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**VAT in regards to the transfer of an immovable affected by a rental activity:**

A fiscal mechanism foresees an exemption for the VAT to which the transfer of an immovable affected by a rental activity is subjected to.

Cabinet BRAHIN Société d'Exercice Libérale à Responsabilité Limitée inscrite au Barreau de NICE

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## I. Cases where the exemption is possible:

**Article 257 bis of the French tax code**<sup>1</sup> (“Code general des impôts”) provides a specific mechanism of VAT exemption for an operation undertaken between taxable persons (“redevables de la taxe”) leading to a transmission of the total or partial sum of assets (“universalité totale ou partielle de biens”) (in return for payment or freely, or by assets to a company).

In certain cases, either the transfer benefits from an exemption of taxation, or the transferor (“cédant”) is exempted to proceed to the regularization of the VAT previously deducted.

If the conditions of application of the exemption are fulfilled, the tax authority fully applies this mechanism.

The tax authority has allowed this mechanism to apply under conditions to the sale (isolated) of an immovable affected by a rental activity subjected to VAT.

This implies that the property is sold to a purchaser that intends to pursue the transferor’s rental activity (with leases subjected to VAT, ipso jure or by option).

This mechanism does not apply in the event of an isolated sale of an immovable if it is (only) partially affected to a rental activity.

## II. The application of the exemption to a vacancy:

An immovable temporarily vacant during the transfer can benefit from this mechanism.

A vacancy can indeed be justified by the market situation of the immovable, a change of tenancy, by works or after any damage without the intention of renting the immovable subjected to VAT being questioned.

Consequently, the duration of the vacancy is not taken into account for “article 257 bis”, it is only the demonstration of an intention to rent during the vacancy that needs to be proved.

The circumstances that have motivated the departure of the (last) tenant of the immovable are not alone capable of questioning the application of the mechanism.

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<sup>1</sup> Article 257bis du Code général des impôts : « Les livraisons de biens et les prestations de services, réalisées entre redevables de la taxe sur la valeur ajoutée, sont dispensées de celle-ci lors de la transmission à titre onéreux ou à titre gratuit, ou sous forme d'apport à une société, d'une universalité totale ou partielle de biens. (...) »

### III. The conditions for this exemption in the event of a vacancy:

It must be kept in mind that the mechanism of “article 257 bis” will only be applicable if the transferor can prove he is actively searching for a tenant.

In practice, the proof can easily be given if the transferor has handed a research mandate for a tenant (or a management mandate).

However, the rent must be adjusted to the market.

In the event of a resale of immovable activity, if a person liable to VAT proceeds to the isolated sale of an immovable in inventory (current assets), the tax authority considers that the exemption is not applicable even if while waiting for the resale, the immovable is affected by a lease subjected to VAT.

Best regards,