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**France – Finance
Act for 2021:
analysis for VAT
measures and
actions to be
anticipated**



France – Finance Act for 2021

French Finance Act for 2021 (*Law n°2020-1721 of December 29, 2020*) provides certain measures regarding VAT and indirect taxes.

1. Implementation of VAT Group scheme (*article 162 of the Finance act for 2021*) – entry into force as of January 1st, 2022 for an effective application on January 1st, 2023

The Finance Act for 2021 introduces a VAT group regime by transposing article 11 of Directive 2006/112/EC, according to which it is possible to consider as a single taxable person, entities established in France which are legally independent, but closely linked to each other financially, economically and from an organizational point of view.

The VAT group concerns all companies, all sectors and all internal flows (supplies of goods and services). It will allow the creation of a single taxable person for VAT purposes. For an application starting January 1st, 2023, the option must be formulated no later than October 31st, 2022 and will be effective for a period of three calendar years.

Please note that, consequently, the scope of the VAT exemption scheme for independent groups of persons (IGP) (*article 261 B of the French Tax Code*) has been restricted, effective January 1st, 2023.

In order to assess the opportunity to implement such a regime, it would be worthwhile to anticipate from now on the entry into force of the VAT group in France by identifying the companies that could join the group and the flows that would be positively impacted.

Assessment on a case-by-case basis will have to be made to determine the benefit of opting for this measure, since it will involve internal administrative reorganisations due to the centralization of reporting obligations at the level of a single entity. At this end operators should carry out:

- **An inventory and a review of the intra-group invoicing flows** that may be concerned by the VAT group.
- **An audit of the companies** that meet the conditions for joining the VAT group and an identification of the head company of the group.
- An analysis of the relevance of creating **VAT sub-group**.
- **A financial simulation of the impact** of the integration of target subsidiaries and the impacts in terms of wage tax.

If a VAT group is to be implemented, it will be necessary to (i) prepare a communication and training of the group's member entities (ii) draft a group agreement to provide for the organization of relations between the members and the consequences of the exit, (iii) determine the date on which the option can be made, and the date of entry into force of the VAT group and (iv) anticipate companies' IT / ERP systems adaptation to centralize and transmit information to the head of the group.

2. VAT and E-commerce: postponement on July 1st, 2021 (*article 51 of the Finance Act*) - measures applicable as of July 1st, 2021

Due to the health crisis and in accordance with the European Commission, the entry into force of E-commerce package reform has been postponed for 6 months, bringing it to July 1st, 2021.

Also, the Finance Act for 2021 provides (i) the application of the standard VAT rate to imports subject to the special regime instituted by article 298 sexdecies I of the FTC – i.e., goods contained in consignments whose value is less than €150, when the IOSS is not used (ii) the exclusion of second-hand goods works of art, collectors' items and antiques, and second-hand means of transport, subject to the VAT margin scheme and (iii) the application of the distance selling threshold (€10,000) only to taxable persons who are established in a single EU Member State.

These new rules apply to transactions carried out since July 1st, 2021 (chargeable event and chargeability of VAT occurring on or after that date). From now on, operators must anticipate the following actions:

- Complete a **mapping of flows** in order to identify new applicable rules (e-merchants and platforms) and new VAT liability cases.
- Anticipate local **VAT registrations** and assess the opportunity **to opt for one-stop-shops** (OSS, IOSS).
- Anticipate the new applicable rules by **informing sellers** of their obligations (platforms) as well as customers, by reviewing and modifying the terms and condition and Incoterms used (platforms and e-merchants).



- Modify **IT system settings** to include new requirements and obligations.
- Review, with the logisticians, the flows in order to **secure the VAT regime applied** (communication of the IOSS number in order to benefit from the import VAT exemption, monitoring of the €150 threshold and H7 declaration...).
- Depending on the applicable regime and the situation, **secure the obligation to issue invoices** (option for OSS, platform liable for VAT, etc.) and the information to be included in the invoices.

3. Clarification of the VAT rules applicable to complex transactions (*article 44 of the Finance Act*) - measures applicable as of January 1st, 2021

The Finance Act for 2021 clarifies the rules applicable to complex transactions laid down by the case law of the European Court of Justice (ECJ)¹. These rules were until now included in the tax authorities' guidelines but was often the subject of discussions in the event of a tax audit.

Following the new rules, every transaction must normally be regarded as distinct and independent. However, transaction which comprises a single supply from an economic point of view should not be artificially split.

The Finance Act also provide for a definition of a single transaction as the elements of a transaction which are so closely linked that they form, objectively, a single inseparable economic service, the breakdown of which would take on an artificial character

Therefore, when a supply is considered as a single transaction, the highest VAT rate will apply to the whole transaction. However, if a supply can be considered as a principal supply with accessories, the VAT rate applicable to the accessories will be the one applicable to the principal supply.

In addition, the Finance act provides some adjustments to prevent tax optimization practices in certain sector such as travel agency and offers including digital services, broadcasting services, television services for the determination of the taxable basis.

This clarification of the VAT rules applicable to single complex transactions is welcomed and should make it possible to secure the treatment applied by operators (often a source of discussion and interpretation).

The tax authorities' guidelines relating to article 268 bis of the FTC, which aims to determine the allocation of the taxable base of VAT under the sole responsibility of the company, should be removed.

As these new rules are applicable since January 1st, 2021 (due date and operative event occurring on or after that date), operators should complete the following actions:

- Perform a **review of invoiced operations** (in a global approach) and the VAT rates applied as well as the territoriality rules applied.
- **Quantify the risks** if the current position is maintained (in the light of the tax authorities' guidelines to be removed).
- If the treatment is changed, review the pricing policy and **inform clients** of the change in the applied rate (to avoid the calculation of the VAT by deducting ("*TVA en-dedans*") and therefore impact the margin)
- If necessary, **modify mentions** on invoices to consider the rate change.
- **Modify IT system settings** to consider the applicable rate and the corresponding territoriality rule.

4. Mandatory BtoB electronic invoicing - A government ordinance on the practical implementation expected by September 2021 (*article 195 of the Finance Act for 2021*)

Article 195 of the Finance Act enables the Government to take, by means of an ordinance, within 9 months of the publication of the Finance Act for 2021, any measure necessary to allow the generalization of e-invoicing.

The mechanism will have to be based on a report submitted to parliament and will have to pursue two objectives: the generalisation of the use of electronic invoicing and the obligation to transmit to the authorities, information relating to transactions carried out by VAT taxable persons which will not be derived from electronic invoices.

Electronic invoicing and data transmission will be implemented gradually. From January 1st, 2023, all companies will have to be able to receive electronic invoices. Regarding the issuing of electronic invoices, a gradual implementation will take place: as from January 1st, 2023 for major companies (more than 5,000 employees, or a turnover of more than 1.5 billion euros and a balance sheet of more than 2 billion euros), as of January 1st, 2024 for mid-size companies and as of January 1st, 2025 for small companies.

¹ ECJ, October 27th 2005, C-41/04, OV Bank NV, ECJ, November 10th 2016, C-432/15, Pavlina Bastova, ECJ, January 18th 2018, C-463/16, Station Amsterdam CV).



As the introduction of electronic invoicing and e-reporting requires a major effort in terms of company organization, involving changes to internal procedures and the configuration of IT systems, this reform should be anticipated. To this effect, it will be necessary to:

- Ensure **regular monitoring** of the reform in the light of existing procedures within the company insofar as the practical details of the reform are not yet known.
- **Review the various IT modules** and internal procedures that will be impacted by the reform.
- **Prepare teams for major changes** in the procedures for receiving and issuing invoices, and train them in the new procedures.
- **Analyse the various existing solutions** in order to determine the most relevant organization (e.g., invoice format, technical solution for issuing and receiving invoices, etc.).
- **Assess the opportunity to use a certified private platform** and **secure contractual relations** with the various service provider in charge of implementing the platform.
- Implement a **secure solution** for electronic invoices (i.e., EDI, certified electronic signature, reliable audit trail) or update it to incorporate new electronic invoicing and e-reporting procedures.

5. Clarification on sanctions applicable to VAT fraud (*article 170 of the Finance Act for 2021*)

Tax-free form fraud – measures applicable as of January 1st, 2021

Article 170 of the Finance act for 2021 provides for the application of a new fine to requests of VAT refund by non-EU travellers when the conditions for the refund are not met.

To this end, fraudulent request of customs stamp on a tax-free form, are subject to a custom fine of €150 to €1,500 as well as confiscation of the goods.

Failure relating the taxable base of import VAT – measures applicable as from January 1st, 2022

The Finance act for 2021 provide for the application of a customs fine to failures relating to import VAT taxable base, found by the customs authorities.

Failure to provide to customs authorities with the necessary information to establish the taxable base of imports VAT will be subject to a fine of €300 to € 3,000. This sanction will be applicable to import made as from January 1st, 2022.



Nathalie Habibou, VAT Partner, Arsene, Taxand Network

<https://www.arsene-taxand.com/>

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