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TAX ALERT
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The second amended Finance Bill for 2012 has been voted yesterday.

The main provisions relating to the real estate industry sector are the following[1]:

1. Creation of an additional tax to the CIT amounting to 3%[2] and to be applied on distributions realized by companies, subject to exceptions (notably the distributions realized by OPCI, realized by Small and Medium Enterprises[3], distributions by way of allocation of shares and distributions within a tax group).
2. Hardening the conditions for tax rulings authorizing losses' transfer in case of mergers with respect to the activity having generated the losses and express exclusion of companies the activity of which consists in managing securities or real estate properties.

The 1st measure, presented as an invitation for companies to prefer reinvestment rather than dividend distributions, is unfavourable to the REITs/SIIC (despite an improvement of the initial draft[4]) which regime is on the contrary based on a distribution obligation.

The 2nd measure, although poorly drafted, should not prevent management companies from obtaining positive ruling for tax loss transfer (within the hardened conditions).

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[1] The adopted project also provides for the non-tax-deductibility of financial debt waivers (and similar non-business-oriented aids), a limitation to the tax deduction of loss upon sale of shares in subs in case of prior recapitalization realized within the preceding two years and **the relaunching of the revision of the cadastral rental values of professional premises including its one-year postponement and a smoothing of its mechanism.**.

[2] This additional tax allows to compensate the Budget for the abolition of the withholding tax on dividends paid to foreign UCITS/OPCI/Mutual funds (further to the European Community case law)

[3] REGULATION (EC) No 800/2008 of the Commission of 6 August 2008

[4] The distributions of exempted results by the subsidiaries of SIIC/Sppicav having elected for the SIIC regime, to SIIC/Sppicav, have been included amongst exceptions in order to avoid a double taxation of a same result subject to distribution obligation