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The Luxembourg parliament has introduced a draft bill in order to comply with the recommendations of the European Commission.

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This decision puts an end to the tax on the market value of immovable property owned in France by non-resident legal entities.

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## Scheduled abolition of capital duty on the raising of capital

On 4 December 2006, the European Commission proposed the progressive abolition of capital duty by 2010 in order to foster the growth of European Union companies. That proposal called for a phasing out in two steps:

- ◆ a limit of 0.5% on the rate of capital duty by 2008
- ◆ a phasing out of such tax by 2010.

To comply with that recommendation, the Luxembourg Parliament introduced on 10 October 2007 a bill intended to reduce the capital duty from 1% to 0.5% as at 1 January 2008 and to abolish it entirely by 2010 at the latest.

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## Agreement between Luxembourg and France for the prevention of double taxation effective from 2008

The double taxation prevention agreement concluded between Luxembourg and France is distinctive in that it does not include a definition of immovable property income conforming to the OECD model. This led to two legal precedents, one in France, the other in Luxembourg, which have resulted in a truly exceptional situation where income from immovable property owned in France by a Luxembourg company is subject to tax neither in France nor in Luxembourg provided the Luxembourg company has no permanent establishment in France.

To put an end to this non-tax situation, a second amendment to the agreement between the two countries was signed in November 2006. It stipulates that income from immovable property located in France will be subject to tax there. However, it must be noted that unlike agreements recently renegotiated with France, the amendment does not provide for taxation on gains deriving from the alienation of shares in a company the main assets of which consist in immovable property located in France. As a result, Luxembourg remains an attractive location for holding immovable property situated in France through local companies.

With both the Luxembourg Chamber of Representatives and the French Senate having just approved the new amendment this past September, it should come into force before year end provided all notification procedures have been accomplished. This amendment should be applicable to immovable property income as from 1 January 2008.

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## ECJ ruling on the 3% tax in France on 11 October 2007 (Case C-451/05)

Following the ECJ Attorney General's conclusions, covered in our first-half Flash News this year, the European Court of Justice issued a much-awaited ruling this 11 October. That case affects the existence of the tax on the market value of immovable property owned in France by non-resident companies and the compatibility of that tax with European law.

The ECJ ruling confirmed that the tax is incompatible with article 73B of the EC Treaty (now article 56 EC) since companies established in France are exempt from the tax whereas the exemption for foreign companies is subject to particular conditions.

The full text of the ruling is available at the ECJ site (<http://www.curia.europa.eu/fr/>).

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