

## NEWSLETTER - OCTOBER 2017

### I. Tax provisions resulting from the French Annual Finance Act Bill for 2018

This bill released on 27 September 2017 is currently being discussed at the Parliament. The below provisions should not be considered as definitive before the act is voted late December.

#### I.1. Cash Desk Software certification

The French Annual Finance Act for 2016 introduced new obligations regarding the certification of accounting, management and cash desk software. The related provisions originally introduced in the French legislation under article 286 I 3° bis of the French Tax Code were supposed to come into force on January 1<sup>st</sup>, 2018.

These original provisions were enacted with the widest scope as for the taxable persons concerned and the software to be certified. The original plan was to make it mandatory for every taxable person realising operations in France and registering payments from their customers with accounting/management/cash desk software, to use certified software satisfying specific terms regarding notably registration, security and data storage.

Originally, this obligation was supposed to apply to every taxable person VAT-registered in France and to any piece of software that would operate calculation and registration of the payments such as:

- Accounting software : those can be defined as software allowing registration of the payments in different modules (suppliers, customers, wages, ledger, ...)
- Management software : those are referred by the French Administration to the automated commercial management of orders, invoices, cost estimate or delivery notes and to the management of the stock (sales and purchases), turnover, ...
  - Any piece of software combining the *management* with the *accounting* registrations, allowing to monitor the global activity (sales and payments) was then supposed to be part of the certification obligation.
  - ERPs were mainly part of those
- Cash desk software: Those refer to the unique function of registering payments. 3 different types are described by the French Administration:
  - "Autonomous" cash desk: they can register data related to payments, without the possibility to be linked to a network with other cash desks or a central payment registration unit.

- Cash desks linked to a cash register network system able to register, to secure and to store the payments data in real time directly in the system. Those systems may produce the accounting based on the data provided by the cash registers.
- Cash registers software installed on one computer or on computers (network or not): in addition to the payments registration, securing and storage functions in real time directly in the system, those deliver accounting and finance management features.

Difficulties have however arisen as regard the application of these provisions. In June 2017, an official note from the Minister of Budget initiated a simplification of these obligations. This note was followed with the issuance of a detailed guidance from the French Authorities under a FAQ format. These modifications will be introduced in the French Annual Finance Act for 2018 currently under discussion.

January 1<sup>st</sup> 2018 will remain in principle the entry into force date.

Note that those provisions do not create an obligation to use software for registering supplies and payments. They generate an obligation to use a certified piece of software only if the taxable person uses one for this purpose. It is then still possible to rely on paperwork, or both methods.

The expected provisions to come into force next January makes it mandatory to have software certified based on two conditions:

- Undertaking VAT-taxable supplies of goods or services located in France for which invoice issuance is not required.
- Using Cash Desk Software for registration of commercial operations and related payments.

#### 1) Taxable persons concerned

The purpose of this obligation is to guarantee that every VAT-taxable operation is registered and that the data stored cannot be altered, especially in the case where no invoices are issued to underpin the reality of these operations.

Consequently, the obligation will be applicable only to taxable persons carrying B-to-C transactions. This means that if the operator carries out B-to-B and B-to-C transactions at the same time, certified software will have to be used.

The obligation will not apply to taxable persons carrying only VAT-exempted operations.

As far as foreign based companies are concerned, the FAQ published by the FTA in June 2017 specifies that:

- subsidiaries and branches of foreign companies will fall within the scope of this obligation of certification;
- as a tolerance measure, foreign companies that are VAT-registered in France without being established will not fall within the scope of the obligation.

The FAQ nor the French Annual Finance Act Bill for 2018 currently under discussion at the French Parliament do not comment further on the situation of foreign based companies constituting selling and/or purchasing PE only for VAT purposes. Further clarification from the FTA will have to be requested.

Regarding e-commerce activities, if those are B-to-C and located in France, the cash desk software must be certified as described earlier. However, a foreign company operating supplies of goods in

France under application of the distance sales rule is not in the scope of the provisions due to the obligation for the provider to issue invoices to the customers.

## 2) Software to be certified

The scope of the certification obligation is narrowed down to the “cash desk software” section depicted above. Generally speaking, the main function of those is to enable the registration of the B-to-C supplies of goods and services, that is to say when no invoices need to be issued in accordance with French Law.

There is no need to use certified software for B-to-B operations, as French Law makes it mandatory to issue invoices.

In case of software delivering multifunction tools such as accounting, management, or invoicing features alongside cash desk functions, only the cash desk part must be certified.

## 3) How to ensure the software are certified?

The operator can ensure the software used are certified in two ways:

### - *Certification:*

- It is delivered by one of the two entities entitled to enact it, the AFNOR and the LNE (Laboratoire National de Métrologie et d'Essais), upon demand by the software companies.
- The certification document is then not directly addressed to the user of the software but to the software companies.
- This certification is global and bound specifically to the software. This means once the software gets through certification, VAT operators can acquire it and ensure fulfilment of their obligation.
- You can find attached in Appendix 1 a list of the current software and version that have been certified by those entities.

### - *Attestation:*

- It is a document delivered by the software company itself to the user, stating that its products are compliant with the obligation's requirements.
- It is delivered individually to any operator that needs to satisfy their obligation.
- There are no official certifying entities involved in this process, which means the responsibility relies on the software company.
- The software company must ensure and state explicitly in the document that the piece of software fulfil the requirements set by the legislation regarding securing, registration, data storage etc. The accreditation document must moreover indicate the version of the software for which accreditation is given along with the date of acquisition. The accreditation must be addressed explicitly to the operator using the software.
- The attestation is valid as long as the software is updated with *minor* changes. Minor updates are the ones that do not modify the features of the software that comply with the obligation (no alteration, securing, storing, and archiving of the data). When those features are modified, it is considered as a *major* update for which new attestations have to be delivered.

- You can find in Appendix 2 the attestation template provided by the French Authorities (with a free English translation).

#### 4) Obligations regarding data storage and archiving

The software must provide tools and features that comply with the obligation as regard data storage and archiving.

Data storage refers to the storing of data in the cash desk system itself. Archiving the data refers to the extraction of those from the system and to use physical storage device (such as USB, hard disk drive or optical).

The software must foresee an archiving process at least once in every fiscal year. In any case, archiving must be processed every time an extraction from the system is operated.

As a reminder, the data must be stored either in the system or in archiving storage device for 6 years.

### **I.2. VAT tax base for online press services**

The current VAT tax rate for press and online press services is 2.10%.

However, online press services are sometimes included in package of services sold by Internet Service Providers. As the main services provided follow the regular 20% tax rate, it can be difficult and uncertain to isolate the different tax bases for applying the corresponding tax rates.

When online press services are introduced into such a package, the 2.10% rate is applicable to the portion of the subscription of the customer that corresponds to the sums paid by the Internet Service Provider itself for the acquisition of those services.

Those provisions are supposed to be applicable on transactions whose chargeable event intervenes as from January 1<sup>st</sup> 2018.

### **I.3. VAT exemption on home-care services**

Until now, only specific activities that were authorized could benefit from the VAT exemption on home-care services. Recent provisions have however spared home-care services provider related to the elderly to obtain such authorization, ruling out the whole activity from the exemption.

To keep the full range of those services out of the scope of VAT, little additions and modifications of the provisions related to exemption of home care services are foreseen to come into force.

### **I.4. Expansion of the VAT exemption applicable to psychologists and psychotherapists**

Currently, psychologists and psychotherapists must hold a specific degree to be VAT-exempted that allow them to be recruited in public hospitals.

The new provisions intend to expand the exemption to psychologists and psychotherapists that are acknowledged and registered by the Administration on the ADELI register (national register for public health professionals).

### **I.5. Planned rates for energy-related indirect taxes**

The French Annual Finance Act Bill for 2018 has disclosed the plan for indirect taxes on supply of energy products (natural gas, electricity, and fuels) for the 2018-2022 period.

1) TICGN rates (domestic tax on consumption of natural gas as fuel):

UNIT OF MEASUREMENT	RATE (euros)				
	2018	2019	2020	2021	As from 2022
Megawatt-hour	8,45	10,34	12,24	14,13	16,02

2) TICC rates (domestic tax on consumption of coal, lignite and hard coal as fuel)

UNIT OF MEASUREMENT	RATE (euros)				
	2018	2019	2020	2021	As from 2022
Megawatt-hour	14,62	18,02	21,43	24,84	28,25

3) CSPE/TICFE rates (domestic tax on supply of electricity):

The CSPE/TICFE rate for 2018 is in principle fixed at 22,5€/MWh. Specific provisions regarding the period up to 2022 are expected.

4) TICPE (indirect tax on other energy products such as fuel):

The Finance Act Bill updates the list of the different rates applicable to the different fuel products. The new rates take into account the evolution of carbon pricing and seek to equalize on a 5-year period rates applicable on petrol and diesel products.

### **I.6. Application of a flat tax on savings income**

The French Finance Act Bill undertakes a simplification process for the tax regime on savings income by creating a 30% flat tax ("Prélèvement Forfaitaire Unique") that will be applicable to revenues collected as from January 1<sup>st</sup> 2018.

This flat tax will replace the progressive income tax scheme currently applicable and should apply to the following income:

- Investment income (interests, dividends and assimilated).
- Income resulting from life insurance policies corresponding to premiums paid as from September 27<sup>th</sup> 2017.
- Capital gains resulting from securities transfer such as stocks, shares, bonds, etc.

The 30% flat tax will be constituted of:

- Income tax for 12,8%
- Social levies for 17,2%.

## II. Other tax updates

### **II.1. Update on airline companies which benefit from the international airline VAT exemption of Art. 262-II-4° of the French Tax Code**

Article 262-II 4° of the French Tax Code exempts from VAT operations undertaken on airplanes used by airline companies for which the activity from or towards foreign territories, including French Overseas Territories, represents at least 80% of their global activity.

Those operations can be related to supplying, repairing, renting, processing, maintenance, or chartering.

For the application of this exemption, the suppliers must in principle be provided with a certificate from the airline company proving that the above requirements regarding international activity are fulfilled.

- **Regarding foreign companies:** there is an assumption that those requirements are fulfilled. The following list of airline companies are considered by the FTA as excluded from this assumption. They must provide to the supplier a VAT exemption certificate.
  - AERO4M (AEH)
  - AIR-TAXI CHARTERS INTL (IBJ)
  - AIRGO FLUGSERVICE (XGO)
  - ATLANTIC AIRLINES UK (NPT)
  - EASTERN AIRWAYS (EZE)
  - GAINJET AVIATION (GNJ)
  - HELI AIR MONACO (MCM)
  - JETFLY AVIATION LUXEMBOURG (JFA)
  - MHS AVIATION GMBH (MHV)
  - SI AVIA (SVB)
  - SKYTAXI LTD (IGA)
  - VLM AIRLINES (VLM)
  - VOLOTEA (VOE)
  - WEST AIR SWEDEN (SWN)

- **Regarding French companies:** there is no assumption that the requirements are fulfilled except for the listed companies below. Those companies qualify automatically for the international airline VAT exemption and are relieved from issuing a VAT exemption certificate to their supplier:
  - AIGLE AZUR (AAF)
  - AIR AUSTRAL (REU)
  - AIR CARAIBES (FWI)
  - AIR FRANCE (AFR) and its subsidiaries
  - AIR ITM (MQT)
  - AIR MEDITERRANNEE (BIE)
  - AIR TAHITI NUI (THT)
  - AIRAWAK (ATI)
  - AIRBUS TRANSPORT INTERNATIONAL (BGA)
  - AIRCALIN (ACI)
  - AIRLEC AIR ESPACE (ARL)
  - ASL AIRLINES FRANCE (FPO)
  - ATLANTIQUE AIR ASSISTANCE (TLB)
  - CORSAIR (CRL)
  - DASSAULT AVIATION (DAB)
  - DASSAULT FALCON SERVICE (DSO)
  - FRENCH BLUE (FBU)
  - HELI UNION (HLU)
  - LA COMPAGNIE (DJT)
  - MICHELIN AIR SERVICES (BIB)
  - OPENSKIES (BOS)
  - ST BARTH COMMUTER (SBU)
  - TRANSAVIA (TVF)
  - UNIJET (LEA)
  - XL AIRWAYS FRANCE (XLF)

Above lists are effective from 6 September 2017.

## **II.2. Obligation for registration of Customs Representatives**

Following the coming into force of the Union Customs Code in 2016, the French Administrative Act from April 13<sup>th</sup> 2016 on Customs representation created a specific registration obligation for Customs representatives. This registration obligation to the Customs authorities has been already mandatory for *direct* Customs representatives since May 1<sup>st</sup> 2016.

Starting from January 1<sup>st</sup> 2018, *indirect* Customs Representatives will also have to comply with the registration process.

The obligation is applicable to every representative acting on behalf of another person essentially for the filing of French Customs returns and documents and for any formalities regarding the application of the Customs legislation. All representatives, either established in France, in another Member State or outside the EU, must fulfil this obligation as soon as they carry out Customs representation activity in France in accordance with the EU and domestic legislation.

Customs representatives, either established or not in the EU, do not have to fulfil the registration when their activity is limited to filing temporary admission returns or for occasional purposes (i.e. 3 declarations per year maximum). For EU-established representatives, this registration relief applies also for transit declarations.

Note that the Customs representatives that have been accredited by the French Customs Authorities, as per the legislation and prior to May 1<sup>st</sup> 2016, will not have to follow this registration process again. Their accreditation license number will be used as their Registered Customs Representative number.

Requirements for being granted the registered status are the following:

- to have a system of managing customs and fiscal records which allows the follow-up of the import operations;
- the absence of any serious infringement or repeated infringements of customs legislation and taxation rules during the last 12 months preceding the application;
- to satisfy standards of competence related to Customs related activities;

Those requirements will be however reassessed by May 2019 for every representative. When this will happen, some representatives that didn't have to register following the relief might have to finally apply for the registered status:

- Customs Representatives who had been holding an AEO 'customs simplification' license for at least 3 years before May 1<sup>st</sup> 2016 are deemed fulfilling those requirements, including the competence criterion. There will be no need for registering.
- Customs Representatives who had been holding an AEO 'customs security-safety' license for at least 3 years before May 1<sup>st</sup> 2016 are deemed fulfilling those requirements, except the competence criterion. They will have to satisfy this criterion when reassessment occurs, with possible registration obligation if it is not fulfilled.
- However, Customs Representatives without the AEO license will have to register when the reassessment will take place.

The competence requirement aims to ensure that the representative can satisfy the conditions set by the Union Customs Code. Indeed, the full application of the provisions of the new UCC made it mandatory for the representative to provide its clients with counselling and advisory services regarding Customs and tax compliance.

### **III.3. Implementation of the new audit procedure of examination of the accounts ("examen de comptabilité")**

The French Annual Finance Act for 2017 created a new audit procedure for the French Administration called 'examen de comptabilité'. This procedure allows the authorities to carry out tax audits remotely. It can be used only for investigation of computerized accountancy.

Legally, this new procedure has been applicable as from January 1<sup>st</sup> 2017. It is now implemented and has been introduced in the official guidance BOFIP of the French Tax Administration on October 4<sup>th</sup> 2017.

The framework of this audit procedure can be described as follows: French Authorities issue a document called notification of examination of the accounts ('avis d'examen de comptabilité') that starts the procedure. The taxpayer is invited to provide its computerized accounting entries ('Fichier des Ecritures Comptables (FEC)' in French) within the next 15 days. Those information can be sent through an electronic platform or using any physical storage medium sent to the administration

office (USB, CD-ROM, etc ...). Upon receipt of the corresponding files, and if those fulfil the requirements regarding FEC standards, a 6-month period is triggered for the Administration to conduct the audit.

Regardless of the audit to be remotely performed, the taxpayer must be granted the right to exchange with the authorities, to present its observations throughout the procedure, with or without the assistance of a counsellor of its choice. During the procedure, the authorities may ask for additional documents/file or details.

All those exchanges can be conducted in writing (emails are possible) or orally (phone, within the administration's premises, ...). All the additional files can be provided similarly on dematerialized support (emails).

If the taxpayer does not provide the requested files within 15 days, or if the files provided are not compliant with the legislation (after a first request for being compliant), or if he refuses to send the files, a 5 000 € fine will belevied. In this case, the 'examen de comptabilité' can be shut down and replaced by another procedure called 'vérification de comptabilité' which brings a more thorough auditing process.