France

1. CONDITIONS FOR THE EXEMPTION OF AN INTRA-COMMUNITY SUPPLY

1.1. Current rules in force

The intra-EU supply is exempt from VAT in the country of departure (*Article 138 of the Council Directive 2006/112/EC transposed under Article 262 ter of the French tax code*).

Four conditions must be met to benefit from the exemption:

- the delivery is made for a consideration;
- the seller is a taxable person acting as such;
- the goods are dispatched or transported outside France by or on behalf of the seller or the purchaser to another Member State;
- the customer is a taxable person or a non-taxable legal entity which does not benefit in its Member State from the derogation system allowing it not to charge VAT on its intra-EU acquisitions.

Currently, the supplier only must check that his customer is registered on the VIES basis, but this is only a formal requirement that could not impact the VAT exemption.

The report of the transaction on the Intrastat returns (French DEB), is currently only a formal requirement.

1.2. Rules applicable as from January 1st 2020 (finance bill for 2020)

According to Article 34 of finance bill for 2020 (LOI n° 2019-1479 transposing the quick fixes into national law), the system of exemption for intra-EU supplies and taxation of intra-EU acquisitions is maintained but the substantive conditions for benefiting from the exemption are strengthened.

Prior to perform the Intra-EU delivery, the supplier will have to obtain the VAT identification number of its client to insure it is valid, otherwise the exemption will be refused.

This condition will require systematic and regular follow-up of the validity of customers' VAT numbers and the inclusion of this number on their invoices.

The second condition is the report of the Intra-EU delivery of the goods on a Dispatch Intrastat return without mistake or error.

1.3. Administrative guidelines

- The communication, by the purchaser, of a VAT number valid in a Member State other than France (country of departure of the goods) is sufficient to benefit from the VAT exemption. In practice, for a question of consistency of flows, both in the Member State of departure of the goods and in the Member State of destination, our recommendation, is to request the VAT number of the purchaser in the Member State of destination of the goods (except in the case of triangular operations). Indeed, in principle, the purchaser will have to self-assess VAT in the Member State of destination of the goods.
- As a precaution, operators established in France must invoice intra-Community supplies with French VAT (i) when the customer communicates his French VAT number or (ii) when the customer communicates an invalid intra-Community VAT number.
- Regarding French Dispatch Intrastat returns, the exemption of the intra-Community supply is not called into question if the supplier is able to justify his failure.

⇨ **Risks incurred in the event of non-compliance:**

- Taxation of the Intra-EU deliveries of goods (reconsideration of the VAT exemption)
- Application of late interests at 2.4% per year and the 40% penalty for willful default, if any
- Application of a 15 € penalty per missing or incorrect mention and per invoice concerning the mandatory mentions on the invoices according to Article 242 nonies A of the appendix II of the French tax code (FTC)
- Administrative penalties for Intrastat return: application of a penalty amounting to 15 € per mistake and per return (in case failure to report a transaction on the return) or 750 € penalty per month increased to EUR 1 500 if the obligation is not fulfilled within 30 days after a reminder has been issued by the authorities (in case of failure to file Intrastat return)

2. PROOF OF INTRA-COMMUNITY TRANSPORT

2.1. Current rules in force

The exemption for intra-Community supplies of goods is subject to proof of transport of goods outside France. In France this proof of shipment could be made by any means.

The seller must justify by any means of the reality of the dispatch or transport of goods outside France.
All indications resulting from the normal commercial documents must allow, in principle, the seller to provide the proof, for each supply, of the existence of the shipment or transport.

Tax administration gives a non-exhaustive list of supporting documents (airway bill, transporter's invoice etc).

2.2. Rules applicable as from January 1st 2020 (finance bill for 2020)

The rules resulting from the "Quick Fixes" have a direct effect in France.

According to the article 45a of the Council implementing regulation (EU) 2018/1912 of 4 December 2018, in order to ensure that the rules of proof are uniform between Member States, Quick Fixes provide a rebuttable presumption for the proof of intra-EU deliveries of goods.
Goods are presumed to have been dispatched from one Member State to another if the supplier is in possession of the following documents:

⇨ If the transport is carried out by the supplier: two non-contradictory transport documents **or** one transport document and one additional non-contradictory evidence

⇨ If the transport is carried out by the buyer: a written statement from the buyer is required **plus** either two non-contradictory transport documents **or** one non-contradictory transport document and one additional non-contradictory evidence

This measure does not remove the current system but strengthen the legal certainty of the operators by harmonising the supporting documents which allowed to presume that the conditions relating to the effective dispatch or transport of goods are met in order to benefit from the exemption on the intra-EU supplies.

2.3. Administrative guidelines

- Possibility for companies to apply the refutable presumption

  Companies have the choice to apply presumptions introduced by Article 45a of the Council Regulation (EU) 2018/1912 of 4 December 2018.
  French administrative guidelines also clearly state that: *"Of course, when companies do not wish to avail themselves of the system of rebuttable presumptions introduced by Article 45a of Council Regulation (EU) 282/2011 of 15 March 2011, the system of proof by any means applies"* (BOI-TVA-CHAMP-30-20-10-14/10/2020, n°90)
- System of proof by any means

  According to French administrative guidelines (BOI-TVA-CHAMP-30-20-10-14/10/2020, n°50):
  - *"All the information resulting from the usual commercial documents must, in principle, enable the seller to provide proof, for each delivery, of the existence of the shipment or transport.*
  - *This may include the following documents: transport document (consignment note under the convention on the international carriage of goods by road (CMR), air waybill, sea or river bill of lading, etc.), carrier's invoice, insurance contract relating to the international transport of goods, contract concluded with the purchaser, business correspondence, written order form from the purchaser stating that the goods must be dispatched or transported to another Member State, delivery note, collection order, written confirmation by the purchaser that the goods have been received in another Member State, duplicate of the vendor's stamped invoice of the purchaser, notice of payment from a foreign banking institution.*
  - *This list is not exhaustive, and the overall value of the justifications provided must be assessed on a case-by-case basis.*
  - *If the seller considers that he does not have sufficient justification to prove the existence of the shipment or of the transport, the invoice must be issued with local VAT".*

3. CHAIN TRANSACTIONS

3.1. Current rules in force

In principle, the sale which benefit from the intra-EU deliveries of goods exempt from VAT is the one in respect of which the transport of goods takes place.

There are no legal provisions in the VAT Directive or in the FTC on chain transactions.

Only simplified triangular sales are covered by a provision in Directive 2006/112/EC (Article 141).

3.2. Rules applicable as from January 1st 2020 (finance bill for 2020)

According to Article 34 of finance bill for 2020 (transposing the quick fixes into national law), the regime of chain transactions will be included in the FTC, under Article 262 ter.

In the event of successive supplies of the same goods dispatched or transported on the territory of another Member State of the European Union directly from the first seller to the last purchaser in the chain, the intra-EU supply shall be deemed to be that made to the intermediate operator if this latter organizes the transport.

By way of derogation, the intra-EU shall be deemed to be made by the intermediate operator when he has communicated to his supplier the VAT identification number which has been given to him on the Member State of departure of the goods.

An intermediary operator is defined as a taxable person in the chain, other than the first seller, who dispatches or transports the goods, either himself or through a third party acting on his behalf.

3.3. Administrative guidelines

These rules are confirmed by the French administrative guidelines.

4. CALL-OFF STOCK

4.1. Current rules in force

A supplier established in a Member State (Member State 1) who transfers his goods to another Member State (Member State 2) must be identified for VAT purposes in the Member State of destination of the goods (Member State 2).

The supplier makes a transfer treated as an intra-EU supply of goods exempt from VAT in the Member State 1 (dispatch Intrastat return must be filed).

The supplier makes a transfer treated as an intra-EU acquisition of goods in Member State 2 (Arrival Intrastat return must be filed depending the applicable thresholds).

The supplier performs a domestic sale of the goods in the Member State 2 when the customer makes each withdrawal from stock.

4.2. Rules applicable as from January 1st 2020 (finance bill for 2020)

Article 256 of the French tax code is amended. A paragraph III bis is inserted after paragraph III.

The transfer by a taxable person of goods from his enterprise under a call-off stock arrangement to another EU Member State is not treated as a supply of goods if the 4 following conditions are met:

- goods are dispatched or transported by a taxable person, or by a third party on his behalf, to another Member State with a view to those goods being supplied there, at a later stage and after arrival, to another person who is entitled to take ownership of those goods in accordance with an existing agreement between both taxable persons

- the taxable person dispatching or transporting the goods has not established his business nor has a fixed establishment in the Member State to which the goods are dispatched or transported

- the taxable person to whom the goods are intended to be supplied is identified for VAT purposes in the Member State to which the goods are dispatched or transported and both his identity and the VAT identification number assigned to him by that Member State are known to the taxable person referred to in the above point at the time when the dispatch or transport begins;

- the taxable person dispatching or transporting the goods records the transfer of the goods in the register provided for in *Article 286 quater, I-2 of the FTC* and includes the identity of the taxable person acquiring the goods and the VAT identification number assigned to him by the Member State to which the goods are dispatched or transported in the recapitulative statement provided for in Article 289 B, I of the FTC.

If, within 12 months of their arrival in the Member State to which they were dispatched or transported, the goods have not been delivered to the taxable person and none of the circumstances mentioned below have occurred, a transfer of goods (article 256, III of the FTC) shall be deemed to take place on the day following the 12-month period.

If, within 12 months of the arrival of the goods, the right to dispose of the goods, the right to dispose of the goods has not been transferred, no transfer of the goods shall be deemed to take place when the goods are returned to France and the taxable person enters their return in the register of the *Article 286 quater, I-2 of the FTC*.

No transfer within the meaning of *Article 256,III of the FTC* shall be deemed to have taken place when the taxable person to whom the goods were intended is replaced, within a period of 12 months following the arrival of the goods, by another taxable person provided that the other conditions remain satisfied and that the taxable person dispatching or transported the foods enters this replacement in the register provided for in 2° of 1 *of Article 286 quater of the FTC*.

During the 12 months following their arrival in the Member State to which they have been dispatched or transported, a transfer of goods (*article 256, III of the FTC*) shall be deemed to take place:

- As soon as one of the 4 conditions mentioned above ceases to be met
- Immediately before the delivery when the goods are delivered to a person other than the taxable person to whom the goods were intended and if the replacement referred to in the previous paragraph has not been correctly made.
- Immediately before the beginning of dispatch or transport when the goods are transported to a country other than France.
- When the goods are destroyed, lost or stolen, on the date on which the goods were effectively removed or destroyed or, if this date is impossible to determine, on the date on which it was found that the goods were destroyed or missing.

Article 256 bis, I of the French tax code is amended for the case where the stocks are in France:

- The obtaining of the power to dispose of goods dispatched or transported under call-off stock arrangements, within 12 months of their arrival in France, will be considered as intra-Community acquisition.

The dispatching or transporting of goods from a Member State to France, by a taxable person under call-off stock arrangement, will not be considered as intra-Community acquisition.
In any case, if the above-mentioned conditions are met, the supplier will no longer have to be VAT registered in the country where the goods arrive and will not have to recover a deemed Intra-EU acquisition of goods followed by a domestic sale of goods in the Member State 2.

4.3. Administrative guidelines

- Traders who apply the consignment system only are exempted from identifying themselves for VAT purposes in the Member State of destination of the goods, when the conditions for applying the simplification are met.
  - The supplier must not be established or have a fixed establishment in the Member State to which the goods are dispatched or transported.
  - The fact that the supplier is VAT registered in the Member State of destination of the goods does not affect the application of the simplification.

The drafting of a contract of consignment and call-off stock is an essential prerequisite in order to secure the application of the simplification, as well as the rights and obligations of the parties.

- In terms of invoicing flows:
  - The supplier must issue a pro forma invoice at the time of departure of the shipment or transport of the goods to the other Member State of the European Union.
  - The supplier must issue a commercial invoice at the time of withdrawal from stock by the customer for the intra-Community supply of goods.
  - These elements will inevitably result in a discrepancy between the French VAT returns and the monthly Dispatch Intrastat that will be submitted by the operators. In the event of an audit, the operators must be able to explain these discrepancies.

Our contact in France:
Nathalie Habibou
T: +33 1 70 39 47 75
M: +33 6 23 72 32 75
nathalie.habibou@arsene-taxand.com