

**TAX ALERT - March 2024**

**Recent case law of the French Supreme Court (Cass. Com)  
reminding the rigor of the 3% tax exemption rules**

**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: French or foreign legal entities owning real estate properties located in France, directly or indirectly, are exempted from the 3% tax subject to<sup>1</sup> declaring/communicating certain information concerning said real estate properties and concerning their shareholders<sup>2</sup>.

**Cass. com. 30-08-2023 no 21-15.743**

The shortened 3-year limitation period is not applicable in the case of annual 3% tax returns mentioning the name of the economic beneficiary (in this case the ultimate individual beneficial owner) but not the statutory shareholder (in this case an interposed company located in the British Virgin Islands).

**Cass. com. 12-10-2022 no 20-14.073 F-B et no 20-14.565 F-D**

It is for the company requesting the benefit of the 3% tax exemption to demonstrate by any means the reality of the shareholding by the persons it has designated as shareholders. In this regard, the Court rejected the proof provided **in the absence of corporate documents filed with the public services of the Home State of the entity, or of declarations filed with tax authorities, or of an authentic document issued by a member of a regulated profession, or of supporting financial flows documents justifying the movement of shares.**

The Court decided that the economic reality of the transfers of the shares was corroborated neither by (i) the shareholders' registry, (ii) a private document of transfer of shares (even filed with a notary), or (iii) the payment of a symbolic price stated in the deeds of transfer while the real estate property was accounted in the balance sheet for twenty-four million euros without any relevant element justifying the decrease of its market value, or of the shares, nor the alleged indebtedness demonstrated.

**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 severity of these decisions reminding the rigor of the 3% tax exemption rules is consistent with the purpose of the tax. Indeed, its mechanism and its conditions of exemption are intended to give the French administration a full knowledge of the shareholding chains of the French real estate properties, up to the ultimate individuals possibly liable for French real estate wealth tax ("IFI" formerly "ISF") to fight tax evasion schemes.**

---

<sup>1</sup> Unless specific exemptions applicable, in particular those based on the nature of the entity (for example a company ultimately fully held by a State, or entity not predominantly real estate oriented)

<sup>2</sup> By annual 2746 return to be filed on May 15 at the latest or by commitment to communicate information (and compliance with this commitment upon request from the administration) to be subscribed within two months of the acquisition of the property, right or participation bringing the legal entity into the scope of the 3% tax (*Article 990 E of the French Tax Code; French Administrative Guidelines BOI-PAT-TPC-20-20 n°450, 05-10- 2016*)