CIRCULAR N° 002 /MINFI/DGI/LC/L OF 31 JANUARY 2012 SPECIFYING THE TERMS OF APPLICATION OF DECREE NO. 2011/0975/PM OF 04 APRIL 2011 SETTING THE TERMS OF REVALUATION OF DEPRECIABLE AND NON-DEPRECIABLE FIXED ASSETS OF COMPANIES

THE DIRECTOR GENERAL

To

- ***The Head of the National Inspectorate of Services;***
- ***The Division Heads;***
- ***The Heads of the Regional Tax Centres;***
- ***The Deputy Directors and equivalent;***
- ***The Department Heads and equivalent;***

The 2010 Finance Law instituted the legal revaluation of capital assets to allow companies to present balance sheets that reflect the economic reality of the moment. Some of the provisions of this system were amended in the 2011 Finance Law, and its purpose is also to improve the financial information of companies with a view to strengthening their borrowing capacity. Finally, this revaluation is a real tool to foster investment.

The terms and conditions of application of this revaluation are laid out in Decree No. 2011/0975/PM of 4 April 2011.

This circular, which provides useful details for the effective implementation of this mechanism, is structured around themes such as the scope of the revaluation, the terms and conditions of its implementation, the handling of the revaluation difference, as well as disclosure requirements and the applicable sanctions regime, if any.

I - THE SCOPE OF LEGAL REVALUATION

A- Persons automatically subject to revaluation (Articles 2, 3 and 5)

Natural or legal persons meeting the following cumulative criteria are automatically subject to the legal revaluation of tangible and intangible capital assets:

- fall under the actual tax regime and have generated a turnover greater than or equal to one hundred million CFA francs as of 31 December 2010 or during the two previous financial years:

Individuals or legal entities whose annual turnover excluding VAT is greater than or equal to fifty million (50,000,000) CFA francs must be considered as falling under the actual tax scheme.

However, in addition to being subject to the actual tax scheme, the persons concerned must have generated a turnover excluding VAT of at least CFA F 100 million for the 2010 financial year or during the 2009 or 2008 financial years. For the assessment of this criterion, you shall refer to the turnover retained for the calculation of the license fee or, if necessary, to the turnover reconstituted during an audit of documents, a spot check or an accounting audit, whether partial or general;

- Be engaged in an industrial, commercial, agricultural, real estate, mining or craft activity, or a liberal profession in Cameroon :

Persons subject to the obligation to revalue their fixed assets must fall within one of the sectors of activity mentioned above. From this enumeration, it should be noted that only natural or legal persons exercising a profit-making activity are covered. Sole proprietorships, commercial companies, including companies with public capital or semi-public companies are therefore included in the scope of the revaluation;

On the other hand, those persons whose purpose in their activities is not to make a profit do not satisfy this condition and therefore are not automatically subject to revaluation. This is the case for associations, legal entities under public law such as the State, decentralised local authorities and public administrative establishments;

Legal entities that are fiscally transparent and have opted for corporation tax, such as civil companies or general partnerships subject to corporate income tax, are also automatically subject to revaluation.

B – Persons subject to revaluation by option (Articles 3, 4, 6)

The regulations give some companies that are not automatically subject to revaluation the possibility of opting for the legal revaluation of their capital assets. These are :

- companies benefiting from a stabilised tax regime;
- companies benefiting from a preferential tax regime;
- companies having freely revalued their capital assets during the four (4) financial years preceding 2011;
- companies with a turnover of less than one hundred (100) million.

1 – Companies with a preferential tax regime

A company benefiting from a preferential tax regime is defined as a company that enjoys, within the framework of a regime arranged a priori and over a multi-year period, a total or partial exemption from income tax or more favourable income tax calculation methods.

Consequently, companies approved under the special tax regime for structuring projects, those approved under the regimes of the Investment Code, in particular the reinvestment regime, the basic regime, the Small and Medium-sized Enterprises (SME) regime and the strategic companies regime should not be considered as having the possibility to opt or not to opt for the legal revaluation.

2 Companies with a stabilised tax regime

These are companies which, by virtue of the law or a special agreement with the State, have a stability clause guaranteeing the stability of the applicable tax regime.

The stability clause is a contractual provision inserted in a contract concluded with the State of Cameroon stating that the State undertakes not to modify the fiscal terms of the contract throughout its execution.

It is important to take note that the stability clause shall in no case be assumed. It must in fact be expressly included in the contract in question. This is the case for oil, mining and gas contracts, establishment agreements, concession contracts, etc.

However, the clause expressly stating that a company is exempt from any levy or tax existing or to be created after the entry into force of the mechanism providing for the said clause also constitutes a stability clause.

I would also like to point out that the benefit of a preferential or stabilised tax regime is only taken into account for the exercise of the right of option if the activities of the company concerned are covered by the agreement providing for stability or the approval granting the derogatory regime. Consequently, you should ensure that the legal revaluation regime is systematically applied to capital assets used for activities that do not fall within the scope of the stabilised or preferential tax regime.

Finally, it is important to note that when the preferential or stabilised tax regime ends before the legal revaluation period, i.e. before 31 December 2013, the company concerned automatically becomes subject to the legal revaluation, even if its decision not to opt for it had already been notified to the Director General of Taxation.

3 - Companies that have carried out a free revaluation of their capital assets during the previous four (04) fiscal years preceding 2011

The legal revaluation is optional for companies that have carried out a free revaluation during the four financial years preceding the 2011 financial year. These are the 2007, 2008, 2009 and 2010 financial years.

It should be noted, however, that this option can only be exercised on condition that the capital gain resulting from the free revaluation that was carried out has been declared and the related taxes duly paid. You should therefore ensure that any company invoking the option on the basis of a previous free revaluation provides proof of the declaration and payment of the capital gains tax. As for payment, you must ensure that the said capital gain has indeed been taken into account in the determination of the result subject to corporate tax for the year in which the free revaluation was carried out.

If, on the other hand, it appears that the company in question has not declared and paid the duties normally due on the capital gain, the legal revaluation is automatically applicable to it, without prejudice to the appropriate legal proceedings, which I urge you to implement to ensure the recovery of the sums previously due.

On the other hand, companies that have carried out a partial free revaluation are required to carry out the revaluation only for the items that have not been freely revalued.

4 - Companies with a turnover of less than CFA F one hundred (100) million CFA

Although falling within a field of activity eligible for revaluation, a company that does not meet the above-mentioned turnover condition (100 million CFA francs) cannot be bound by the mandatory nature of the revaluation. However, it may opt for this revaluation. This is the case for companies that are attached to approved tax management centres (*Centre de Gestion Agréé*) because of their turnover that cannot exceed the threshold of one hundred (100) million CFA francs.

5 – Terms and conditions for exercising the option and its consequences

Companies wishing to voluntarily carry out the legal revaluation must notify their option to the Director General of Taxation in writing by 31 December 2013 at the latest. The declaration of legal revaluation equates a notification of the option taken by the company.

The option taken is irrevocable. It entails the obligation to observe all the conditions attached to the legal revaluation, just like companies that are automatically subject to it. These include both the reporting obligations and the obligation to pay the 5% tax on the revaluation variance. Similarly, the conditions attached to the exemption from capital gains tax are imposed on the company that has opted for the legal revaluation.

In the specific case of credit institutions and insurance companies, you will note that notwithstanding the derogatory standards which they are subjected to within the context of their operations (COBAC or CIMA standards), they are required to carry out the legal revaluation of their capital assets.

C - Persons or entities excluded from the revaluation (Article 7)

Not all economic entities are subject to the revaluation of capital assets. Those listed below are excluded.

1 - Branches of companies whose head offices are located outside Cameroon

Branches of foreign companies domiciled outside Cameroon are prohibited from revaluing their capital assets. A branch shall be understood as a company directly attached to another company. Unlike the subsidiary, the branch shall not have a legal personality distinct from its "parent company". It is a simple decentralised structure. For example, unlike a subsidiary, the parent company and the branch have joint accounting.

However, Cameroonian companies are required to revalue capital assets allocated to their branches located abroad as soon as the said assets appear in the balance sheet and inventory register of their parent company based in Cameroon.

2 De facto and joint venture companies

De facto companies and joint ventures are excluded from the legal revaluation of capital assets. Indeed, although they have a fiscal status, these entities do not have a legal personality and therefore do not have any assets liable to be revalued.

In accordance with the provisions of article 864 of the OHADA Uniform Act on Commercial Companies and Economic Interest Groups, a company is considered as a de facto company if it is composed of two or more natural or legal persons acting as partners without having formed between them one of the companies recognised by OHADA law.

There is also a de facto company where two or more natural or legal persons have formed a company between them without completing the legal formalities required for the establishment of a company or have formed between them a company not recognised by OHADA law.

A joint venture company is a company whose members have agreed not to register in the trade and personal property credit register. It therefore has no legal personality and is not subject to publication. The participating partners, also known as "participants", set the terms of their cooperation amongst themselves, which may take the form of the provision of money or business assets.

3 – Tax-transparent companies have not opted for corporate tax

When they have not opted for corporate tax (is), tax-transparent legal entities are excluded from the legal revaluation of capital assets.

Tax-transparent legal entities shall mean all those whose income is taxable in the hands of the partners after distribution. This category includes :

- general partnerships ;
- simple limited partnerships;
- civil societies ;
- financial unions;
- economic interest groups (EIGs);
- joint initiative groups (JIGs).

On the other hand, those companies that have opted for corporate tax in accordance with the forms and procedures provided for this purpose are automatically subject to revaluation.

As the option exercised is irrevocable, you will ensure that partnerships subject to corporate tax do indeed revalue their capital assets.

D. Items subject to mandatory revaluation (Articles 2 and 7).

1 - Nature of the assets to be revalued

In principle, legal revaluation applies to all tangible and intangible capital assets, both depreciable and non-depreciable.

As a reminder, capital assets in the OHADA accounting system refer to all tangible and intangible items intended to serve the company's business on a long-term basis.

Tangible capital assets include material assets. They include those acquired through full ownership, bare ownership, usufruct and leasing.

Intangible assets include intangible items such as software, patents, licences and trademarks.

Depreciable capital assets concern any capital asset belonging to the operation and effectively subject to depreciation through use or time.

Non-depreciable capital assets are those that are not subject to depreciation through use or the effect of time. They include in particular land, goodwill and leasehold rights.

2 – General characteristics of assets to be revalued

In order to be revalued, capital assets must meet the following cumulative characteristics:

- be the property of the company ;

- appear on the assets side of the reference balance sheet of the revaluation, which is that of 31 December 2010;

- appear in the inventory register of the revaluation year listed and initialled by the president of the competent court or by the judge delegated for this purpose, as provided for in articles 13 and 14 of the OHADA Uniform Act on Commercial Law.

Thus, it is imperative for companies to carry out a prior exhaustive inventory of their capital assets before conducting the revaluation.

If, at the end of this inventory, it turns out that capital assets are scrapped or are not found (assets listed in the inventory register, but no longer physically existing), companies will have to request the services of a bailiff for the purpose of making a formal record.

In any event, you should note that capital assets not appearing in the inventory register are exempt from revaluation. The same applies to capital assets acquired after the reference year (2010 financial year).

The following are also included among revaluable tangible capital assets:

- buildings built on long-term leases, except for those where the lease expires before the end of the new depreciation period;

- buildings built on land belonging to all State divisions, provided that the remaining period of the lease or temporary occupancy permit is greater than four (04) years.

E – Assets excluded from revaluation

Although they are tangible or intangible capital assets, some assets are excluded from legal revaluation. These are :

- financial fixed assets, consisting of equity interests, debt securities, other fixed securities and receivables related to these equity interests ;

- capitalised costs which represent expenses or charges incurred that can be shown to be beneficial to the existence and development of the company not only for the current financial year, but also for future financial years. These include architectural, legal and engineering fees, installation costs and capitalised costs arising from loans to finance fixed assets;

- capital assets that are fully depreciated or have a net book value of zero, except for buildings and fixtures ;

- buildings erected by the concession companies on land owned by the State and which must return to the State at the end of the concession;

- outstanding capital assets;

- leased assets on the assets side of the lessee's balance sheet;

- leased assets appearing on the assets side of the lessor's balance sheet, unless the companies opt for the revaluation of these assets;

- goods included in the assets of individual companies, but kept off their balance sheets or considered under the provisions of the General Tax Code as not directly contributing to the operation of these companies.

II - IMPLEMENTATION PROCEDURES FOR THE REVALUATION

A – The revaluation method

1 - The revaluation must be comprehensive and general

The revaluation of capital assets must be neither partial nor phased. As a result, companies revaluing their capital assets may not revalue some assets and not others as they see fit.

Concretely, they have to revalue all their capital assets with the exception of those excluded from the scope of application, as presented above.

Similarly, the revaluation must be a one-off operation. Consequently, the company may not choose to revalue at intervals or over several financial years, even if the phasing period were to remain within the legal three-year period.

It should be noted, however, that in the case of companies that have carried out a free revaluation, the legal revaluation is only made on the items which have not been freely revalued.

2 - The revaluation is carried out on an item-by-item basis

The revaluation is performed item by item for each of the assets entered in the inventory register and listed in the 2010 reference balance sheet.

3 - The deadline for carrying out the revaluation

In accordance with the 2011 Finance Law, companies are allowed a three-year (3) deadline to carry out the revaluation. This period runs from 1 January 2011 to 31 December 2013. During this legal revaluation period, no free revaluation may be carried out by either companies subject to automatic revaluation or companies exempted by option.

B – Determining the revalued amount

The basis for determining the revalued amount consists of :

- the net book value on 31 December 2010 for assets not fully depreciated ;

- the original value or the cost price when they become part of the company's assets, for buildings and fixtures and fittings that have been fully depreciated;

- the revalued amount in the event of an unrestricted revaluation that occurred no later than 31 December 2006.

The revalued amount of each item is obtained by applying the revaluation coefficient as set out in the decree, either to the net book value at 31 December 2010, or to the original value or cost price when they were first recorded in the company's assets for fully depreciated buildings and fixtures, or to the revalued amount in the event of an unrestricted revaluation that occurred no later than 31 December 2006.

In the case of non-depreciable assets, the revaluation is carried out by applying the revaluation coefficients to the net book value, which in this case is the acquisition value.

In addition to these principles, the attention of the departments must be drawn to the fact that the revalued amount should under no circumstances result in a revalued amount higher than the current value of the asset. Where the revalued amount is higher than the current value, the latter is taken into account for the realisation of the revaluation.

In accordance with the provisions of article 42 of the OHADA Uniform Act on the organisation and harmonisation of company accounts, the current value of an asset is an estimated value at the time of valuation, which is assessed by an expert based on the market and the usefulness of the asset for the company's operations.

Three cases are envisaged:

- the case of an asset that has not been fully depreciated;

- the case of a fully depreciated asset;

- the case of a non-depreciable asset.

i. Case of a partially depreciated asset :

Take the case of a 10-year depreciable capital asset acquired in January 2004 for a value of F CFA 100 000 000. Depreciation will have been applied for 7 years (2004, 2005; 2006; 2007; 2008; 2009; 2010).

Calculation of the revalued amount **:**

Purchase price	: 100 000 000
Depreciation (7 years)	: 70 000 000
Net book value (as of 31/12/2010)	: 30 000 000
Coefficient to be applied (2004)	: 1.62
Revalued net book value	: 48 600 000 (30 000 000 x 1,62)
Revaluation variance	: 18 600 000 (48 600 000 -30 000 000)

NB: The above revalued net book value may differ from the inventory value. If this inventory value is, for example, F CFA 39,000,000, the coefficient used k=1.62 set by the decree will be compared to a calculated

coefficient which will be equal to k'=1.3, (i.e.: 39,000,000/ 30,000,000). At the end of this calculation, the value of 39,000,000 will be retained and the k replaced by k' as the fair value of the asset. The revaluation variance will then be F CFA 9,000,000 instead of 18,000,000.

ii. Case of a fully depreciated asset :

Let's take the case of a building erected in 1990 at a cost price of F CFA 600,000,000, depreciable over 20 years.

Calculation of the revalued amount :

Purchase price	: 600 000 000
Depreciation	: 600 000 000
Net book value	: 0
Coefficient to be applied	: 2, 07
Revalued net book value	: 1 242 000 000 (600 000 000 x 2,07)
Revaluation variance	: 642 000 000 (1 242 000 000 - 600 000 000).

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F CFA 300 000 000 au lieu

Take the case of a land acquired in January 2004 whose net book value before its revaluation on 31 December 2010 was CFA F 100,000,000. The land is sold on 31 December 2012 for CFA F 125,000,000.

Purchase price	: 100 000 000
Net book value (as of 31/12/2010)	: 100 000 000
Coefficient to be applied (2004)	: 1.62
Revalued net book value	: 100 000 000 x 1,62 = 162 000 000
Revaluation variance	: 62 000 000 (162 000 000 - 100 000 000).

C - The calculation and tax treatment of depreciation after a revaluation

The revaluation of an asset should in no way change its original depreciation plan. Depreciation annuities for financial years beginning on the date of revaluation are calculated in proportion to the number of years remaining, in accordance with the initial depreciation plan for each item.

Thus, with reference to the first practical case above, the new annual depreciation instalments for this asset will be obtained as follows: revalued net book value / remaining period. i.e.: 48,600,000 / 3 = 16,200,000.

This results in additional depreciation to be booked as an expense of : 6,200,000 (new annuity - old annuity = 16,200,000 - 10,000,000).

6,200,000 (new annuity - old annuity = 16,200,000 - 10,000,000). Normal depreciation charges plus additional depreciation resulting from the revaluation are therefore applied to the net revalued amount, applying the depreciation plan initially adopted for the remaining period.

For fully depreciated assets, the depreciation schedule to be followed is that set out in Article 7 § D of the General Tax Code. Thus, with reference to the practical case presented above, the new value will have to be depreciated over a period of 20 years, i.e. additional depreciation charges of CFA F 32,100,000 to be booked annually (642,000,000/20).

Finally, it should be noted that the additional depreciation resulting from the revaluation is, subject to the commitment to reinvest the entire revaluation capital gain, deductible from taxable income for corporation tax purposes. As for the normal allowances corresponding to the portion of the former annuities, they are deductible without any restriction.

D – Depreciation of new capital assets (Article 15)

When a company has revalued its capital assets, this revaluation has no impact on the depreciation of acquisitions made after its completion. This is also the case for new capital assets acquired as part of the reinvestment of revaluation variances, which will be depreciated on the basis of their acquisition value and at the depreciation rates set out in Article 7 of the GTC.

E – Calculation of capital gains or losses (Article 16)

In the event that a revalued asset is sold by the company, the capital gain or loss on the sale of capital assets is obtained from the net revalued amount as defined above. This capital gain or loss is calculated differently depending on whether the assets are depreciable or non-depreciable.

1 - Calculation of the capital gain or loss on the transfer of depreciable capital assets

When a depreciable capital asset is sold after the revaluation has been carried out, the capital gain or loss on sale is calculated as the difference between the net book value at the date of sale and the price of the sale. This net book value is defined as the revalued amount of the capital asset less any depreciation since the revaluation was carried out.

Tableau de réévaluation des immobilisations

...tation du coefficient légal (données du bilan de référence et décret)								Valeur à réévaluer						Ecart de rééval	Annuité			
Immobilisation																		
...ature	VO	Tx	Annuité	Durée	Amort	VNC	Coef	VNC Ajustée	Val act inventaire	Coef corrigé	VO réev	Amort réev	VNC réév		Durée restant à amortir	supplément	totale	vérifiée
	(v)	(t)	(e)=(v)x(t)	(n)	(a)=(e)x(n)	(b)=(v)-(a)	(k)	(b)x(k)	(b')	(k')=(b')/(b)	(d)	(d)=(a)x(k')	(h)=(b)x(k')	(i)=(h)-(b)	n'=(100/t)-n	(f)=(i)/n'	(g)=(e)+(f)	(g)=(d)x(t)

Ce tableau global appelle à la répartition fonctionnelle ci-après :

Volet 1 : Prise en compte de la valeur actuelle ou la juste valeur par détermination du k'

Bilan de référence								Coefficient	Rapprochement à la VA		
...	Nature	VO	Taux	Annuité	Durée	Amortissements	VNC		VNC ajustée	Val. act. inventaire	Coefficient corrigé
		(v)	(t)	(e)=(v)x(t)	(n)	(a)=(e)x(n)	(b)=(v)-(a)	(k)	(b)x(k)	(b')	(k')=(b')/(b)

...t 2 : Détermination de l'écart de réévaluation

Val d'utilité ou valeur réévaluée			Ecart de réévaluation
...ur d'origine ...éévaluée	Amortissements réévalués	VNC réévaluée	
(d)	(d)=(a)x(k')	(h)=(b)x(k')	(i)=(h)-(b)

Volet 3 : Vérification par la nouvelle annuité

Annuité			
Durée restant à amortir	supplément	totale	vérifiée
n'=(100/t)-n	(f)=(i)/n'	(g)=(e)+(f)	(g)=(d)x(t)

Let's take the above case of a capital asset not yet fully depreciated at the time of the revaluation and depreciable in 10 years, acquired in January 2004 for a value of F CFA 100,000,000.

Calculation of the revalued amount :

Acquisition value: CFA F 100,000,000

Depreciation (7 years): 70 000 000

Net book value (at 31/12/2010): 30,000,000

Coefficient to be applied (2004): 1.62

Revalued net book value: 48,600,000 (30,000,000 x 1.62)

Revaluation variance: 18,600,000 (48,600,000 - 30,000,000)

On December 31, 2012, the company will sell the asset for 35,000,000 CFA francs. As of December 31, 2010, the date on which the revaluation of its capital assets was carried out, this asset had a revalued net book value of CFA F 48,600,000, with a remaining depreciation period of three years in accordance with the initial depreciation plan. The asset will have to be fully depreciated by December 31, 2013, i.e. an annual depreciation of 48,600,000/3 = CFA F 16,200,000.

Determination of the net book value of the capital asset on the date of the transfer :

Net book value at the date of transfer = Revalued net amount - depreciation taken since the revaluation.

Net depreciation: 48,600,000 - (16,200,000 x 2) = CFA francs 16,200,000.

Calculation of capital gain or loss on transfer :

Capital gain or loss on transfer = Transfer price - Net book value at the date of transfer.

Net depreciation: 35,000,000 - 16,200,000 = 18,800,000 F CFA

The capital gain on the disposal of the capital asset as of December 31, 2012 is 18,800,000 CFA francs.

2 – Calculation of the capital gain or loss from the transfer of non-depreciable assets

Insofar as the value of non-depreciable capital assets remains that of their balance sheet entry until a revaluation has taken place, the new net book value will be the revalued net amount. This amount, which cannot be changed, will be the same on the balance sheet at the time of the transfer, even though the company may set aside provisions for depreciation.

The capital gain or loss on transfer will be calculated as the difference between the net book value at the date of transfer, which will be equal to the revalued net amount as defined above, and the price at which the capital asset was sold.

Example :

Take a piece of land acquired in January 2004 whose net book value before its revaluation on December 31, 2010 was 100,000,000 CFA francs. This land will be sold on December 31, 2012 at a price of CFAF 125,000,000. The capital gain or loss arising from this transaction is being determined.

Calculation of the revalued amount :

Acquisition value : 100 000 000

Net book value (as of 31/12/2010) : 100 000 000

Coefficient to be applied (2004) : 1.62

Revalued net book value : 100 000 000 x 1,62 = 162 000 000

Revaluation variance : 62 000 000 (162 000 000 - 100 000 000).

Determination of the capital gain or loss on the land sale :

Capital gain or loss from the sale – value of the sale =

Sale price – net book value at transfer date.

Net depreciation: 125 000 000 – 162 000 000 = -37 000 000.

The capital loss on the land sale as of 31 December 2012 is 37 000 000 CFA francs.

III - PARTICULAR CASE OF A LEGAL REVALUATION FOLLOWING A FREE REVALUATION (ARTICLE 18)

A – Free revaluation performed at the latest on 31 December 2006

The decree of 4 April 2011 gives companies that have freely revalued their capital assets by 31 December 2006 at the latest, the possibility to carry out the legal revaluation using the freely revalued amounts. To this end, the latter must be attached to the legal revaluation declaration:

- the documents used and attached to the statistical and tax declaration of the free revaluation fiscal year. These include the reference balance sheet used, the inventory register considered, the revaluation coefficients applied, etc.

- the minutes of the general assemblies or other similar bodies that have approved the terms and conditions of the free revaluation;

- a certificate from the Director General of Taxation justifying the tax declaration of the capital gains generated by the free revaluation. The capital gains in this case correspond to the revaluation variance obtained at the end of the free revaluation and which must be declared.

It should be recalled that the above-mentioned items must be produced cumulatively. Should this not be the case, the legal revaluation must be carried out without taking into account the free revaluation that occurred previously.

B – Free revaluation performed starting 1st January 2007

Companies that have freely revalued their capital assets as of 1 January 2007 benefit from the option provided for in Article 6 of the decree in question. However, this option is only taken into account by the tax authorities if :

- the taxes issued in respect of the capital gain resulting from the revaluation have been declared and paid;

- the company has provided the administration with proof of payment of the tax on the revaluation variance, such as receipts or, where applicable, proof of exemption from payment of the said levy, in particular a letter of exemption.

Where these conditions are not met, the company is required to perform the legal revaluation.

C - The revaluation method for companies having performed a free revaluation

The free revaluation must be justified item by item in a table annexed to the legal revaluation declaration. Where appropriate, items that have not been freely revalued are automatically subject to the legal revaluation.

This justification is made by specifying for each item the net book value at the date of the free revaluation, as well as the revaluation coefficient used to determine the freely revalued net amount.

The legal revaluation of depreciable and non-depreciable capital assets of companies that have performed a free revaluation by 31 December 2006 at the latest is carried out by applying the legal revaluation coefficient to the freely revalued net amount.

The new revalued net book value is equal to the difference between the new revalued amount and the revalued depreciation.

D - Tax treatment of depreciation after legal revaluation of freely revalued assets

The initial depreciation plan for each asset remains unchanged notwithstanding the free revaluation.

Depreciation annuities for fiscal years beginning on the date of the free revaluation will be calculated in proportion to the number of years remaining, in accordance with the initial depreciation plan for each item.

IV – THE REVALUATION VARIANCE

The revaluation variance is defined as the difference between the revalued amount and the net book value of the assets before revaluation. This difference constitutes a capital gain to the extent that the revaluation results in an increase in the value of the said assets.

A – Accounting treatment of the revaluation variance (Articles 12 and 20)

• Accounting for the revaluation variance

The amount of the revaluation variance is recorded directly on the liabilities side of the balance sheet in account 1061 entitled "Legal revaluation variance", with the counterpart entry on the assets side of the balance sheet of the revalued assets at their revalued net book value. The "legal revaluation difference" account is subdivided into sub-accounts specific to the categories of revalued assets:

- legal revaluation variance on non-depreciable capital assets (business assets, land).

- legal revaluation variance on depreciable capital assets.

Illustration of accounting entries to record the increase in assets resulting from revaluation.

ASSETS	LIABILITIES
21, 22, 23, 24 : Capital assets (at their revalued amount)	**1061 :** Legal revaluation variance on depreciable asset **1061 :** Legal revaluation variance on non-depreciable asset

• Specific case of the accounting of the provision for depreciation

When the depreciation of a non-depreciable capital asset occurs after revaluation, a provision for depreciation is established by the company.

A provision for depreciation is the recording of a reduction in the value of an asset, generally a non-depreciable capital asset such as land and business assets.

This provision for depreciation is charged against the legal revaluation variance if it has not yet been incorporated into the capital as specified in the terms and conditions and deadlines set out below. It is recorded as a deductible expense under the terms and conditions provided for by the General Tax Code.

In other words, the loss in value of the non-depreciable asset could lead to a reduction in the revaluation variance if the latter has not yet been incorporated into the capital.

• Subsequent treatment of the revaluation variance

The revaluation variance must be fully incorporated into the capital by 31 December 2014 at the latest, either by distribution of free shares or units to shareholders in proportion to the structure of the capital, or by increasing the nominal value of the securities.

It should be noted that the revaluation variance incorporated into the share capital may not be reduced for a period of five (5) years.

However, this prohibition to reduce the capital within the above-mentioned period is not applicable to companies whose shareholders' equity is less than half of the corporate capital, the latter being required to reconstitute it at the level of the minimum corporate capital, in accordance with the provisions of the OHADA Uniform Act relating to commercial companies and EIGs.

In addition, it is recalled that pursuant to the provisions of article 546 of the GTC, deeds increasing the capital following the incorporation of the revaluation variance will be recorded free of charge without levying graduated stamp duty.

Likewise, the incorporation of the revaluation variance into the capital is not considered as distributed income and therefore escapes taxation in the category of income from movable capital, pursuant to the provisions of article 37 of the GTC.

Incorporating the revaluation variance into the share capital applies, irrespective of the legal provisions in force or special agreements or standards.

However, companies that do not incorporate the revaluation variance must proceed to a reversal by recording miscellaneous income subject to corporate tax, which is offset outside the accounts.

However, if it turns out that the revaluation variance has neither been incorporated into the share capital within the time limit set, i.e. after 31 December 2014, nor included in income, it must be reinstated in the company's profit and loss account and taxed at corporate tax rate without prejudice to any penalties that may be applicable.

• Restrictions with regard to the revaluation variance

The provisions of the decree of 04 April 2011 prohibit :

- the distribution of the revaluation variance: indeed, no distribution to shareholders as a dividend is allowed. Similarly, it is strictly prohibited to make the revaluation variance available in any way whatsoever in the form of cash advances. Account 1061 should not experience any movement against the mobilisation of a cash account. Such a transaction would constitute a wrongful "distribution of fictitious dividends" according to article 144 paragraph 3 of the Uniform Act on Commercial Companies of the OHADA Treaty;
- the allocation of the revaluation variance to cover losses: capital gain from the revaluation must not be credited to the profit and loss account under any circumstances, nor must it contribute directly to the reduction of losses for the financial year or for previous financial years not prescribed. Likewise, the revaluation variance may not be allocated to the retained earnings account in order to clear such deficits.

B – Tax treatment of the revaluation variance (Article 14)

1 – Taxation of the revaluation variance

The revaluation variance is subject to the levying of a 5% withholding tax in full discharge of any other tax, duty, fee or charge. Consequently, the revaluation difference must not be included in the taxable income for tax purposes. Therefore, this levy is not deductible from corporate income tax, as it is itself based on a gain.

The tax on the revaluation variance is calculated by applying the 5% rate to the net revaluation gain.

2 - Exemption from taxation of the revaluation variance in case of reinvestment

When a company decides to reinvest the revaluation capital gain, it may, under certain conditions, benefit from the exemption from payment of this tax and the deductibility of additional depreciation arising from the revaluation of the taxable income for corporate tax purposes.

This exemption from capital gains tax is granted in proportion to the amount reinvested. By way of illustration, a company which, in the case of a revaluation variance of 100 million, decides to invest only 50 million, will only be exempted from taxation of this capital gain up to 50 million, while the remaining amount not reinvested will normally be subject to deduction.

As regards the deductibility of additional depreciation, it is only acquired if the entire revaluation variance is invested.

However, in order to be taken into account, the reinvestment of revaluation surplus must relate to the acquisition of new capital assets, with the exception of the rehabilitation or refurbishment of old capital assets necessary for operations.

New capital assets are defined as any acquisition of tangible or intangible capital assets, recorded in the balance sheet and intended to contribute directly and durably to the creation of wealth within the company. This includes licenses and software, business capital, land, buildings or extensions to buildings constructed of permanent materials, new equipment and tools and specialised accessories permanently attached to the ground.

For this purpose, I specify that the constructions must be new and built on a separate, bare property. An extension is an addition to an existing building, not a simple refurbishment of the building through alterations such as painting, roofing, tiling, architectural modifications, etc. In any case, not all maintenance work is eligible for exemption from taxation following reinvestment of the revaluation surplus.

In the specific case of the industrial sector, the acquisition of an industrial assembly line or heavy production equipment contributing to the operation, even if second-hand, constitutes a new capital asset.

Therefore, in the event of an option to reinvest the revaluation surplus, the revaluation declaration must be accompanied by an investment plan clearly indicating the nature of the investments and the year in which they are to be made.

The investment plan submitted to the administration may in principle not exceed the two financial years following the revaluation declaration. However, companies with a significant revaluation surplus may, on the basis of an investment plan exceeding two years to be submitted by 31 December 2013 at the latest, apply to the Director General of Taxation for an investment period exceeding the two prescribed financial years.

In the event of failure to comply with the commitment to reinvest within the prescribed period, and regardless of the percentage of completion of the planned investments, the 5% levy becomes payable and the additional depreciation resulting from the revaluation will have to be reintegrated into the taxable income of the companies concerned, without prejudice to the penalties that apply in such situations.

During the reinvestment period, companies must provide a file as an annex to their statistical and fiscal declaration, including a statement of the investments made under the obligation to reinvest the revaluation surplus excluding all other investments for which commitments have been made pursuant to the provisions of articles 105 to 107 of the GTC or special agreements.

V – REPORTING OBLIGATIONS AND PENALTIES

A. Reporting obligations concerning legal revaluation (Article 8)

1 – Reporting deadlines and procedures

The revalued items must be reported to the tax authorities and to the departments of statistics and national accounting no later than 15 July of the year following the completion of the revaluation. By way of illustration, a revaluation carried out in 2011 must be declared no later than 15 July 2012.

Any company conducting a revaluation must therefore file a declaration with its tax centre or with the Large Taxpayers Office if it is attached to this unit, against a receipt or acknowledgement of receipt, no later than the date indicated above.

2 – Content of the declaration

Companies that undertake a revaluation are required to present all the revalued assets in the form of a summary table. This table, an example of which is provided in the appendix, must include the following information for each of the revalued assets:

- original or acquisition value ;

- depreciation applied;

- net book value ;

- coefficient applied;

- revalued amount ;

- revalued net book value ;

- the revaluation difference

- details of the capital assets recorded in the balance sheet as of 31 December 2010, as well as evidence of the differences between this balance sheet and the inventory table of the capital assets to be revalued.

In accordance with the provisions of Articles 70, 100 and 110 of the OHADA Uniform Act on the organisation and harmonisation of company accounts, this summary table must be accompanied by a certificate of conformity of the operation issued to the taxpayer by a chartered accountant or an auditor who signs the revaluation declaration. Beyond the technical commitment of his responsibility, the signatory will be responsible for the proper technical completion of the operation.

B. Penalties applicable to companies subject to revaluation (Article 19)

Companies required to revalue their capital assets are liable to a penalty payment of 2% of turnover for each year of delay until the revaluation is carried out:

- when, although automatically subject to revaluation, they have not performed the revaluation until the expiry of the deadline, i.e. before 31 December 2013;- when the revaluation carried out has not been declared within the prescribed deadline (15 July of the year following that of the revaluation). In this specific case, the penalty is assessed ex officio;

- in general, when they have not complied with one of the conditions set out in these provisions.

However, the implementation of this penalty is contingent upon prior formal notice of the companies concerned. You are therefore invited to systematically issue a formal notice to companies that are subject by law, but have not submitted their revaluation declaration by 15 July 2014.

You will note that the penalty can only be applied when the formal notice to regularise their situation within 15 days has not been followed up on.

As regards the calculation of the penalty, any month started is counted as a whole month. Also, for periods of less than one year, the turnover to be taken into account is the one generated during the period concerned. This penalty payment is collected under the conditions provided for in articles L52 and following of the GTC relating to tax recovery.

Example :

A company falling within the scope of the legal revaluation and meeting the relevant conditions that has not revalued its capital assets as of 31 December 2013, achieves the following turnover:

- Turnover for the 2014 financial year: CFA francs 128 million;

- Turnover for the month of January 2015: CFAF 18 million;

- Turnover for the month of February 2015: CFA F 20 million;

- Turnover for the month of March 2015: CFAF 30 million.

After a formal notice to declare remained unanswered, the administration decided to assess a penalty for its failure to comply. The company will only regularise its situation by 30 March 2015. It will be assessed a penalty payment of 2% per year of delay on its turnover as of 1 January 2014 and on the turnover for the period from January to March 2015, i.e:

From 1 January 2014 to 31 December 2014: 2% x 128,000,000 = 2,560,000

CFA francs.

From 1 January 2015 to 30 March 2015: 2% x (18,000,000 + 20,000,000 + 30,000,000) = 1,360,000 CFA francs

A total penalty payment of 3,920,000 CFA francs until 30 March 2015.

I would like to remind you that these prescriptions must be strictly observed and any difficulty in applying them must be reported.

The Director General of Taxation,

(é) Alfred BAGUEKA ASSOBO