

**TAX ALERT - September 2023**

**Partial incompatibility of the French alternative housing regime with the VAT Directive**

**For further information, please contact:**

Sybille Salmon-Legagneur  
E: [ssalmon-legagneur@sl-avocats.fr](mailto:ssalmon-legagneur@sl-avocats.fr)

Marie Dessimond  
E: [mdessimond@sl-avocats.fr](mailto:mdessimond@sl-avocats.fr)

**Reminder of the rules**

The French law provides that renting furnished accommodation is VAT exempted but that the exemption does not apply when are offered at least three out of the four following services: breakfast, cleaning, linen supply and reception<sup>1</sup>.

The EU Directive provides that renting premises is VAT exempted but that the exemption excludes the accommodations operated within the hotel industry or within industries with similar function<sup>2</sup>.

**Opinion of the Supreme Court<sup>3</sup>**

The Supreme Court says that the French law is partially incompatible with the Directive considering it subordinates the application of VAT to the condition it is offered three out of the four alternative housing services, whereas exemptions shall receive strict interpretation when they are constituting exceptions to the principle of general VAT liability rule.

The Supreme Court thus concludes that the situation of potential competition with hotel enterprises must be assessed by the Administration on a case-by-case basis according to relevant indicators (and not only by solely applying the 3 out of 4 criteria) and also referring to the minimum duration of stay.

Regarding the duration of stay, a draft directive<sup>4</sup> proposes to define the short-term rental, to be treated as similar in nature to the one in the hotel industry non-VAT exempted, as the uninterrupted rental of housing for a maximum 45 days, with or without other accessory services.

**Salmon-Legagneur & Associés**  
Avocats à la Cour  
A.A.R.P.I.  
62 avenue des Champs-Élysées  
75008 Paris  
Tel. : +33(0)1 56 89 20 20  
[www.sl-avocats.fr](http://www.sl-avocats.fr)

**The application or not of VAT to different types of rental of furnished accommodations, such as Co-Living, cannot be anymore solely assessed by reference to the four criteria fixed by the law but shall include as main indicator the maximum/minimum duration of stay, allowing to treat the rental as temporary or not.**

**The modification of the law and the adoption of the VIDA directive could precise/confirm the relevant indicators, as well as the decision of the Douai Court of Appeal<sup>5</sup> which had asked the Supreme Court for opinion, and shall decide on the case of a touristic and/or seasonal rental of a furnished accommodation purchased under sale off-plan and for which the taxpayer was claiming for the application of VAT.**

<sup>1</sup> Article 261 D,4°-b of the FTC

<sup>2</sup> Article 135, 1-1 and 2-a of the Directive 2006/112/CE

<sup>3</sup> CE Opinion 8e-3e ch. 5-7-2023 n° 471877

<sup>4</sup> Proposal of directive COM/2022/701 named « VAT rules for the digital age » (« VIDA »),

<sup>5</sup> CAA of DOUAI, 4ème chamber, 02/03/2023, 22DA01547