



France – Draft Finance Bill for 2021 – VAT Measures

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French Draft Finance Bill for 2021 provides certain measures regarding VAT and indirect taxes.

1. Implementation of a French VAT Group (Article 45 of the Draft Finance Bill for 2021) – entry into force as of January 1st, 2022 for an effective application on January 1st, 2023

The Draft Finance Bill for 2021 provides a transposition of Article 11 of Directive 2006/112/EC, according to which it is possible to consider as a single taxable person, entities established on France who are legally independent, but closely linked to each other financially, economically and from an organizational point of view.

This follows the decisions of the ECJ case law which condemned the VAT exemption for independent grouping of Article 261 B of the French tax code (i.e. Article 132(1)(f) of the VAT Directive 2006/112/EC) for banks and insurance companies (i.e. ECJ, September 21, 2017, C-605/15, Aviva and C-326/15 DNB Banka), and limit the scope of this exemption to activities of public interest. Consequently, this measure was awaited, particularly by companies in the banking and financial sectors impacted by the above ECJ case law.

Nevertheless, the VAT group as provided for in Draft Finance Bill for 2021 concerns all companies, all sectors and all internal flows (supplies of goods and services).

The VAT group will allow the creation of a single taxable person for VAT purposes. Consequently:

- Each member of the group will lose its status as independent taxable person for VAT purposes.
- Transactions carried out between group members (i.e. internal flows) will be neutralized, thus limiting certain VAT credits (i.e. cash timing).
- The representative of the group will have to declare and pay the VAT, if any (the members will remain jointly and severally liable for the payment of the VAT due by the group, up to the amount of the duties they would be liable for if they were not a member of the VAT group).
- The offsetting of VAT credits and VAT amounts to be paid within the group should also have a direct impact on the group's cash position.
- Certain reporting and VAT compliance duties will be simplified.

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.

In order to anticipate the implementation of the French VAT Group, it would be recommended to identify the companies that will be able to join the group and to carry out financial simulations of the VAT impacts.

Please note that, consequently, the scope of the VAT exemption scheme for autonomous groups of persons (Article 261 B of the French Tax Code) will be revised to take into account the above ECJ case law.

2. Postponement of the implementation of the E-commerce Package (Article 10 of the Draft Finance Bill) - measures applicable as of July 1st, 2021

Due to the health crisis and in accordance with the European Commission, the French Draft Finance Bill for 2021 contemplates to postpone the implementation of the E-commerce Package to July 1st, 2021.

As a reminder, the measures of the VAT e-commerce package were adopted within the framework of the EU Directive 2017/2455 of December 5, 2017, which was transposed by the Finance Law for 2020.

This reform, linked to the operations carried out in B2C relations, integrates:

- The introduction of a common threshold of €10,000 for distance sales of goods and the establishment of a European one-stop shop (modification of MOSS to OSS)
- Implementation of a new scheme for distance selling of imported goods (when the value is less than 150 euros) and creation of a new system for report and payed VAT in the Member States (IOSS)
- The introduction of a new VAT liability for platforms when they facilitate certain transactions
- The opening of the OSS to all supplies of services taxable in the Member State of consumption (e.g., services linked to a building). As a reminder, the MOSS applicable today covers only B2C electronic services taxable in the Member State of consumption.

The French Draft Finance Bill provides that standard rate of VAT to imports is application of the subject to the special scheme of Article 298 *sexdecies* I of the CGI French Tax Code - i.e. payment and declaration of VAT on importation by persons presenting the goods to customs on behalf of the recipient, for goods contained in consignments whose value is less than €150, when the IOSS is not used - (Article 269 *septvicies* bis of the VAT Directive).

Please note that the French regime includes a particularity beyond the rules provided by the Directive EU/2017/2455 dated December 5th, 2017, indeed, the import VAT is also due when the value of the goods is higher than 150 euros for the goods sold in the French territory.

3. Clarification of the VAT rules applicable to complex transaction (Article 9 of the Draft Finance Bill) - measures applicable as of January 1st, 2021

The Draft Finance Bill for 2021 proposes to recognize the case law of the Court of Justice of the European Union relating to complex transactions (e.g. *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*). This definition was until now included in the administrative doctrine but was often the subject of discussions in the event of a tax audit.

In principle, 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 draft also takes up the analysis grid for determining whether two services should be assessed separately or as a single service. This is an economic analysis based on an overall assessment from the point of view of the average consumer.

Therefore, when a supply is considered as a unique 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 Draft Finance Bill for 2021 provides 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.

4. Other VAT and indirect tax measures

- Bringing the VAT regime for horse racing winnings into compliance with European law (Article 11 of the French Draft Finance Bill) - Following ECJ case law November 10, 2016, *Pavlina Bastova* (c-432/15), race-earning received by the owner of a horse will no longer be subject to VAT due to their random nature.
- Removal of low-yield taxes (Article 16 of the Draft Finance Bill) - Removal of 7 low-yield taxes, including pornography, tobacco, lubricants, oils and hydrofluorocarbons.



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