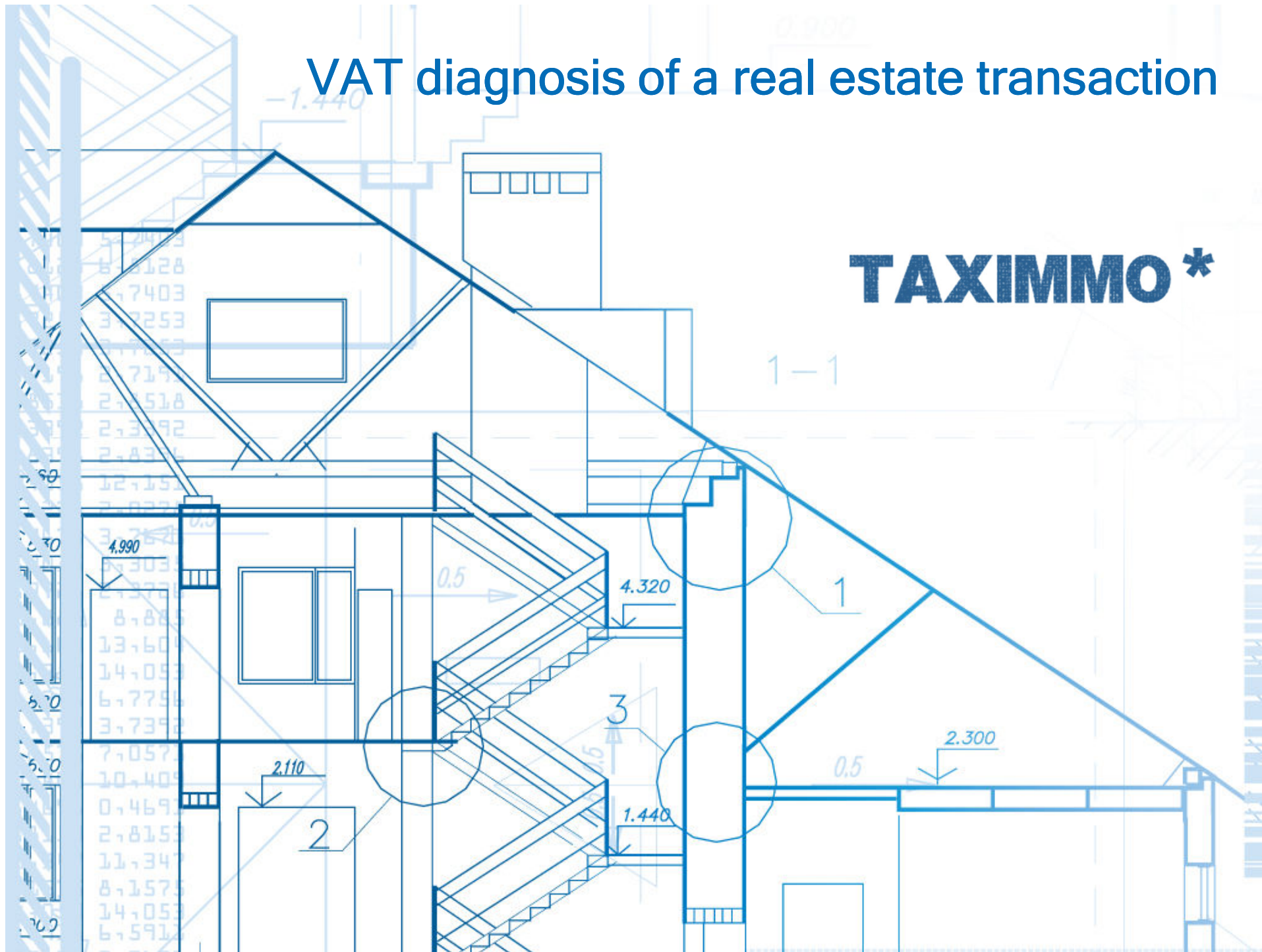


VAT diagnosis of a real estate transaction

TAXIMMO*



VAT diagnosis of a real estate transaction

- **The VAT diagnosis of a real estate transaction is crucial for determining the VAT and transfer tax schemes that may apply to a given transaction: avoiding tax risks and adjusting the price.**
 - For a given transaction, several schemes may apply
 - Some schemes may not apply and generate tax risks for the parties
 - It is necessary to determine beforehand the scheme that is the most favorable in order to propose it during the negotiations
 - The timing of this analysis is essential: tax issues may not be reviewed on the day before the signature but shall be reviewed as soon as the marketing phase, before the exchange of the letters of intent
 - A prior analysis allows, where appropriate, to get a tax saving in the price
 - The audit shall also cover all documentary aspects: incomplete documents may deprive the seller of certain tax choices or force it to grant guarantees or a price reduction (refurbishment rulings, VAT election letters, accounting documents)

Transfer taxes: registration duties / land registration tax

VAT diagnosis of a real estate transaction

- **Why does the VAT diagnosis of a real estate transaction become essential? The subject is more complex now.**
 - Yesterday's reflexes are no longer valid.
 - Two major reforms dramatically impacted the subject.
 - January 1, 2006: application of TOGC VAT relief (art. 257 bis) to real estate transactions.
 1. The disposal of a building completed less than 5 years ago is no longer necessarily subject to VAT.
 2. VAT relief requires conditions as regards the seller and the purchaser. Before the beginning of the negotiations, the conditions as regards the seller are the only ones that may be verified. There is no certainty as regards the situation of the purchaser. The seller shall always think about an alternative scheme.
 - March 11, 2010: reform of the real estate VAT, new tools.
 1. Concerning the seller: the sale of an old building may, as the case may be, give rise to a transfer of adjustments or be subject to VAT under an express VAT election (taxes on the margin or on the price, as the case may be). What are the constraints? What is the best choice?
 2. Concerning the purchaser: the commitments allowing to reduce transfer taxes were significantly modified. New perspectives appear for all of the purchasers in order to reduce such taxes.
 - VAT wrongly invoiced: The *Conseil d'Etat* recently confirmed again that it was not possible to deduct a VAT wrongly invoiced, including by parties acting in good faith.

VAT diagnosis of a real estate transaction

- **What are the steps of the VAT diagnosis of a real estate transaction?**
- **BEFORE THE EXCHANGE OF THE LETTERS OF INTENT.**
- **Identify the main characteristics of the transaction**
 - VAT status of the seller: Is the seller acting as an entity that is subject to VAT or does it carry out a property transaction that is not subject to VAT. Does it recover VAT?
 - VAT qualification of the asset sold: the VAT “language” differs from the real estate language or from the common language. The qualification shall be made using specific criteria. Is the asset sold a buildable land? A building? Was it completed less than 5 years ago? What is the VAT consequence of a recent renovation? Or of a less recent renovation? These questions also require a good knowledge of the asset and of the market.
 - Acquisition scheme of the asset sold: allows the seller to determine the VAT amount that is payable pursuant to the resale transaction. The VAT may be payable as regards the sale price or as regards a specific margin.
 - VAT status of the foreseen purchaser: is the purchaser acting as an entity that is subject to VAT? Is it a real estate dealer or a developer?

VAT diagnosis of a real estate transaction

- **Check the application of the TOGC VAT relief.**
 - What is at stake: (1) avoiding a VAT wrongly invoiced, which may not be recovered by the purchaser, and (2) proposing a scheme that protects the cash flow of the purchaser.
 - Point to be controlled: the quality of the accounting documents.
- **Envisage a Plan B if the purchaser does not meet the conditions as regards the TOGC VAT relief (e.g. purchaser as a user or as a real estate dealer): transfer of VAT recapture or VAT election?**
 - What is at stake: avoiding the cost of VAT as regards the seller which shall, where appropriate, transfer a VAT previously deducted pursuant to the acquisition of the building or improvement works.
- **Qualify the works related to the building: specific VAT criteria modified on March 15, 2010.**
 - What is at stake: getting reduced transfer taxes in the sale price (0.715% instead of 5.09%).
- **Qualify the land adjoining the building: land to be built, annex to the building?**
- **When the building is leased: confirmation of the VAT scheme (e.g. validity of the election).**
- **Pre-approve the documentary aspects.**
- **Anticipate the requests for rulings (e.g. refurbishment rulings).**

VAT diagnosis of a real estate transaction

- **The four objectives of the diagnosis.**
 1. Prepare a synthetic and exhaustive dashboard.
 2. Improve/Protect the price.
 3. Approve the information provided to the purchaser.
 4. Help to draft the deed.
- **Knowing the asset from a tax standpoint allows to sell better and purchase better.**
- **The diagnosis is not reserved for real estate professionals and also constitutes a precious tool for industrial and commercial groups.**

VAT diagnosis of a real estate transaction

TRANSFERRED ASSET	PURCHASER & SELLER SUBJECT TO VAT & ACTING AS SUCH (scheme applicable since March 11, 2010)	
Non-buildable land	<p>VAT: VAT exemption (art. 261, 5-1°) but a VAT election is possible (art. 260, 5° bis) for a taxation on the aggregate price (art. 266, 1-a / art. 268).</p> <p>Transfer taxes: @ 5.09006% except in case of a commitment to resell @ 0.71498% (art. 1115) or commitment to build @ €125 (art. 1594-0 G).</p>	<p>Chargeable event and & VAT tax point: delivery - payment terms with no impact</p> <p>Taxable amount: aggregate price (no VAT on margin is possible)</p> <p>VAT rate: normal rate (19.60% / 20% as from January 1, 2014)</p> <p>VAT liable person: the seller (pple)</p> <p>CSI: 0.10% of price including tax / Notary: approx. 0.825% excluding tax of the price including tax</p>
Land to be built (1)	<p>VAT: automatic VAT taxation (except for a TOGC VAT relief):</p> <ul style="list-style-type: none"> - on the aggregate price, when the land gave rise to a deduction at the time of its acquisition by the transferor or in case of an acquisition of a building (lack of tax identity between the asset acquired and the asset resold) - on the margin, when the land did not give rise to a deduction at the time of its acquisition by the transferor <p>Transfer taxes:</p> <ul style="list-style-type: none"> - @ 0.71498% if VAT on aggregate price (art. 1594 F quinquies) except in case of a commitment to build @ €125 (art. 1594-0 G). A commitment to resell is not relevant. - @ 5.09006% if VAT on margin except in case of a commitment to resell @ 0.71498% (art. 1115) or commitment to build @ €125 (art. 1594-0 G) 	<p>Chargeable event and & VAT tax point: delivery - payment terms with no impact</p> <p>Taxable amount: calculation of the margin: margin excluding tax = sale price excluding tax - acquisition price</p> <p>VAT rate: normal rate (19.60% / 20% as from January 1, 2014)</p> <p>VAT liable person: the seller (pple)</p> <p>CSI: 0.10% of price including tax / Notary: approx. 0.825% excluding tax of the price including tax</p>
New building	<p>VAT: automatic VAT taxation on the aggregate price (except for a TOGC VAT relief)</p> <p>Transfer taxes: @ 0.71498% (art. 1594 F quinquies)</p>	<p>Chargeable event: delivery</p> <p>VAT tax point: delivery except in case of VEFA (sale of property to be built): receipt of calls for funds</p> <p>VAT rate: normal rate (19.60% / 20% as from January 1, 2014)</p> <p>VAT liable person: the seller (pple)</p> <p>CSI: 0.10% of price including tax / Notary: approx. 0.825% excluding tax of the price including tax</p>
Building other than a new building	<p>1° ann. II) but a VAT election is possible (art. 260, 5° bis) for a taxation (except for a TOGC VAT relief):</p> <ul style="list-style-type: none"> - on the aggregate price, when the building gave rise to a deduction at the time of its acquisition by the transferor or in case of an acquisition of a land / old building having been the subject of a renovation or refurbishment leading to a new building (lack of tax identity between the asset acquired and the asset resold) - on the margin, when the building did not give rise to a deduction at the time of its acquisition by the transferor <p>Transfer taxes: @ 5.09006% except in case of a refurbishment tolerance (7 C-2-11) @ 0.71498% / except in case of a commitment to resell @ 0.71498% (art. 1115) or commitment to build @ €125 (art. 1594-0 G)</p>	<p>Chargeable event and & VAT tax point: delivery - payment terms with no impact</p> <p>Taxable amount: calculation of the margin: margin excluding tax = sale price excluding tax - acquisition price</p> <p>VAT rate: normal rate (19.60% / 20% as from January 1, 2014)</p> <p>VAT liable person: the seller (pple)</p>

(1) definition of a land to be built: land that does not include any building for VAT purposes and that is located in a sector designated as a buildable sector in a town planning document even if the land is not effectively buildable

<http://taximmo.fr>