threshold.

[1] The special tax for Savoie county has not been continued, its objective, that is to say financing the sporting facilities for the winter Olympics in Albertville, being considered to have been achieved.

2. Definition, scope of application and determination of the Low Density Deduction (VSD)

Municipalities which have a *PLU* (local zoning plan) or a *POS* (urban development plan) or the *EPCI* which is competent in matters of *PLU*, may deliberate in order to institute a minimum density threshold (*SMD*), for a period of three years, in urban zones and in zones to be urbanised. An SMD will however be compulsory when the rate of the TA has been set at more than 5%. It may not however be inferior to half or superior to three quarters of the maximum density authorised by the *PLU* rules. We would note that, in all logic, the institution of the VSD entails the cancellation as of right of the Levy for Exceeding the Statutory Density Cap (*VDPLD*).

The VSD will be due by any beneficiary of a planning authorisation authorising a construction with a density inferior to the SMD.

Transfer of land free of charge
Via a priority question of constitutionality no.2010-33 of 22 September 2010, the *Conseil constitutionnel* (constitutional court) has, as of now, cancelled the possibility of transfers of land free of charge on the grounds that municipalities had extensive powers of appraisal, as the statute did not define the public uses that the land thus transferred had to be assigned to, and that there were no provisions instituting any warranty protecting the right to property laid down in article 17 of the declaration of the rights of man, against impairment.

Terms of calculation

Half the value of the land x [floor area missing for the construction to attain SMD / floor area of the construction resulting from the application of the SMD]

In any event, the deduction may not exceed 25% of the value of the land. The non constructible areas of the land unit are not counted, contrarily to constructions which already exist and which are not intended to be demolished. We would recall that the density of a construction is the ratio between the floor area of a construction and the land area of the land unit where the construction is to be positioned. The draft reform contemplates instituting a tax ruling in the field of VSD on the one hand, to take into account specific situations and the configuration of certain land and, on the other hand, to secure legal certainty.

3. Exclusions and exemptions from TA and VSD

Are excluded from the scope of application of TA and VSD: constructions intended to be assigned to a public service or a public utility service, certain social housing accommodation, the operating areas of agricultural buildings, those developments prescribed by hazard prevention plans, reconstructions in an identical manner of buildings destroyed for less than ten years and constructions, the floor area of which is inferior to 5 sq m.
Are also excluded from the municipal or inter-municipal fraction of TA, those constructions carried out within the perimeter of national interest projects or of Concerted Development Zones (ZAC) when the cost of the public facilities is placed on the burden of the builders or developers as well as those constructions carried out within the perimeter of partnership based urban projects or of overall development programs.
Finally, can be exempted from TA and VSD, in totality or partially, by deliberation: social housing accommodation which is not excluded from the scope of application of the taxes, within the limits of 50% of their surface area, housing accommodation other than of a social nature but which has been financed via an interest free loan, industrial premises, retail premises with a floor area inferior to 400 sq m and the works authorised on buildings classified as historical monuments.

"The prime objective of the reform is thus to simplify current legislation, by reducing the number of taxes and by harmonising the new taxes created, but also to act against urban sprawl, whilst maintaining constant tax pressure."

4. Establishment, reassessment and recovery

Various common rules govern both new taxes, TA and VSD.

The tax authorities' right to reassess can be exercised up until 31 December of the third year as from the date of the planning authorisation, or, in the event of construction without an authorisation or in violation of one, up until the 31 December of the 6th year following the completion of the litigious constructions.

The tax (TA or VSD) will be recovered according to two collection orders, corresponding to two equal fractions of its amount, issued twelve and twenty four months after the planning authorisation; these two fractions are immediately payable.

The tax authorities' debt recovery action will be time barred subsequently to the expiry of a period of five years as from the issuance of the collection order.

5. Legal recourse

Tax payers may obtain a release, a reduction or the full or partial refund thereof if they are able to provide justification in particular that the authorisation was not implemented, that they have obtained an amended authorisation reducing the amount of the tax, or, finally, that an error has been committed in establishing the assessment basis or in calculating the tax. ■

What about tax on the creation of office space?
The tax on creation of office space is not affected by this reform; but could subsequently be so affected by a specific statute. However, we would note that, in a ruling of 30 July 2010, the *Conseil d'Etat* specified the current regime thereof as concerns the rules applicable to the limitation period enforceable against the administrative authorities for the purpose of placing such under a tax
recovery procedure. The ruling makes a distinction depending on the situation of the office space:
- if no authorisation was required for the creation of office space, and thus in the absence of an infringement, the limitation period is of two years as from the beginning of the works (article L520-2 of the planning code);
- if the floor areas were created in infringement of the regulatory framework on planning authorisations, then the limitation period for the tax authorities is of six years as from completion of works (article L186 of the Tax Procedure Code).

Is it possible to reform property valuations?

By **Laurent Chatel**, *tax partner. He heads the firm's local taxes department. Within the framework of real estate transactions he checks the land and property values retained as a basis for local taxation, audits said values within the framework of deals for the sale of real estate stocks, and negotiates with the tax authorities the terms of liability under local tax within the framework of major restructuring operations.*
laurent.chatel@cms-bfl.com

The reform of property valuation seems at long last to be underway. The last reform dating back to 1970, has been completely worn down, ensnared by archaisms edging on the verge of absurdity, now deserves to retire. The current litigation regarding the valuation of warehouses are proof of that. Who has not come up against the vague impulse of the tax authorities, relying on a precedent of 2006, to uphold with audacity that a warehouse has, since its construction for instance in 1980, come under the category of industrial buildings?

A review of the minutes in municipalities often reveals to be surprising. Besides the total absence of any buildings similar to one's own, whether as regards assigned use, size or merchantability, various handwritten additions on minutes falling apart leave a nasty feeling regarding their truthfulness. In the absence of a reference building, the cadastral services have developed standard-type premises, the relevance of which is not always obvious. The research conducted in order to reconstitute the origin of a 1970 building are vain as the cadastral services have not kept their own records. The time has come for this reform.

In order to avoid failure, as was the case for the previous attempt in 1990, the government has bravely excluded from the scope of the reform residential accommodation. To the extent where the reform only concerns buildings operated by businesses, it has every chance of being adopted.

The draft presented this summer to local authorities and in the fall to professional bodies uses well known mechanisms. The new rental value will correspond to the application, over the developed surface area, of weighted adjustments then of a base rate.

While waiting for the text, the circulation of notes prepared by Bercy provide several interesting details. The analysis of merchantability should no longer be restricted to a municipal level, but on the basis of zones that may therefore encompass several municipalities. Instead of standard-type premises, far too specific and leading to numerous disputes due for instance to conversions which have been undergone since 1970, a schedule of rates would be implemented. The latter will have the benefit of instituting an anonymous character auspicious to globalisation and

above all prohibiting any verification of the comparability of buildings between each other.

"To the extent where the reform only concerns buildings operated by businesses, it has every chance of being adopted."

As concerns the time frame, the law that would be adopted by the end of 2010 should provide for:

- an exhaustive declaratory campaign in 2011 for all buildings including, besides the floor areas, various items of information enabling the appraisal of their rental value and merchantability;

- the development of software for the treatment of this data and the creation of schedules of rates on the basis of the figures collected;

- a presentation to Parliament of the simulations in 2013;

- an initial application of the reform as from 2014.

It remains that this reform must be based on a fundamental assumption that will need defending. Such a reform must be neutral for the local authorities that stand to benefit from this. The taxes based on these valuations must not lead either to reducing or increasing the revenues of the beneficiary authorities in comparison to what they would have collected in the absence of such a reform. From a global standpoint however there will be those that stand to win and those that stand to lose.

The neutral character of the reform is difficult to conserve whilst maintaining the rates of real estate tax on property and of corporate real estate contribution (*CFE*) whereas the taxable base will have been multiplied by two or three. If the minister seems to have set aside the principle of a vote on rates specific to professional premises, it will be necessary to apply relief to the new values, rendering all of this even more complex. In conclusion, one should remain vigilant regarding the development of the draft until its final adoption by Parliament. ■

The AIFM Directive and real estate activity

By **Jérôme Sutour**, *partner in charge of the Financial Services department in CMS Bureau Francis Lefebvre.*
jerome.sutour@cms-bfl.com

After a great many episodes, the directive concerning alternative investment fund managers, or "AIFM" (the last draft of which date backs to 27 October 2010), has finally been adopted. Although it may appear as only applying to investment fund managers, it is extremely broad in scope and will allow other professionals to be lured in, including real estate managers.

AIFM defines a fund as a collective investment vehicle which levies funds from the public in view of investing these funds in accordance with a strategy defined for the benefit of its investors. This particularly broad definition is designed to encompass the full spectrum of the legal forms that investment funds may adopt.

If holding companies are excluded from the scope of this definition, the definition provided by AIFM remains, all in all, restrictive: is a holding company (i) that company which (a) holds interests in subsidiaries and (b) the purpose of which is to deploy a commercial strategy through said subsidiaries in order to contribute to their long term appreciation and which is (ii) (a) either listed on a regulated market and acting on its own behalf (which is not managed by a third party), or (b) does not have the objective of generating income in favour of its investors by selling its subsidiaries.

"Qualification as an investment fund manager has serious consequences as this will imply obtaining AMF approval as a management company."

Finally, it should be noted that the characteristic of a fund manager is, within the meaning of AIFM, to manage (a) the funds' asset portfolio or (b) its risks. On this basis, structuring processes in respect of which a person makes investment decisions in the name and on behalf (a) of an entity which is not a company or (b) of a company which is not a holding company, could be considered as an investment fund manager. This could therefore be the case of a real estate manager empowered to make decisions regarding acquisitions/sales of properties on behalf of a company in application of an investment program defined beforehand with the investors.

Qualification as an investment fund manager has serious consequences as this will imply obtaining, in France, AMF (French Market Regulator) approval as a management company. Thus, real estate managers can be directly concerned by AIMF. If AIMF has been adopted, its implementation statutes have not on the other hand been published yet, the development of this text will need to be carefully monitored. ■

Real estate investments of individuals: reduced tax benefits to be expected

A great many schemes providing incentive for real estate investments by individuals are addressed by the curtailing measures proposed in the context of the draft finance law for 2011.

By **Frédéric Gerner**, *associate, specializing in tax law. He provides both advisory and litigation services with regard to issues related to direct taxation, in particular in connection with intra-group restructuring and real estate*
frederic.gerner@cms-bfl.com

The draft finance law for 2011, announced on 29 September last, and currently under discussion in Parliament, is contemplating a great many measures, increasing the tax burden of individuals, which, if they are voted in, will affect in particular their future real estate investments.

As a general rule, these measures would seem to be designed to apply to investments realized, expenditure incurred or income obtained as from 1st January 2011. One of the most emblematic aspects of these measures concerns the increased taxation of real estate capital gains (the rate of taxation being raised from 16 to 19% and the social security deductions rate being raised from 12.1 to 12.3%; cancellation of the taper relief for the assessment basis of the social security deductions), which is the subject of a specific article in this Newsletter.

This reform is however far from being an isolated event.

The draft finance law for 2011 proposes a whole arsenal of various measures, concerning different types of properties and taxes, such as:

- the withdrawal of the tax credit granted in respect of the interests under loans taken out for the acquisition of a main place of residence;
- the cancellation of the tax reductions (income tax and wealth tax) for subscribing to the capital of a SME with a real estate activity;
- and the 10% reduction of the incentive concerning property rental investments in the tourist sector (article 199 decies E to G of the Tax Code), in residential hotels with a social character (article 199 decies I of the Tax Code) or in furnished residences (article 199 sexvicies), but also "*Malraux*" property restoration projects (article 199 tervicies) and above all "*Scellier*" investments (article 199 septvicies, "levelling out tax loopholes").

If you would like to contact the authors of this newsletter, please write to the editorial staff which shall pass your remarks on to the persons concerned. You can also write to:

CMS Bureau Francis Lefebvre
1-3, villa Emile Bergerat
92522 Neuilly-sur-Seine Cedex, France
Tél : 01 47 38 55 00
Fax : 01 47 38 55 55
www.cms-bfl.com

Me Gaëtan Berger-Picq, gaetan.berger-picq@cms-bfl.com
Me Laurent Chatel, laurent.chatel@cms-bfl.com
Me Richard Foissac, richard.foissac@cms-bfl.com
Me Christophe Frionnet, christophe.frionnet@cms-bfl.com
Me Didier Gingembre, didier.gingembre@cms-bfl.com
Me Cathy Goarant-Moraglia, cathy.goarant-moraglia@cms-bfl.com
Me Christophe Lefaillet, christophe.lefaillet@cms-bfl.com
Me Julien Saïac, julien.saiac@cms-bfl.com
Me Jacqueline Sollier, jacqueline.sollier@cms-bfl.com
Me Jérôme Sutour, jerome.sutour@cms-bfl.com
Me Jean-Luc Tixier, jean-luc.tixier@cms-bfl.com