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TAX ALERT
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New declaration obligations for the registration of sales of shares in real-estate-oriented companies ("REC")

The French finance bill for 2024 introduced new declaration obligations for sales of shares in real-estate-oriented companies ("REC") and notably the obligation to mention if "*the transferee has paid or has committed to reimburse the debts towards the seller taken by the REC, with precision, if needs be, of their amounts*[1].

According to the explanatory memorandum, this new declaration obligation aims at:

(i) preventing from tax avoidance resulting from the differences of taxation of real estate sales realized directly or via companies;
(ii) correcting the tax distortion to the detriment of taxpayers who pay registration taxes on the full purchase price of their real estate properties;
(iii) avoiding tax optimization behaviors through REC borrowing (loans or current accounts) for the sole purpose of reducing the registration taxes basis.

In absence of sanctions expressly provided for non-compliance with these new declaration obligations, the standard penalties for insufficient declaration shall apply (40% penalty for willful default or 80% penalty for abuse of law).[2]

The new obligations do not modify the rules regarding the basis of the registration taxes on sales of shares in REC, which corresponds to the price of the shares (including as a deduction the debts of the REC, without distinction) contrary to the specific definition of the basis applicable from 2012 to 2014 which was limiting the deduction to the sole debts relating to the purchase of the real estate assets.

Therefore, the new provision does not provide with a new ground for reassessments by the tax authorities of the basis of the registration taxes on shares in REC, which require in principle the implementation of the "abuse of law" procedure (heavy for the authorities and quite exceptional)[3].

In this context, the obligation to declare the debts borrowed by the REC "*towards the seller*" could facilitate an audit (and reassessments) in case of debts resulting notably from dividends distributions (or share capital reductions) realized before sale, in view of their reason which could be considered by the authorities as solely tax driven.

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[1] Insertion of a new article 726, III in the French Tax Code by article 119 of the finance law for 2024 (loi 2023-1322 dated 29 December 2023)
[2] Article 1729 of the French tax code
[3] Article L64 of the French tax code allowing the authorities to set aside a fictitious act, or act seeking the benefit of a literal application of the texts and solely tax driven.