

## **THE “MARCHAND DE BIENS” ACTIVITY**

### **OPTIONAL TAXATION REGIME**

A “marchand de biens” is an individual or a company whose activity is buying property (or shares of property companies or ‘fonds de commerce’) in order to sell them for a profit.

The “Marchands de biens” benefit from an attractive taxation regime that is subject to the following strict regulations:

- > Declaring their business presence within the first month of activity ;
- > Keeping records of all mandates, proxies or deeds related to their business activity in a special log book;
- > Registering all deeds related to business activity with the tax authorities;
- > Filing a quarterly VAT return.

If the Marchands de biens fails to meet any of the above regulations fines are incurred.

#### **Taxation of profits**

This activity is of a commercial nature with profits being taxed in the category of industrial and commercial (bénéfices industriels et commerciaux – BIC”) when made by an individual. When profits are made by a company they are subject to corporate income tax (rate 34.33%).

#### **“Taxe professionnelle”**

Like any other commercial venture marchands de biens are subject to the “taxe professionnelle”, which is based on the rental value of the immovable assets and subject to complex valuation and exemption rules.

#### **VAT & transfer tax (droit d’enregistrement)**

The purchase and sale of properties by marchands de biens are subject to a somewhat complex optional taxation regime as regards VAT and Transfer tax. The most current situations are as follows:

- > **Purchase and sale of an existing property (common “marchand de biens” regime)**  
The Marchand de biens is subject to VAT (19.6% rate) on the profit margins achieved (i.e. difference between the purchase costs and the selling price). In this respect the marchand de biens may not deduct the VAT paid on the purchase costs. However VAT paid on maintenance and improvement costs may be deducted.

When profit margins are subject to VAT the marchand de biens is not liable for transfer tax on the purchase price, and only pays the land publicity duties (0.615% rate). In order to benefit from this regime, the marchand de biens needs to sell the property within 4 years of its purchase (with possible extension).

- > **Purchase of a plot of land, construction and sale (common “TVA immobilière regime”)**  
In this case, the marchand de biens is only subject to VAT on the purchase price and construction costs, and may deduct the amount paid (or claim it back from the tax authorities). In order to benefit from this regime, the marchand de biens needs to have completed the construction within 4 years otherwise he/she becomes liable for transfer tax and land publicity duties (plus possible penalties).

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Of course many other eventualities are conceivable, such as:

- > Delays in the construction,
- > Sale of the purchased plot to a professional constructor,
- > Sale of the purchased plot to a non-professional constructor, etc.

Please note that each of these planned or factual circumstances may have important consequences as regards the rules explained above (e.g. cancellation of options, penalties, etc). Advice is therefore necessary at every step of the project.

**Written by Patrick Delas, A Solicitor in Russell-Cooke's French Law department where he specialises in setting up French businesses and associated business related issues.**

For further information on any of the points covered above please contact:

**Patrick Delas** email: [delasp@russell-cooke.co.uk](mailto:delasp@russell-cooke.co.uk)