

Nicolas BRAHIN
DESS Droit Bancaire et Financier
Université PARIS I

Barbara CASTANIE
DEA Droit Administratif
Université de Montpellier

Jennifer SALLES
DEA Droit International Public et Privé
Université de Nice

Avocats au Barreau de NICE

Cabinet BRAHIN avocats

ADVOKATFIRMA I FRANKRIG / LAWYERS OFFICE IN FRANCE

Correspondant organique de :

Legipass
Avocats au Barreau de Paris
8, rue Auber - 75009 PARIS
Tel : +33 01 77 49 27 40 | Fax : +33 01 40 07 04 54
www.legipass.com

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Advokatfirmaet Finn C. Larsen
Advokat au Barreau du Danemark
Algade 43, 1 - 4000 ROSKILDE
Telefon +45 4635 1515 | Telefax +45 4636 3747

PROPERTY DEALER & PROPERTY VAT

Definition : (article 35 of the French revenue Code).

A property dealer ("marchand de biens") is a person who buys in its own name, in order to sale buildings, businesses/commercial establishments ("fonds de commerce"), shares of a real estate company, or who usually subscribes those shares, in order to sale.

A person who, usually, buy real property ("bien immeuble") in order to build properties and sale them.

They are submitted to the payment of the Income tax ("impôt sur le revenu") within the category of profit from industrial and commercial occupations ("bénéfices industriels et commerciaux).

In order to be considered as a property dealer, you will have to fulfill two criteria:

- The operation made must have an usual character; and
- The speculative intending ("intention speculative") at the time of the acquisition.

The profit or losses ("pertes") are calculated from the difference between the sale's price of the buildings and the cost prices ("prix de revient") increased by the expenses ("frais et charges").

The profits are submitted to the income tax unless they are made by a civil company ("société civile") in which case they are submitted to the corporate tax ("impôt sur les sociétés").

The calculation base of the VAT (value added tax) is made from the margin ("marge") and not the entire amount of the sale price.

The gross margin ("marge brute") is the difference between:

- The expressed price ("prix exprimé") and added expenses; and
- Either, the sum paid by the assignor ("cédant") for the property;

Cabinet BRAHIN Société d'Exercice Libérale à Responsabilité Limitée inscrite au Barreau de NICE
1, RUE LOUIS GASSIN 06300 NICE FRANCE
TEL. +33 (0)4 9383 0876 FAX +33 (0)4 9318 1437 **CASE PALAIS 427**
E-mail: info@brahin-avocats.com
www.Brahin-avocats.com

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Palais C 427

- Or either, the nominal value (“valeur nominale”) of the shares given in exchange of transfers in kind (“apports en nature”) made.

The VAT rate is 19,6%.

According to the article 257-7 of the French income Code, the operations contributing to the construction of buildings (the purchase of a building land (“terrain à bâtir”), the sale of new buildings, or of real estate company’s securities (“titre de sociétés immobilières”)) are submitted to the property VAT.

The payment of the VAT is made on the sale price.

		Purpose of the transfer (“objet de la mutation”)	buyer		
			Property dealer	Individuals (“particulier”)	Tax-payer (“assujetti”)
saler	Property dealer	Piece of undeveloped land (« terrain nu »)	Commitment to resale (“engagement de revente”): VAT on margin (article 257-6) and transfer taxes (“droits de mutation à titre onéreux”) of 0,715% (article 1115)	VAT on margin (article 257-6) and transfer taxes of 5,09%	VAT on margin (article 257-6) and transfer taxes of 5,09%
		Building land	Commitment to build which gives the land its building land quality. VAT on the total price (article 257-7) from auto liquidation by the buyer (article 285-3) Exemption of the transfer tax (article 1594-0 G)	Land to build residential building (“immeuble à usage d’habitation”) are submitted to VAT on margin and transfer tax of 5,09%	Commitment to build which gives the land its building land quality. VAT on the total price (article 257-7) from auto liquidation by the buyer (article 285-3) Exemption of the transfer tax (article 1594-0 G)
		New building	VAT on the total price plus reduced transfer tax of 0,715%.		
		Buildings other than new ones	If commitment to resale: VAT on margin and reduced transfer tax of 0,715%. If commitment to build, same rules as for building land	VAT on margin and transfer tax of 5,09%	VAT on margin and transfer tax of 5,09% Or If commitment to build, same rules as for building land

This legislation has been reformed and from July 1st 2010 the property dealer will be submitted to the property VAT as follows:

	Purpose of transfer	Buyer	
		Tax-payer	Non tax-payer
Saler	Piece of undeveloped land to build	Exemption of VAT (261-5-2°) but you can choose a taxation based on the total price and transfer tax of 5,09% unless there is a commitment to resale, the transfer tax will be of 0,715%.	Exemption of VAT (261-5-2°) but you can choose a taxation based on the total price and transfer tax of 5,09%
	Building land	<p>VAT:</p> <ul style="list-style-type: none"> - on the total price if deductions were made at the time of the acquisition by the assignor ; and - on margin if no deductions were made. <p>Transfer tax:</p> <ul style="list-style-type: none"> - if commitment to build: exemption; - if commitment to resale: reduced to 0,715%; and - if no commitments: current transfer tax. 	<p>VAT:</p> <ul style="list-style-type: none"> - on the total price if deductions were made at the time of the acquisition by the assignor ; and - on margin if no deductions were made. <p>Transfer tax:</p> <ul style="list-style-type: none"> - 5,09% when the transfer is submitted to VAT on margin; and - 0,715% when the transfer is submitted to WAT on the total price.
	New building	VAT on the total price plus reduced transfer tax of 0,715%	
			Exemption of VAT but you can choose:
		<ul style="list-style-type: none"> - a taxation based on the total price and transfer tax of 	

Saler	Tax payer	Buildings other than new ones	5,09% unless there is a commitment to resale; or - a taxation based on margin and current transfer tax.	Exemption of VAT but you can opt for a taxation on the total price plus the transfer tax of 5,09%.
	Non tax-payer	Piece of undeveloped land to build	No VAT Transfer tax: - if commitment to build exemption; - if commitment to resale: reduced transfer tax of 0,715%; and - if no commitment: current transfer tax	No VAT Transfer tax of 5,09%
		Building land	No VAT Transfer tax: - if commitment to build exemption; - if commitment to resale: reduced transfer tax of 0,715%; and - if no commitment: current transfer tax	No VAT Transfer tax of 5,09%
		New building	If the building was previously acquired by the assignor as building property ("immeuble à construire"): VAT on the total price and reduced transfer tax of 0,715%. If the building was not acquired as building	If the building was previously acquired by the assignor as building property ("immeuble à construire"): VAT on the total price and reduced transfer tax of 0,715%. If the building was not acquired as building

Saler	Non tax-payer		property: no VAT and transfer tax of 5,09% unless there is a commitment to resale, in which case the transfer tax is 0,715%	property: no VAT and transfer tax of 5,09%
		Buildings other than new ones	<p>No VAT</p> <p>Transfer tax of 5,09% unless: if commitment of resale: 0,715%; and - if commitment of building: exemption.</p>	<p>No VAT</p> <p>Transfer tax of 5,09%</p>