

TAX ALERT - July 2024
Recent case law related to the real estate sector

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Decision to exclude the deduction of financial expenses on a mortgage loan borrowed by a company in order to decrease its share capital¹

The Court of Appeal confirms the decision of the Paris Administrative Court² having excluded the deduction of financial expenses on a bank loan borrowed by the company COFIMA to decrease its share capital and reimburse its sole shareholder. It reminds that an operation presenting an advantage for a shareholder can be considered as outside a normal business management if it is established that the advantage granted was contrary to, or extraneous to the interests of the company.

In the case at hand, the company had not provided any evidence justifying a consideration for itself, limiting argumentation to the sole reminder of the principle of management freedom to choose between financing through equity or through loans.

Decisions assessing the para-hotel nature for VAT purposes according to different criteria not limited to the services provided³

The Court rules on the application of article 261 D of the French tax code⁴, while taking into account the opinion given by the French Supreme Court⁵ considering the condition of three of the four para-hotel services incompatible with the VAT Directive and that the situation of potential competition with hotel companies must be assessed by the Administration on a case-by-case basis based on relevant indices, in particular the minimum duration stay⁶.

The Court concludes that the services of the hotel sector are assimilated noting firstly (i) the availability of furnished accommodation per night and the average length of stay of 3 days, then (ii) the cleaning of the premises carried out at the start and end of stay and the rental accompanied by a reception and supply of household linen (even without establishing that breakfast and cleaning during the stay were offered) and finally (iii) that the sector was particularly touristy.

Thus, the Court precisely follows the opinion of the Conseil d'Etat by assessing the situation of potential competition with hotel companies based on relevant indices (and not by the sole application of 3 out of 4 criteria) such as the length of stay. This type of broad assessment remains applicable for the current article 261 D of the CGI which maintains the criterion of 3 services out of 4 and the criterion of duration (not exceeding 30 nights unless renewed).

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¹ CAA de PARIS, 7ème chambre, 18/07/2023, 21PA06555

² n° 1812856/1-3 du 10 novembre 2021

³ CAA DOUAI 4ème ch. 22/02/2024 n°23DA00583 & 22DA01718

⁴ In version in force until December 31, 2023, which provides that usual furnished rentals for a fee are not exempt from VAT when they include at least 3 of the following 4, provided under conditions similar to those proposed by professionally operated hotel accommodation establishments: breakfast, regular cleaning of premises, provision of household linen and reception

⁵ Conseil d'Etat (CE) avis 5-7-2023 n° 471877

⁶ Cf. Our tax alert of September 2023

https://www.sl-avocats.fr/article/partial-incompatibility-of-the-french-alternative-housing-regime-with-the-vat-directive_154.pdf