

FRENCH TAX NEWS
CONCERNING REAL ESTATE INVESTORS
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regarding this alert,
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1. Ministerial Answer concerning the VAT payment exemption (TOGC)¹

The VAT payment exemption is applicable (i) on exercise of the option by the lessee in a real estate financial lease agreement subject to VAT who rents the building with VAT and (ii) on immediate resale of said building to a purchaser allocating it to a rental activity subject to VAT and registering it within its fixed assets.

Commitment to resell or to build taken by a purchaser for transfer duties purposes² does not prevent from application of VAT payment exemption, except if the purchaser registers the buildings within its inventories thus characterizing purchase and resale activity.

Precisions given will allow limiting the technical uncertainties for the future operations, which will thus be facilitated.

2. Decision concerning real estate preponderance for 3% tax

Paris Court of Appeal³ has decided that the real estate preponderance of a company holding a real estate through an interposed French company and also holding a receivable toward this interposed company shall be computed without including said receivable (in the denominator of the ratio) arguing that such inclusion « *would lead to take twice the value of the real estate, firstly directly and secondly by anticipating on its sale price* ».

This restrictive computation of the real estate preponderance ratio needs to be confirmed/denied considering that the official administrative guidelines expressly include in the denominator of the ratio the French receivables without distinction or exclusion.

3. Decisions concerning the dividends parent-subsidiary regime

The Lyon Administrative Court of Appeal⁴ and the Administrative Supreme Court⁵ recently provided with examples of criterion for application of withholding tax exemption on dividends paid to a beneficial owner having its effective center of management within EU⁶ and of the anti-avoidance clause⁷.

Decisions concerned respectively (i) a Dutch beneficiary company held by a US company and for which it was not evidenced that place of preparation and decision was located in the Netherlands, nor was the residence of its managers or decision-makers and (ii) a Luxembourg beneficiary company held through Cypriot company by Uruguayan resident and being a pure holding without employee or activity and whose managers were exclusively members of law firms or of trusts.

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¹ Rép Min Grau (AN July 10, 2018, n°7359)

² Commitment allowing benefiting from reduced transfer duties or fixed/limited duty on the purchase of a real estate.

³ CA Paris N° 16/03476 07/05/2018 (denying decision of Paris first instance court)

⁴ CAA de LYON, 12/04/2018 – MSA Gallet Holding, 16LY04476 (confirming decision of Lyon first instance court)

⁵ CE N° 397127, 13/06/2018 – Eurotrade Fisch (confirming the decisions of the Marseille administrative court and court of appeal)

⁶ Article 119 ter 2. FTC

⁷ Article 119 ter 3. FTC

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