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COUNTRY DIGEST

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The draft of a third Amending Finance Act for 2012 presented recently to the French Assemblée Nationale (lower house) would impose new capital gains tax rules on companies that move fixed assets out of the country when transferring their headquarters to another EU member state.

The draft states that if a registered office or establishment is transferred from France to another EU member state, any unrealized capital gains on fixed assets that are transferred, as well as any deferred capital gains, would be subject either to immediate taxation or to a five-year tax payment plan.

The new provisions also would apply to transfers to member states of the European Economic Area that have concluded with France a convention on administrative assistance to combat tax evasion and avoidance and a convention on mutual assistance in tax matters.

Under the proposed exit tax provisions, the taxpayer would have to pay its corporate income tax in full within two months after the transfer of the assets or, upon request, could pay a fifth of that amount, with the balance paid in equal installments on or before the anniversary date of the first payment for the following four years or at any time before the expiration of the payment period.

The tax would become payable immediately in the event of:

- the sale of the assets;
- the dissolution of the company;
- failure to comply with the payment schedule; or
- the transfer of the assets to a country other than those mentioned above.

The company would have to submit an annual statement to the tax administration, providing the information required to track the unrealized capital gains on the fixed assets that were transferred. If that requirement is not met, the company would be subject to a fine of 5 percent of the unrealized capital gains.

It must be noted that the draft makes no mention of the taxation of distributions to shareholders in connection with the transfer of the establishment or office, but the question will probably be raised, particularly in the event of a full transfer of the assets of an establishment.

The new exit tax rules would apply to transfers of registered establishments or offices undertaken during the financial year that ends on December 31, 2012.

Notably, the proposed installment tax payment model would be based on tax systems that already exist in Germany and Sweden in order to reconcile the principle of freedom of establishment with the objective of fair distribution of the tax base between EU member states.

Other measures contained in the draft relate to enhanced investigative powers for tax authorities. Those provisions establish that as of January 1, 2013, unreported assets held in bank accounts or life insurance contracts abroad would be subject to a 60 percent transfer duty if the taxpayer fails to respond or inadequately responds to a request from the tax administration for information about the origin and manner of acquisition of the assets.

The tax administration also would be allowed to request, for purposes of a tax audit, information from third parties about the bank accounts and life insurance records of French taxpayers with undeclared assets in foreign countries. ◆

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