

MEMORANDUM

*TRANSLATION FOR
INFORMATION PURPOSES ONLY*

FROM Orrick Rambaud Martel

DATE 18 April 2011

RE **Annual Tax on Offices and office development tax ("*redevance*") paid in the Paris Region (Ile de France) : a significant increase in the rates and a broader tax base**

Information contained in this document is given by way of illustration and cannot be considered as legal advice.

Article 31 of the French law no. 2010-1658 dated 29 December 2010 of the rectifying finance law for 2010 ("**RFL 2010 no. 4**") changes the tax method (rates and tax base) relating to the annual tax on offices, commercial and storage premises (the "**Annual Tax on Offices**") and the office development tax for offices and research premises (the "**Redevance**") paid in the Paris Region (Ile de France). The purpose of this article is to increase tax revenues for the public institution named "*Société du Grand Paris*" ("**SGP**") in order to finance by itself its assignments¹.

Article 31 (paragraphs III and IV) does not just repeal the lump sums from real estate valuation in the Paris Region, known as "Grand Paris" taxes provided in Article 1635 ter A of the French General Tax Code ("**CGI**") or introduce a special tax of equipment to the benefit of the public institution SGP². This article also allocates a part of the Annual Tax on Offices to SGP (Article 31, paragraph I, C).

Consequence: Rates pertaining to Annual Tax on Offices (see 1 below) increase substantially (about 40% for office premises), its rate areas are redefined and its scope is extended to the parking space areas (Article 31, paragraph I, B).

At the same time, Article 31, II overhauls the provisions relating to the Redevance (see 2. below), repeating the system applying to the Annual Tax on Offices.

¹ The public institution named "*Société du Grand Paris*" created by Article 7 of the Law no. 2010-597 of 3 June 2010 relating to "*Grand Paris*" must achieve mainly to design and to draw up the general pattern and the facilities plans ("*projets d'infrastructure*") making up the network of public transport of Grand Paris, to ensure its carrying out (e.g. construction of lines, construction works and permanent fittings, construction and lay-out of the railway stations, including "cross-connexion"), as well as the purchase, maintenance and renewal of rolling stocks designated for traveling on these facilities.

² The special tax of equipment to the benefit of the public institution SGP, codified under Article 1609 G of the CGI, enters into force as from taxation introduced for the year 2011.

From 1st January 2011, real estate professionals (in particular, investors and users of activities premises and logistics centers) will incorporate the increase of taxes in the Paris Region (Annual Tax on Offices and Redevance) in the development budget and operating costs on buildings.

1. ANNUAL TAX ON OFFICES – ARTICLE 31, I-A AND V

Article 231 *ter* of the CGI redrafted by Article 31, I-A of the RFL 2010 no. 4 amends the scope (1.1 below), the districting of the taxation areas (1.3 below) and the rates (1.4 below) of the Annual Tax on Offices.

- *N.B.: a press release from the Department Budget (“Ministère du Budget”) dated 1 March 2011 has announced that the time limit for declaration and payment of the Annual Tax on Offices is postponed to 2 May 2011, bearing in mind this postponement is due inter alia to the fact that information useful for calculating this tax will be available only in April.*

Entry into force: As from taxation introduced for the year 2011.

1.1 Parking space areas of businesses

Now, the Annual Tax on Offices applies to parking space areas attached to the offices, commercial and storage premises.

- *N.B. : "Parking space areas" means premises or areas, whether covered or not, to be used for parking vehicles and which are not topographically fitted in a product unit.*

To be taxable, parking space areas will meet two requirements, i.e.: (i) having a surface area representing **at least 500 square meters** and (ii) being attached to the **taxable premises themselves**.

1.2 Premises exonerated

As a reminder, are exempted from taxation the following premises:

- Office, commercial, storage premises and parking space areas attached to these premises, and located in a urban rehabilitation area ("*zone de redynamisation urbaine*") or in an urban free zone;
- Premises and parking space areas belonging to foundations and recognized non-profit associations where they carry out their activities, as well as premises specially set up for filing and for carrying out researches, social, educational or cultural, activities ;

- Administrative premises and parking space areas for public institution of education (to high school) and private institution under a State contract ;
- Office premises of less than 100 square meters, commercial premises of less than 2,500 square meters, storage premises of less than 5,000 and parking space areas of less than 500 square meters attached to these kind of premises ;
- Storage premises belonging to agricultural cooperative companies or their associations ("*unions*").

1.3 Redistricting of taxation areas

Redistricting of taxation areas on which are based the different rates of the Annual Tax on Offices (defined hereinafter) contributes to increasing the cost of taxation for building's owners:

Prior to 1st January 2011	After 1st January 2011
<p>District 1 : Paris (1st, 2nd, 3rd, 4th, 6th, 7th, 8th, 9th, 14th, 15th, 16th and 17th arrondissements) and arrondissements of Nanterre and Boulogne Billancourt (Hauts-de-Seine)</p> <p>➤ <i>In practice, this District will cover the center and the western part of Paris</i></p>	<p>District 1: Paris (the entire city) and Hauts-de-Seine (the entire department).</p>
<p>District 2 : Paris, (5th, 10th, 11th, 12th, 13th, 18th, 19th and 20th arrondissements) and arrondissement of Antony (Hauts-de-Seine) and Seine St Denis and Val de Marne departments</p>	<p>District 2: Communes belonging to the urban unit of Paris, other than District 1 (Paris and Hauts-de-Seine), the urban unit being determined by a ministerial order³.</p>
<p>District 3 : Seine et Marne, Yvelines, Essonne, Val d'Oise</p>	<p>District 3: Other communes in the Paris Region.</p>
<p><i>N.B.: There was an exception for communes entitled to receive the "DSU" (Dotation de solidarité urbaine), because they could benefit from ranking in District 3, whatever their geographical localization.</i></p>	<p><i>N.B.: This exception is retained but only to communes entitled to receive both DSU and FSCIF (Fonds de solidarité des communes d'Ile de France).</i></p>

³ The urban unit of Paris corresponds to a boundary of Paris and its suburbs drawn up by INSEE, gathering the Ile de France communes comprising on their territory a built area with at least two thousand inhabitants (this must represent on minimum half of their total population) where no housing is apart from the nearest of more than 200 meters. See also INSEE website : http://www.insee.fr/fr/insee_regions/idf/themes/alapage/alap311/alapage311.pdf

1.4 Rates increasing

Article 31 provides the new rates per square meter⁴ at the date of **1st January 2011**. Please note that:

- Rates for office premises increase by at least 40%;
- For commercial and storage premises (which were not the object of a single rate so far), the initial price is multiplied by 4 in District 1 and doubled in District 2 !

In case of a "triple net" lease ("*bail investisseur*"), there is no doubt that the landlord will wish to transfer in the contract this additional charge to the tenants.

Although the previous provisions did not provide any automatic updating, rates are now updated by ministerial order every year on 1st January according to the last National Cost of Construction Index published by INSEE (the French State Statistical Institute).

➤ Office premises

	Prior to 1st January 2011 Office premises		From 1st January 2011 Office premises	
	Normal rate	Reduced rate ⁵	Normal rate	Reduced rate ⁶
District 1	11.30 €	5.60 €	15.91 €	7.88 €
District 2	6.70 €	4.00 €	9.43 €	5.63 €
District 3	3.20 €	2.90 €	4.51 €	4.08 €

➤ Commercial premises

	Prior to 1st January 2011 Commercial premises	From 1st January 2011 Commercial premises

⁴ Surface area taken into account: aggregate of real surfaces of each level in the construction measured on the floor between walls and partitioning. For taxable premises, the taxation will start from the first square meter without taking into account the tax exemption.

⁵ These rates are reduced for premises owned by the State, the local authorities, the bodies or public institutions without industrial or commercial nature, professional bodies as well as associations or non-profit private organizations with health, social, educational, sport or cultural activity where they carry out their activity.

⁶ See footnote no. 5 : Article 31 does not make any change relating to premises entitled to benefit from the reduced taxation rate.

	Prior to 1st January 2011 Commercial premises	From 1st January 2011 Commercial premises
District 1	No differentiated Districts Single rate : 1.80 €	7.00 €
District 2	–	3.60 €
District 3	–	1.80 €

➤ **Storage premises**

	Prior to 1st January 2011 Storage premises	From 1st January 2011 Storage premises
<i>District 1</i>	No differentiated Districts Single rate : 0.90 €	3.60 €
<i>District 2</i>	–	1.80 €
<i>District 3</i>	–	0.90 €

➤ **Parking space areas (attached to offices, commercial or storage premises)**

Area	Prior to 1st January 2011 Parking space areas	From 1st January 2011 Parking space areas
District 1	No taxation	2.10 €
District 2	–	1.20 €
District 3	–	0.60 €

2. OFFICE DEVELOPMENT TAX (REDEVANCE) FOR CREATION OF OFFICE PREMISES IN THE PARIS REGION – ARTICLE 31, II

Article 31, II extends the scope of the office development tax (Redevance) for creation of office or research premises located in the Paris Region to the commercial and storage premises (2.1 below.) Article 31, II also modifies the zoning (2.2 below) and proceeds to rates updating (2.3 below). These new provisions have been drafted in step with those of the Annual Tax on Offices and will have impacts on the provisions of the Planning Code (the "PC") relating to some exemptions and reductions of the Redevance amount (see 2.4 below).

Entry into force (Article 31, II, B): new provisions of the Redevance are applying to constructions and conversions of premises on which a building permit, a prior declaration of works (as provided in Article L. 421-4 of the PC) or a declaration of conversion (as provided in Article L. 520-9 the PC) is filed **after 1st January 2011**.

2.1 Extension of the Redevance to commercial and storage premises

Prior to 1st January 2011	From 1st January 2011
Scope: Redevance applicable to the construction of offices and research premises located in the Paris Region as well as their annexes.	Extension of the Redevance to the construction of commercial and storage premises and to the conversions in such use, of premises previously used for a use other than commercial and storage premises.
Are considered as (taxable) constructions, the conversions of premises previously used for a use other than offices and research premises.	Redevance also applicable to premises attached to commercial and storage premises, and removal of exemption which was provided for the garages (see 1 of 2.4 below).
	<i>N.B.: the commercial and storage premises are defined in consideration of those under the scope of the Annual Tax on Offices (see cross reference to Article 231 ter, III 2° and 3° of the CGI).</i>
	Commercial premises: premises intended for retail sale or wholesale trade and services provision for commercial or traditional product, their adjoining reserves whether covered or not and adjoining spaces continuously used for sale.
	Storage premises: premises or covered areas to be used for warehousing products, goods or assets and which are not topographically fitted in a product unit.

2.2 New zoning

Prior to 1st January 2011	From 1st January 2011
Zones are defined under article R. 520-12 of the PC	New zoning equivalent to the one applicable to the Annual Tax on Offices (1.3 above) resulting from Article 31, I of the RFL 2010 no. 4, namely:
Zone 1: Paris (1st, 2nd, 3rd, 4th, 6th, 7th, 8th, 9th, 14th, 15th, 16th and 17th arrondissements) and some communes of Hauts-de-Seine (e.g. Nanterre, Neuilly, Puteaux)	Zone 1: Paris and communes of Hauts-de-Seine.
Zone 2: other communes located in Hauts de Seine and Yvelines	Zone 2: Communes belonging to the urban unit of Paris, except Paris and communes of Hauts-de-Seine. <i>N.B. As per the Annual Tax on Offices, the urban unit of Paris corresponds to Paris and its suburbs drawn up by INSEE. It will be determined by joint order taken by the ministers in charge of Economic Affairs and the Budget (see 1.3 above).</i>
Zone 3: Paris (5th, 10th, 11th, 12th, 13th, 18th, 19th and 20th arrondissements), Seine Saint Denis department (save listed exceptions) and Val de Marne department (save listed exceptions), other communes in Hauts de Seine, Yvelines as well as certain communes of Essonne, Val d'Oise and Seine et Marne	Zone 3 : Other communes in the Paris Region <i>N.B.: Now, the Redevance is applicable in all communes in the Paris Region, because of the listed exceptions removal.</i>

N.B.: Zoning will be finalized only after publication of the ministerial order which will determine suburbs belonging to the urban unit, so that the settlement of the Redevance will be postponed accordingly.

2.3 New amounts

As a reminder, the Redevance is based on the useful floor space provided for the construction. Article L. 520-5 of the PC, as lastly drafted, provides that its amount is calculated by the State services in charge of planning in the department.

Before the RFL 2010 no. 4, the amounts (and perimeters) of the Redevance were determined by Decree taken in Conseil d'Etat (Article L. 520-3 of the PC). Now, new amounts (also increased of

40% approximately) will be updated by ministerial order taken by the minister in charge of Economic Affairs every year on 1st January according to the last National Cost of Construction Index published by INSEE.

Prior to 1st January 2011	From 1st January 2011
<p>Amounts of the Redevance to be paid per square meter on useful floor space constructed or converted, determined as follows :</p> <p>Zone 1: 244 €</p> <p>Zone 2: 152 €</p> <p>Zone 3: 61 €</p>	<p>Amounts of the Redevance to be paid per square meter on useful floor space constructed or converted, determined as follows :</p> <p>Zone 1: 344 €</p> <p>Zone 2: 214 €</p> <p>Zone 3: 86 €</p>
	<p>Amounts are reduced by 65% for commercial premises and by 85% for storage premises. They would be calculated as follows:</p> <ul style="list-style-type: none"> ➤ For commercial premises, 120.40 € in Zone 1 and 74.90 € in Zone 2 ➤ For storage premises, 51.60 € in Zone 1 and 32.10 € in Zone 2
	<p><i>NB: The new drafting of Article L. 520-3 of the PC seems to apply the reduced amount of the Redevance only to premises located in Zones 1 and 2.</i></p>
	<p><i>However, pursuant to Mr Patrice Lallement of the "Bureau de la fiscalité de l'aménagement durable" (MEDDTL) in a telephone conversation of 31 January 2011, this new drafting is constituting a single error ("erreur matérielle") so that the reduced amounts of the Redevance would apply also on premises located in Zone 3.</i></p>
	<p><i>The amounts would be calculated as follows: 30.10 € for commercial premises and 12.90 € for storage premises.</i></p> <p><i>Bearing in mind that these reduced amounts result from</i></p>

Prior to 1st January 2011	From 1st January 2011
	<i>a Finance Act, another (legal) text having the same nature needs to take place for supporting the above meaning.</i>
	Following the example of the Annual Tax on Offices, communes eligible to receive both DSU and FSCIF, will benefit from rate applicable in Zone 3 (see 1.3 above).

2.4 Redevice exemptions

Bearing in mind the Redevice having its scope extended, how do apply the PC provisions which provide some exemptions⁷ and/or reductions of the Redevice amount in accordance with the nature of the premises created or the operation carried out? As regards zones under reduced amounts, see 2.3 above.

1. Garages

The 4th indent of Article L. 520-7 of the PC, as drafted before the RFL 2010 no. 4, exempted from the Redevice, the garages, i.e. premises assigned to the parking of vehicles of any nature (*Circular no. 86-12 of 31 January 1986, no. 212*). However, Article 31, II, A of the RFL 2010 no. 4 in its paragraph 4^o expressly **repeals** the reference to this **exemption** and its paragraph 1^o **places annexes** to offices, research, commercial and storage premises under the scope of the Redevice.

If legal authors agree to consider the Redevice as applicable to the garages, situation remains unclear as regards the **non covered parking spaces**. The brief statement of the amendment no. 7 introduced by Gilles Carrez, French Deputy, on 2 December 2010 proposed to extend the scope of the Redevice to the commercial and storage premises **as well as parking**, without providing any other details.

On its side, the new drafting of Article L. 520-1 refers to the definition of commercial and storage premises as provided in Article 231 *ter* of the CGI relating to the Annual Tax on Offices but not to the definition of parking space areas provided in the same article. Furthermore, the Circular of 31 January 1986 describes the garages as premises assigned to the parking of vehicles of any nature (*Circular no. 86-12 of 31 January 1986, no. 212*), so it suggests that the removal of the Redevice will concern covered spaces. However, for obtaining more details in this respect, legal modification of the texts would be necessary.

2. Demolition-Reconstruction (Article L. 520-8 of the PC)

⁷ As regards exemptions resulting from the users' quality (e.g. members of liberal professions, public service, local authorities, etc.), the amendments brought to the Redevice regime by the RFL 2010 no. 4 do not give rise any particular remarks.

Pursuant to Article L. 520-8 of the PC, that the RFL 2010 no. 4 did not amend, the operations for building reconstruction, where a building permit is delivered **prior to 1st January 2014**, are liable to the Redevance **only as regards square meters of the useful floor space which exceed the useful floor space of the building existing before reconstruction**.

- *N.B.: Indeed, Article 151 of the rectifying finance law for 2006 no. 2006-1771 of 30 December 2006 has introduced this exemption with the purpose to boost the towers refurbishment.*

This is a temporary exemption of the Redevance, made on operations subject to building permits.

In order to determine the outstanding Redevance, Article L. 520-8 only refers to the excess useful floor space with regards to the existing space **before reconstruction** of the building and does not refer to the amount of the Redevance already paid, unlike converting the use of existing premises (see 3 of 2.4).

Accordingly, existing commercial and storage premises would benefit from Redevance exemption, provided that the square meters to be demolished and reconstructed do not exceed the existing useful floor space, as it was initially provided for offices and research premises.

3. Converting the use of existing premises (Article L. 520-9 of the PC)

Following the example of offices and research premises, the RFL 2010 no. 4 considers that **converting** into premises having commercial or storage use, the premises previously used for another use, corresponds to **a construction taxable to Redevance**.

Article L. 520-9 provides then a Redevance exemption as regards conversions in use carried out in urban free zones (“*zones franches urbaines*”). It also provides deduction of the redevance initially paid from the amount of the Redevance due under conversions in use agreed by a permit under Article L. 510-1 of the PC.

(a) Conversions in urban free zones (Article L. 520-9, last indent)

Conversions carried out in urban free zones are not taxable to Redevance. The RFL 2010 no. 4 extends this exemption to the research, commercial and storage premises whereas the sole offices were benefiting such exemption previously.

(b) Conversions agreed by the office development permit (“*agrément bureau*”) (Article L. 520-9, 3rd indent)

Indent 3 of Article L. 520-9 of the PC allows deducting from the Redevance amount the redevance initially paid when the following conditions for converting existing premises are fulfilled (*Circular no. 86-12 of 31 January 1986, no. 532*):

- (i) This is by conversion and not reconstruction that the existing premises convert their use (see 2 of 2.4 above relating to demolition/reconstruction operations).
- (ii) The permit under Article L. 510-1 of the same code (office development permit) agrees the conversion of premises taxable to Redevance: it means, for instance, to convert existing premises into offices representing more than 1,000 m² or into storage premises of more than 5,000 m² (Article R. 510-6 of the PC).
 - *N.B.: However, Circular no. 86-12 of 31 January 1986 specifies that the amounts of the redevance paid before will be also attributed to operations exempted from office development permit because of the **thresholds** provided to in Article R. 510-6 of the PC.*
- (iii) The existing premises must be converted into premises, a taxable category of which has a redevance amount higher than before: i.e., the amount applying to each square meter of the premises at their creation will be lower than the one applying at their conversion.

Further to the RFL 2010 no. 4 amendments brought to the Redevance regime (in particular as regards its scope and its amounts), the developer must take into account several parameters to establish the budget of his conversion operation:

- As regards spaces converted into offices or research premises, he will pay the gap between the redevance paid already before conversion and the current amount, which will represent a substantial increase for Redevance item, bearing in mind in particular the corresponding increase of the amounts of 40% at least.
- As regards spaces converted into commercial or storage premises, he will pay the total amount of the Redevance because these spaces were not liable to any redevance payment by 1st January 2011.

Furthermore, in the future, one may wonder whether the premises intended for store ("*magasin de vente*"), which were exempted from permit because of their nature and not in applying the threshold provided in Article R. 510-6 of the CU, will rightfully benefit from this redevance deduction.

4. Exemption in case of sinister or compulsory purchase – Article R. 520-9 of the PC

As a reminder, Article L. 520-6, last indent of the PC gives right to the owners of premises destroyed by sinister or expropriated in the public interest to restore by Redevance free-allowances an **useful floor space equivalent to the space of the premises destroyed or expropriated**.

Coming under Article L 520-6, Article R. 520-9 provides the enacting conditions of the Redevance exemption as follows:

- Restoration of premises destroyed by loss or expropriated in the public interest is carried out by the initial owner or, in case of transfer by inheritance, the beneficiary of this transfer.
- The loss or expropriation must prevent actual economic activity.

N.B.: Pursuant to Circular no. 86-12 of 31 January 1986 (no. 23), the exemption cannot be granted to unoccupied, vacant, abandoned or disused premises before loss or expropriation.

- Restoration operation must be the object of a building permit application filed at the latest **within eighteen months** following the loss or expropriation, as far as an useful floor space **equal** to the one of the premises destroyed or expropriated.
- Restoration must be carried out, **without change of allocation**, either in the same place, or in a town where the redevance amount is not higher than the amount applicable in the town where the premises destroyed or expropriated were located.

These provisions would continue to apply as is because the RFL 2010 no. 4 did not amend Article L. 520-6, last indent and Article R. 520-9 of the PC was not the object of any other modification from this date. Furthermore, these texts, expressly, do not refer to a category of premises so that commercial and storage premises may benefit from this exemption of Redevance.

5. Office spaces deducted from the Redevance tax base – Article R. 520-1-2 of the PC

Article R. 520-1-2, 2° of the PC deducts from the Redevance tax base, in stores and commercial warehouses, premises having an office use up to a limit of 5% of the total area of all premises constructed.

Subject to a further modification of the text, this 5% deduction would continue to apply although the commercial premises (retail) and the storage premises (commercial warehouses) are now taxable.

On the other hand, the RFL 2010 no. 4 challenges the "exonerative" effects of case law on bank agencies. Administrative judge⁸ considered so far office premises directly accessible to customers for investing and selling to the public financial products and services as commercial premises and not offices adjoining commercial premises. Accordingly, this qualification would allow them to be out of the scope of the Redevance.

⁸ TA Paris, 6 July 2007, no. 0417005, Caisse de Crédit Mutuel « Paris 5/6 Saint Michel » ; TA Melun, 29 April 2009, no. 0507246/4, Caisse de Crédit Mutuel de Vincennes.

But, from 1st January 2011, qualifying bank agency offices into commercial premises (which are now taxable) will no longer allow them to waive the Redevance regime.
