

NEWSLETTER - December 2019

Table of contents

I/ EU VAT Quick Fixes 2020	3
1/ New substantive conditions for zero-rating intra-EU supplies of goods	3
2/ Proof of transport for zero-rating intra-EU supplies of goods.....	3
3/ Call-off stock simplification regime	4
4/ Intra-EU chain transactions.....	5
II/ UCC definition of the exporter for customs purposes – forthcoming end of the tolerance period	5
III/ Brexit – French consequences.....	6
IV/ Transfers deemed intra-EU supplies from France – new position from the tax office for foreign residents (DINR).....	7
V/ VAT rules for e-commerce	7
1/ Information obligations for sharing economy platform operators – 2020	7
2/ Joint liability of sharing economy platform operators – 2020.....	8
3/ E-commerce of supplies of goods – 2021	9
VI/ Other VAT main provisions.....	9
1/ Reverse-charge on import VAT – amended conditions - 2020	10
2/ Information obligation for logistics warehouse operators - 2020.....	10
3/ Publication of the list of non-cooperative platforms - 2020	11
4/ Exploitation of the data made public on the websites of social networks and platform operators - 2020.....	11
5/ VAT reverse-charge on transfers of certificates of guarantees of origin and guarantees of capacity – 2020.....	12

6/ VAT regime of UCITS - 2020.....	12
7/ Extension of VAT deduction on oil products (gasoline) - 2020.....	12
8/ Electronic invoicing – end of tolerance regarding invoices created on paper then transmitted electronically - 2020	12
9/ Electronic invoicing – suppliers in the public sector - 2020.....	13
10/ VAT on petroleum products - transfer of jurisdiction from the Customs authorities to the Tax authorities - 2021	13
11/ VAT on importation – transfer of jurisdiction from the Customs authorities to the Tax authorities – 2022	13
12/ Compulsory electronic invoicing – 2023/2025	14
VII/ Other indirect taxes main provisions	14
1/ Unification of the taxation regime of natural gas under the domestic tax on consumption of natural gas (TICGN) – 2020.....	15
2/ Domestic tax on consumption on energy products (TICPE) applicable to road freight transport - 2020.....	15
3/ Extension of the scope of the ‘Premix’ excise duty – 2020	15
4/ Excise duties – electronic reporting – 2020.....	16
5/ General Tax on Polluting Activities (TGAP) – transfer of jurisdiction from the Customs authorities to the Tax authorities – 2020/2021.....	16
6/ Abolition of the contribution on the first sales of medical devices - 2021.....	17
7/ Domestic tax on consumption of energy products (TICPE) on diesel off-road (GNR) – 2022	17
8/ Electronic reporting and payment by direct debit of the Insurance Premium Tax (IPT) – 2022..	17
9/ Unification of the modalities of declaration and recovery of certain indirect taxes – 2022/2024	18
VIII/ Incoterms 2020	18

1/ EU VAT Quick Fixes 2020

On 1st January 2020, four 'Quick Fixes' rules on intracommunity trade adopted at the EU level will come into force in all EU Member States.

France will implement those provisions through the Draft Finance Act for 2020 currently under discussion at the Parliament, with an application from 01/01/2020.

1/ New substantive conditions for zero-rating intra-EU supplies of goods

The following substantive conditions will be required to justify the VAT zero-rating :

- **Valid EU VAT number of the customer** : prior to 2020, the EU VAT number of the customer was only a formal condition. In absence of such VAT number, the VAT status of the customer could be justified by any means. Starting 01/01/2020, the VAT zero-rating is applicable if the supplier is provided with a valid EU VAT number from the customer. Businesses must put in place internal processes to ensure not only a regular monitoring of the validity of the EU VAT numbers of their customers by using the EU Commission's website VIES (VAT Information Exchange System), but also storage of these checks.
- **Reporting of the cross-border transaction in VIES/EC Sales List** : the VAT zero-rating will be conditioned to the submission of this reporting and to the absence of errors or omissions in this reporting, unless the supplier can duly justify this failure. In France, this reporting will consist in the submission of a 'DEB' return, which is a single report resulting from the merger of the Intrastat return and the EC sales listing.

2/ Proof of transport for zero-rating intra-EU supplies of goods

As from 01/01/2020, the new regulation will harmonize the conditions under which the transport requirement can be satisfied. The requirements to fulfil the transport justification will vary depending on who is in charge of the transport.

- ❖ If the supplier is in charge of the transport, the transport will be deemed performed if the supplier can provide :
 - 2 transport justifications (CMR, Bill of Lading, transport invoice, ...) delivered by 2 different parties independent from each other and from the supplier and customer,
 - or
 - 1 transport justification (CMR, Bill of Lading, transport invoice, ...) and 1 additional justification document listed below, delivered by 2 different parties independent from each other and from the supplier and customer :
 - Insurance policy related to the transport or dispatch of the goods
 - Bank documents proving payment of the transport or dispatch of the goods
 - Official documents issued by a public authority (eg. notary) confirming the arrival of the goods in the Member State of destination

- Receipt issued by a warehouse keeper in the Member State of destination confirming the storage of the goods in that Member State
- ❖ If the customer is in charge of the transport, the transport will be deemed performed if the supplier can provide:
 - The standardized justifications under the same conditions as stated above,

and
 - A written assessment from the customer certifying that the goods have been dispatched by himself or for his account : this assessment must be provided to the supplier by the 10th day of the month following the supply.

Above justifications are rebuttable presumptions. Hence, if the supplier does not meet above standardized transport justifications rules, proof of transport can in principle be provided by any means. Final guidance is still to be published.

3/ Call-off stock simplification regime

A call-off stock transaction refers to the situation whereby a supplier sends goods to a stock in another Member State for an already known intended acquirer, the transfer of ownership of these goods to that acquirer being postponed to a further event in the destination state when the acquirer takes out the good from the call-off stock.

The application of the current principles of intra-community regulations requires the seller to report a deemed intra-EU supply in the country of dispatch of the goods, and to be VAT registered in the EU country of destination where the stock is located to perform a deemed intra-EU acquisition and a domestic supply to the customer. VAT simplification arrangements were implemented by different Member States to avoid such registration but the rules vary from one country to another.

As from 01/01/2020, the new regulation introduces simplification rules whereby the supplier performs only an intra-EU supply in the country of departure of the goods and the customer an intra-EU acquisition in the country of destination. Both operations are deemed to be performed when the acquirer takes ownership of the goods.

The use of this simplification will be subject to the following conditions :

- the goods are dispatched or transported by a taxable person from one Member State to another with a view to being supplied there at a later stage and after arrival to another taxable person who can dispose of it as an owner by virtue of an agreement between the two taxable persons ;
- the supplier has not established his business nor does he have a fixed establishment in the Member State to which the goods are dispatched or transported ;
- the acquirer is identified for VAT purposes in the Member State to which the goods are transferred and has communicated his identity and VAT identification number to the supplier at the time when dispatch or transport begins ;

- the supplier mentions this transfer and the VAT identification number of the intended acquirer in his recapitulative statement submitted for the period of the transport of the goods ;
- the transfer of ownership must occur within 12 month following the introduction of the goods in the Member State of arrival.

This simplification is of mandatory use if all the conditions are fulfilled. The former French VAT simplification no longer applies.

This simplification does not cover the situation whereby a business transfers goods from one Member State to another without knowing yet the intended acquirer in that latter Member State.

4/ Intra-EU chain transactions

An intra-EU chain transactions refers to the situation where the same goods are successively supplied and their transport is made directly from the first supplier in one Member State to the final customer of the chain in another Member State.

From 01/01/2020, the new regulation introduces harmonised criteria for determining which of the transactions in a chain is the intra-EU supply. The Quick Fix covers only the situation where the middle party ('intermediary operator'), distinct from the first supplier and the final customer of the chain, arranges for the transport.

As a matter of principle, the transport is allocated to the supply by the first supplier to the intermediary operator which is deemed as the intra-EU supply. This rule locates the rest of the transactions in the chain in the Member State of destination of the goods.

By way of derogation, if the intermediary operator provides the first supplier with a VAT number in the Member State of dispatch of the goods, the transport is allocated to the supply by the intermediary operator to the final customer which is deemed as the intra-EU supply. This rule locates all the prior transactions in the Member State of dispatch of the goods.

For a number of cases, French administrative guidances already allowed in practice certain options of the new chain transaction rules.

II/ UCC definition of the exporter for customs purposes – forthcoming end of the tolerance period

Under the new Union Customs Code (UCC) definition of the exporter in force since May 2018, a company not established within the EU Customs territory cannot act as exporter for customs purposes. An EU tolerance nevertheless allowed such companies to still be declared exporter in box 2 of the customs document until 31/12/2020.

From a French VAT perspective, the fiscal definition of the exporter remained unchanged, i.e. a non-EU established company could be declared as exporter for VAT purposes and benefit from a VAT

exemption as long as the conditions laid down by articles 262 I of the French tax code and 74 of appendix 3 to the same code are fulfilled. The French customs authorities confirmed the application of above tolerance until 31/12/2020 in a note released in January 2019.

Since the customs export declaration is the main proof of the VAT exemption on exports, the French customs authorities also allowed in this note to have, after the end of the tolerance period, one company (EU based company) be declared as exporter for customs purposes in box 2 and another company (non-EU based company) declared as exporter for VAT purposes under its French VAT number in box 44 of the export declaration.

The revised guidance on the exporter definition released in 8 July 2019 by the EU Commission through Annex A to the UCC Export & Exit Guidance does not refer anymore to this transitional period until 31/12/2020.

The French customs authorities have not yet commented on this revised guidance. According to unofficial information, it is however expected that they would anticipate the end of this tolerance from 1 January 2020. Businesses should therefore take the necessary measures to amend their export customs clearance process.

III/ Brexit – French consequences

The UK will in principle leave the EU on 31 January 2020. In case of no deal, there would be no transitional period : the customs will be put in place between France and the UK from 01/02/2020.

The re-instatement of customs will imply the following changes :

- Intra-EU acquisitions from the UK will automatically become imports in France ;
- Intra-EU supplies to the UK will become exports from France.

Also, in the event of a hard Brexit, the following general aspects should be taken into consideration :

- French VAT registration : nothing should change regarding the existing VAT registration of UK based companies in France. The French VAT number will remain the same.
- Tax representation : Until now, the UK entities, as part of the EU, did not have the obligation to appoint a tax representative for VAT purposes. The French tax authorities have confirmed that UK entities will do not have to appoint a fiscal representative in case of hard Brexit. The French customs authorities have not yet officially published their position in respect to the maintenance or not of the obligation for non-EU based companies to appoint a fiscal representative for customs clearance purposes.
- EORI number : this Economic Operator Registration and Identification number is a unique customs ID. Businesses may need to obtain both an EORI from the EU and an EORI issued by the UK, notably in the case where the company is responsible for both the export declaration from the EU and import declaration in the UK or vice versa.

IV/ Transfers deemed intra-EU supplies from France – new position from the tax office for foreign residents (DINR)

Transfers deemed intra-EU supplies from France such as transfers of owned goods require a French VAT registration according to the French tax code.

The DINR took very recently an internal position to consider that the sole performance of transfers deemed intra-EU supplies from France does no longer trigger the obligation to file VAT returns. The DINR thus created a new case of limited VAT registration for the purpose of filing dispatch DEB/Intrastat returns, in addition to the already existing limited VAT registration for the purpose of filing arrival DEB/Intrastat returns (for instance in situations where the foreign company performs exclusively IC acquisitions followed by local sales subject to domestic reverse-charge in France).

The immediate consequence is that in such case, French input VAT is no more recoverable through the French VAT return but through the electronic VAT refund procedure (for EU companies) or through the 13th Directive VAT refund procedure (for non-EU companies) with stricter deadlines.

This position was recently published on the general website of the FTA but not integrated in the official doctrine BOFIP, nor in the French tax code.

Even if the legality of this new process is likely to be challenged, foreign companies should take into consideration this new position when registering for VAT in France. Businesses already VAT registered in France and carrying out transfers of stocks from France to another Member State must assess to which extent this measure will impact their VAT reporting obligations and their exercise of their right to VAT deduction.

V/ VAT rules for e-commerce

1/ Information obligations for sharing economy platform operators – 2020

Article 242 bis of the French Tax Code provides for the obligation for sharing economy platform operators :

- to file an annual report with the tax administration summarising all the transactions conducted by users/sellers of these websites. A specific format is required here : the platform must gather all the information within a single file (or multiple file if the amount of data refers to more than 1 million users to report) under an XML/UTF-8 format. This file must be transmitted electronically from the website of the French Tax Administration (www.impots.gouv.fr). To this purpose, these platforms must get a SIREN number in France (even in the case where they would not have any French VAT reporting obligations) in order to create a professional account on this website from which the annual report must be submitted.
- to send an annual report to each user/seller including the number of transactions this user carried out, together with the related amount. There is no imposed format as long as all below requirements are included in this report which can for instance be sent by email to the seller.

These reports must include the following information :

- Identification of the platform operator: Corporate name, place of establishment, identification number (VAT number for platforms established in the EU or SIREN number).
- Identification of the user (Seller) :
 - Private individual : Name, first name, residence address, telephone number, email address, date of birth. A copy of ID documentation or private tax number (French resident) to be provided if the seller performs sales higher than EUR 1.000 per year.
 - Professional seller : Corporate name, place of establishment, identification number (VAT number for sellers established in the EU ; Local commercial/tax registration number for sellers established outside of the EU), email address.
- Status of the seller (professional seller or private individual)
- Number of transactions during the year N
- Total amount of transactions during the year N
- Seller's bank account details for receiving the payments (if known by the platform)

The first reports submission is due by 31/01/2020 for transactions carried out during year 2019.

This obligation applies only when the seller performs supplies of goods/services whose place of supply is in France, irrespective of the status of the recipient (B2B or B2C) or the application of a reverse charge mechanism.

The platform does not have to report to the French Tax Administration the sales if they are performed by a private individual under the following conditions :

- Type of goods sold : furnitures, cars, household devices or others items not exceeding EUR 5.000.
- Maximum amount of sales during the year : EUR 3.000
- Maximum number of sales during the year : 20

If the platform fails to comply with above obligations, the penalties are as follows :

- Failing to provide report to the seller : 5% of the sums that had to be declared
- Failing to provide report to the administration : Fixed fine (maximum EUR 50.000)

2/ Joint liability of sharing economy platform operators – 2020

Platforms can be held jointly liable for the payment of the VAT due by the seller. This applies to :

- B2C transactions located in France for which the seller has an obligation to be VAT registered in France and to collect and pay the VAT to the French authorities.
- Imports carried out through the platform by a person established in France, EU or third country.

Platforms concerned are the ones that have more than 5 millions unique visitors per month, irrespective of their place of establishment.

The mechanism applies as follows :

1. When the administration is suspicious regarding a seller operating supplies of goods/services through the platform that should be declared in France, it informs firstly the platform with the measures to take to ensure a regularization from the seller. The platform must execute

these measures which could cover the notification to the seller of its obligation, the information to the seller to contact the administration for regularization, the collection of French VAT number (if any), the validity check of the VAT number, the demanding from the seller to designate a tax representative (if applicable).

2. Once the measures have been applied, the platform informs the tax administration and reports the information collected.
3. If the administration remains suspicious after communication of the information or if no reply has been provided 1 month after the notification, the administration can force the platform to take additional measures or to exclude the user from the platform.
4. If the additional measures or the exclusion are not performed within 1 month following the notification from the administration, the platform will be considered jointly responsible for the payment of the VAT.

This joint liability does not apply to the transactions falling into the scope of Directive (UE) 2017/2455 to come into force in January 2021, notably distance sales of goods imported from third countries which do not exceed EUR 150 or sales within the EU performed by an operator established outside of the EU, whereby those transactions are made through the use of a platform. Electronic platforms involved into these type of transactions will become buyer-reseller of these goods from a VAT standpoint, and thus directly liable for VAT on the supplies to the non-taxable EU consumer.

3/ E-commerce of supplies of goods – 2021

France is considering implementing the provisions of Directive (EU) 2017/2455 of 5 December 2017 on e-commerce through the Draft Finance Act for 2020 currently under discussion at the Parliament, with an application from 01/01/2021.

The new rules will consist mainly in :

- Providing a modernized definition of intra-EU distance sales ;
- Generalizing the principle of taxation at the place of final consumption when the threshold of EUR 10.000 is crossed, this threshold being assessed over a year and at the level of all EU countries ;
- Creating a new special regime for distance sales of imported goods;
- Subjecting interfaces (marketplaces, platforms, portals or similar operators) to new obligations regarding VAT liability and record keeping;
- Extending the scope of the already existing Mini One Stop Shop (MOSS), and create a new MOSS for distance sales of imported goods.

VI/ Other VAT main provisions

Below developments are notably based on the :

- French Finance Act for 2019 already adopted ;
- French Draft Finance Act for 2020 currently under discussion at the Parliament. The Final Finance Act for 2020 will be officially published at the end of the year ;

- French Draft Social Security Financing Act for 2020 which has been definitively adopted by the French Parliament and should be officially published by the end of this year.

1/ Reverse-charge on import VAT – amended conditions - 2020

In the current state of legislation, a company established outside the EU and VAT registered through a fiscal representative in France can apply with the Customs for the authorization to reverse-charge import VAT if it appoints a customs representative holding an AEO authorization.

A company established in the EU must meet the following conditions in order to obtain this authorization :

- The company should have performed at least 4 imports in the EU in the past 12 months ;
- The company must certify that it is in a position to consolidate the VAT information in order to properly file its VAT return ;
- The company must prove that there have been no serious or repeated infringements of customs and tax provisions during the 12 months preceding the application ;
- The company must prove a satisfactory financial situation during the 12 months preceding the application.

In the situation where the EU established company is granted an AEO authorization ('customs simplifications' or 'Customs security'), the 4 above conditions are considered fulfilled.

The Finance Act for 2019 introduces amended provisions whereby the first and third conditions are reshaped for EU based companies :

- The company should have performed at least 4 imports in the EU in the past 12 months or should have been existing for at least 12 months.
- Not only the company must prove that there have been no serious or repeated infringements of customs and tax provisions during the 12 months preceding the application but the Director(s) of the company must also comply with this obligation.

The Finance Act for 2019 also provides that all companies benefiting from the import VAT reverse-charge license have an additional period of one month to report in the VAT return and reverse-charge VAT on import operations for which they are able to demonstrate that they are not in possession of the import declaration on which they are designated as actual consignees.

Finally, those companies will be in position to make adjustments through their VAT returns.

Above amended provisions will be applicable from 1 January 2020.

2/ Information obligation for logistics warehouse operators - 2020

The Draft Finance Act for 2020 creates an obligation for operators operating a warehouse or a logistics platform which consists in making available to the tax authorities various information relating to the origin, nature, quantity and detention of the stored goods but also to the identity of the owners of the stored goods. This obligation concerns the following scope :

- The goods stored are intended to be sold by an electronic platform, the electronic platform being defined as a business, regardless of its place of business, which remotely connects people electronically for the sale of goods, the supply of a service or exchange or sharing of a good or service ;

- The sale is likely to fall within the scope of VAT ;
- The goods have been imported from a country or territory outside the EU ;
- They are the property of a taxable person established outside the EU ;
- They have not yet given rise to an operation subject to VAT since their importation.

This information will have to be kept by the operator of a warehouse or logistics platform until 31 December of the sixth year following the year during which the import operation took place.

The Draft Finance Act also creates a right of communication under which operators of a warehouse or logistics platform must communicate to the administration, on its request, the aforementioned information. The opposition to such right of communication would be sanctioned by a fine of EUR 10.000.

The information collected may usefully be cross-checked with the information provided to the tax authorities pursuant to Article 242 bis of the French Tax Code, concerning in particular the amounts and the number of transactions of online platform users (cf. paragraph 1 of part II above of our newsletter).

3/ Publication of the list of non-cooperative platforms - 2020

The Draft Finance Act for 2020 creates a 'name and shame' process for the publication on the internet of the names of the platforms which failed to fulfill their cooperation obligations with the tax authorities.

The publication would require two prior failures, over a rolling period of twelve months, and leading to :

- The implementation, after notification and formal notice, of the solidarity mechanism of VAT, established by the law of 23 October 2018 on the fight against fraud, when the administration presumes fraud of one of the platform users;
- Or the application of a fine for failure to reply to a right of communication ;
- Or the application of a fine for the absence of annual transmission of information relating to user transactions ;
- Or forced taxation to VAT, in case of reporting failure, in respect of certain distance sales that the platform has facilitated for which it would be liable for VAT ;
- Or finally forced taxation to the digital services tax (TSN) in case of non-declaration.

The publication cannot exceed one year and is withdrawn if the platform pays taxes or fines imposed on it.

4/ Exploitation of the data made public on the websites of social networks and platform operators - 2020

The Draft Finance Act for 2020 would authorize, experimentally for a period of three years, a 'datamining' process whereby the French tax and customs authorities could collect in bulk public personal data freely released by users of certain online platforms.

The retention period for the data is set at :

- A maximum duration of 30 days when they are not likely to contribute to the finding of a tax or customs offense exhaustively listed ;
- A maximum period of one year where they contribute to the finding of a tax or customs offense among the aforementioned list;
- Until the end of the procedure if criminal, tax or customs proceedings are initiated.

5/ VAT reverse-charge on transfers of certificates of guarantees of origin and guarantees of capacity – 2020

The Draft Finance Act for 2020 foresees a new reverse-charge mechanism applicable to transfers of certificates of guarantees of origin and guarantees of capacity respectively referred to in articles L. 314-14 (guarantees of origin of electricity produced from renewable sources) and L. 335-3 (capacities for which the public transport network operator has certified availability and effectiveness) of the Energy Code.

6/ VAT regime of UCITS - 2020

In the state of the current law, undertakings for collective investment in transferable securities (UCITS) and certain other undertakings for collective investment (UCI), exhaustively listed in article 261 C, 1°, f of the French tax code, benefit from a VAT exemption in respect of their management services. The Draft Finance Act for 2020 extends the benefit of the exemption to all UCI "with similar characteristics" to UCITS. The list of these organisms would be fixed by decree.

7/ Extension of VAT deduction on oil products (gasoline) - 2020

Since 2017, the oil products (gasoline) deduction regime is progressively aligned with that of diesel fuels.

Regarding oil products used for fuel engines for passengers transportation vehicles, in 2019, input VAT was deductible at 40%. Going forward :

- From 1 January 2020, input VAT will be deductible at 60% ;
- From 1 January 2021, input VAT will be deductible at 80%.

Regarding oil products used for fuel engines on commercial/utility vehicles, in 2019, input VAT was deductible at 60%. Going forward :

- From 1 January 2020, input VAT will be deductible at 60% ;
- From 1 January 2021, input VAT will be deductible at 80% ;
- From 1 January 2022, input VAT will be deductible at 100%.

8/ Electronic invoicing – end of tolerance regarding invoices created on paper then transmitted electronically - 2020

An electronic invoice is an invoice or a flow of invoices created, sent, received and stored under any electronic format. The entire invoicing process must be electronic.

The French tax administration tolerates up to now that an invoice created on paper then scanned to be sent and received by electronic means (through email or secured network) and considers it as an electronic invoice, subject to the fulfilment by the issuer of cumulative specific conditions.

This tolerance applied until 31/12/2016 for large companies and public entities, 31/12/2017 for intermediate-sized companies, 31/12/2018 for small and medium-sized companies and is applicable for micro-companies until 31/12/2019.

From 1 January 2020, this tolerance is not applicable anymore, whatever the size of the company. To be considered as an electronic invoice, the whole invoicing process will have to be electronic.

9/ Electronic invoicing – suppliers in the public sector - 2020

From 1 January 2020, the electronic transmission of invoices on the French Chorus Pro portal becomes mandatory for very small companies (less than 10 employees) which are suppliers in the public sector (State, local authorities, hospitals, public institutions, etc.).

This provision applies since January 2019 for small and medium-sized enterprises (10 to 250 employees), since 2018 for medium-sized enterprises (250 to 5.000 employees) and since 2017 for those with more than 5.000 employees.

10/ VAT on petroleum products - transfer of jurisdiction from the Customs authorities to the Tax authorities - 2021

Currently, VAT on petroleum products referred to in table B of article 265-1 of the Customs code is managed by the Customs authorities and the Tax authorities depending on the status of the goods (prior, at time and after release for consumption).

The Finance Act for 2019 fully transfers the collection of VAT on petroleum products from the Customs to the Tax authorities.

The main consequences will be as follows :

- Prior to release for consumption, the VAT suspensive regime as referred to in article 277 A of the French tax code will automatically apply to petroleum products (except natural gas) placed under excise warehouse ;
- At time of release for consumption, VAT will be collected by the Tax authorities and deductible under common law conditions ;
- After release for consumption, VAT will continue being subject to common law conditions under the jurisdiction of the Tax authorities.

These new provisions will be effective as of 1 January 2021.

11/ VAT on importation – transfer of jurisdiction from the Customs authorities to the Tax authorities – 2022

The introduction of goods from non-EU countries to the EU gives rise to the collection of the VAT by the Customs authorities, at the time of customs clearance of the import operation.

Importing companies can deduct this VAT under common law conditions from the Tax authorities.

Existing arrangements in France already correct this duality of regime in certain cases (VAT free import regime of article 275 of the French tax code to the benefit of exporters, Customs regime 42, VAT import reverse-charge upon customs authorization).

Considering that this temporal disjunction between the payment and deduction of VAT, with two different interlocutors, is a source of difficulties for companies, the Draft Finance Act for 2020 intends to simplify the recovery of VAT on imports by fully transferring the collection of the import VAT from the Customs to the Tax authorities as unique interlocutor for B2B transactions.

In addition, new rules for the designation of the person liable for import VAT will be established

The main consequences will be as follows :

- The VAT import reverse-charge upon authorization from the Customs authorities will become void. A similar arrangement whereby an importer could opt for the VAT import reverse-charge with the tax authorities is expected to be implemented ;
- The mechanism of the VAT recovery on imports or on exits of suspensive regimes will be carried out under common law conditions ;
- The tax authorities become competent for auditing VAT due on importation.

These new provisions will be effective as of 1 January 2022.

12/ Compulsory electronic invoicing – 2023/2025

The Draft Finance Act for 2020 establishes the obligation to issue invoices electronically between taxable persons. Also, the data contained in the electronic invoice would have to be transmitted to the administration.

The entry into force of this scheme is planned between 1 January 2023 and 1 January 2025 according to a schedule set by decree that will take into account the size and sector of activity of the companies concerned. It is also expected that the entry into force is subject to the authorization of the Council of the European Union.

VII/ Other indirect taxes main provisions

Below developments are based notably on the :

- French Finance Act for 2019 already adopted ;
- French Draft Finance Act for 2020 currently under discussion at the Parliament. The Final Finance Act for 2020 will be officially published at the end of the year ;
- French Draft Social Security Financing Act for 2020 which has been definitively adopted by the French Parliament and should be officially published by the end of this year.

1/ Unification of the taxation regime of natural gas under the domestic tax on consumption of natural gas (TICGN) – 2020

The Draft Finance Act intends to simplify the natural gas taxation regime. To this end, it integrates all uses of natural gas into the scope of the domestic consumption tax on natural gas (TICGN), whereas these uses currently fall under either this tax (when natural gas is used as heating fuel, i.e. burnt to produce directly heat) or the domestic tax on consumption on energy products (TICPE) (when natural gas is used as motor fuel, i.e. burnt to produce directly mechanical energy). Thus, the chargeable event and tax point of the TICPE occur upstream of the distribution circuit, when the chargeable event and tax point of the TICGN occur downstream of this same circuit.

The future regime would maintain a differentiated tariff according to the use, as follows :

- natural gas used as motor fuel would be taxed at a TICGN rate of 5,23 euros per MWh ;
- natural gas used as heating fuel would be taxed at a TICGN rate of 8,44 euros per MWh.

The future scheme would also simplify the application of the TICGN exemption for biogas, through a flat-rate exemption : the tax rate will be lowered, for all taxpayers, by the average proportion of biogas found in the network in 2018.

Above provisions would be applicable on transactions for which the tax point occurs from 1 January 2020.

Finally, it is intended that the extension of the TICPE exemption of fuel biogas used in cogeneration installations be applied retroactively, so that all installations are treated in an equivalent manner. This provision would cover the TICPE which was due between 1 April 2014 and 31 December 2018, when the gas quantities have been used as motor fuel in cogeneration installations for combined production of heat and power.

2/ Domestic tax on consumption on energy products (TICPE) applicable to road freight transport - 2020

The Draft Finance Act intends to reduce the scope of the derogatory taxation scheme for the TICPE on diesel fuel used by certain road hauliers. The tariff would be increased from 43,19 euro per hectoliter to 45,19.

This provision would be applicable on fuel acquired from 1 January 2020.

3/ Extension of the scope of the 'Premix' excise duty – 2020

This so-called premix tax referred to in article 1613 bis of the French tax code currently applies at a rate of 11€ per deciliter of pure alcohol to mixed beverages whose alcohol by volume (ABV) is between 1,2% and 12%. They are constituted by :

- Either a pre-mix of low alcohol drinks (ABV less than 1.2%) and alcoholic beverages,
- Or an alcoholic product that contains more than 35 grams of sugar or an equivalent sweetener per liter expressed as invert sugar. The taxable basis is however restricted to products which do not benefit from protected geographical indications or certificates of

specificity within the meaning of the Community rules, which are not covered by the relevant EU regulations and which are not cider or perry.

Those products are liable for taxes for specific public health reasons. The Draft Social Security Financing Act for 2020 extends the scope of the premix tax by introducing a taxation at 3€ per deciliter of pure alcohol to aromatised wines, aromatised wine-based drinks and aromatised wine-product cocktails, which do not benefit from the protections mentioned above for alcoholic products.

The Draft Social Security Financing Act for 2020 has been definitively adopted by the French Parliament and should be officially published by the end of this year. Above new provision will be applicable from 1 January 2020.

4/ Excise duties – electronic reporting – 2020

The decree of 26 March 2018 provides for the mandatory use of the e-filing and online payment of excise duties no later than :

- 1 September 2019 for wine producers (winemakers, winemakers, winemakers and cooperatives) ;
- 31 December 2019 for the other operators, including notably those involved in the business of alcoholic beverages.

The access to the dedicated Customs platform called CIEL (online excise duties) has been extended since 26 November 2019 to registered consignees who will have to file and pay online their periodical excise duties return starting 01/01/2020.

5/ General Tax on Polluting Activities (TGAP) – transfer of jurisdiction from the Customs authorities to the Tax authorities – 2020/2021

The TGAP is currently collected by the Customs authorities and requires the appointment of a responsible fiscal representative when the liable taxable person is established outside France.

The Finance Act for 2019 transfers the collection of the TGAP to the Tax authorities under below modalities :

- For the TGAP divisions related to lubricants, detergents, extraction materials and emissions of polluting substances into the atmosphere, the transfer of jurisdiction will apply to transactions with a chargeable event taking place from 1 January 2020.
- For the TGAP waste division, the transfer of jurisdiction will apply to transactions with a chargeable event taking place from 1 January 2021.
- The TGAP on fossil fuels, now called incitative tax related to incorporation of biofuels, is not concerned by this transfer of jurisdiction and remains collected by the Customs authorities.

The practical consequences of this transfer are as follows :

- The appointment of a responsible fiscal representative remains only for non-EU companies established in a country having no legal instrument of tax mutual assistance with France. The principle of unicity of the fiscal representation (notably for VAT) set by article 302 decies of the French tax code will also cover the TGAP. Companies established in the EU can fulfill their TGAP obligations through the appointment of a simple tax agent.

- For taxable persons liable for VAT under standard conditions, the TGAP will be declared in the appendix to the VAT return (form 3310-A) in respect to the month following the first calendar quarter of the year following the one in which the tax became due.
- Those who do not have any VAT reporting liabilities will have to apply for a prior registration with the tax authorities to obtain an identification SIREN number. The TGAP will be declared no later than 25 April of the year following the one in which the tax became due.
- It is expected that the TGAP will have to be declared electronically and paid by direct debit from a SEPA B2B bank account.

As a transitional measure, a double reporting of the taxable quantities in 2019 both with the Tax authorities and the Customs authorities will be required in 2020. The regularization of the tax due for 2019 will be performed with the Customs authorities. The calculation of the tax due for 2020, including the down-payments, will be performed with the Tax authorities.

6/ Abolition of the contribution on the first sales of medical devices - 2021

This social contribution currently referred to in article L. 245-5-5-1 of the Health public code is due by VAT taxpayers operating the first sale in France, after manufacture in France or after introduction into France from abroad, of medical devices and in vitro diagnostic medical devices.

The Draft Finance Act for 2020 intends to abolish this contribution from 1 January 2021.

7/ Domestic tax on consumption of energy products (TICPE) on diesel off-road (GNR) – 2022

The reduced TICPE taxation on diesel off-road would be progressively abolished by 2022, so that this taxation would be aligned with the one applicable to diesel fuel starting 1 January 2022.

The Draft Finance Act for 2020 also organizes the introduction on 1 January 2022 of a reduced tariff directly applicable to the release for consumption of such product for farmers, who currently benefit from the reduced tariff on GNR.

8/ Electronic reporting and payment by direct debit of the Insurance Premium Tax (IPT) – 2022

The Draft Finance Act foresees the obligation to declare the IPT by electronic means (online platform). This would be applicable also to the parafiscal charges (notably the CATNAT levy), and the withholding tax of article 990-I CGI on life insurance contracts. This would be also supported by an obligation to pay the corresponding tax amount by direct debit.

These new provisions would be applicable from a date determined by decree and at the latest to the transactions for which the chargeable event occurs from 1 January 2022.

9/ Unification of the modalities of declaration and recovery of certain indirect taxes – 2022/2024

A transfer of jurisdiction from the Customs authorities to the Tax authorities is foreseen for below taxes, among others :

- From 2022 : domestic taxes on consumption of natural gas (TICGN), coal (TICC) and electricity (TICFE)
- From 2024 : excise duties on alcoholic beverages and tobacco

VIII/ Incoterms 2020

The International Chamber of Commerce released in September 2019 the following new Incoterms (world's essential terms of trade for the sale of goods) which will be applicable starting 1 January 2020 :

- Rules for any mode of transport

EXW | Ex Works

FCA | Free Carrier

CPT | Carriage Paid To

CIP | Carriage and Insurance Paid To

DAP | Delivered at Place

DPU | Delivered at Place Unloaded (ex- DAT | Delivered at Terminal)

DDP | Delivered Duty Paid

- Rules for sea and inland waterway transport

FAS | Free Alongside Ship

FOB | Free On Board

CFR | Cost and Freight

CIF | Cost Insurance and Freight