



Tax alert VAT & Customs

2022 : a year rich in Customs and VAT matters

Summary of measures to be anticipated on January 1st, 2022

30/11/2021

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INTRODUCTION

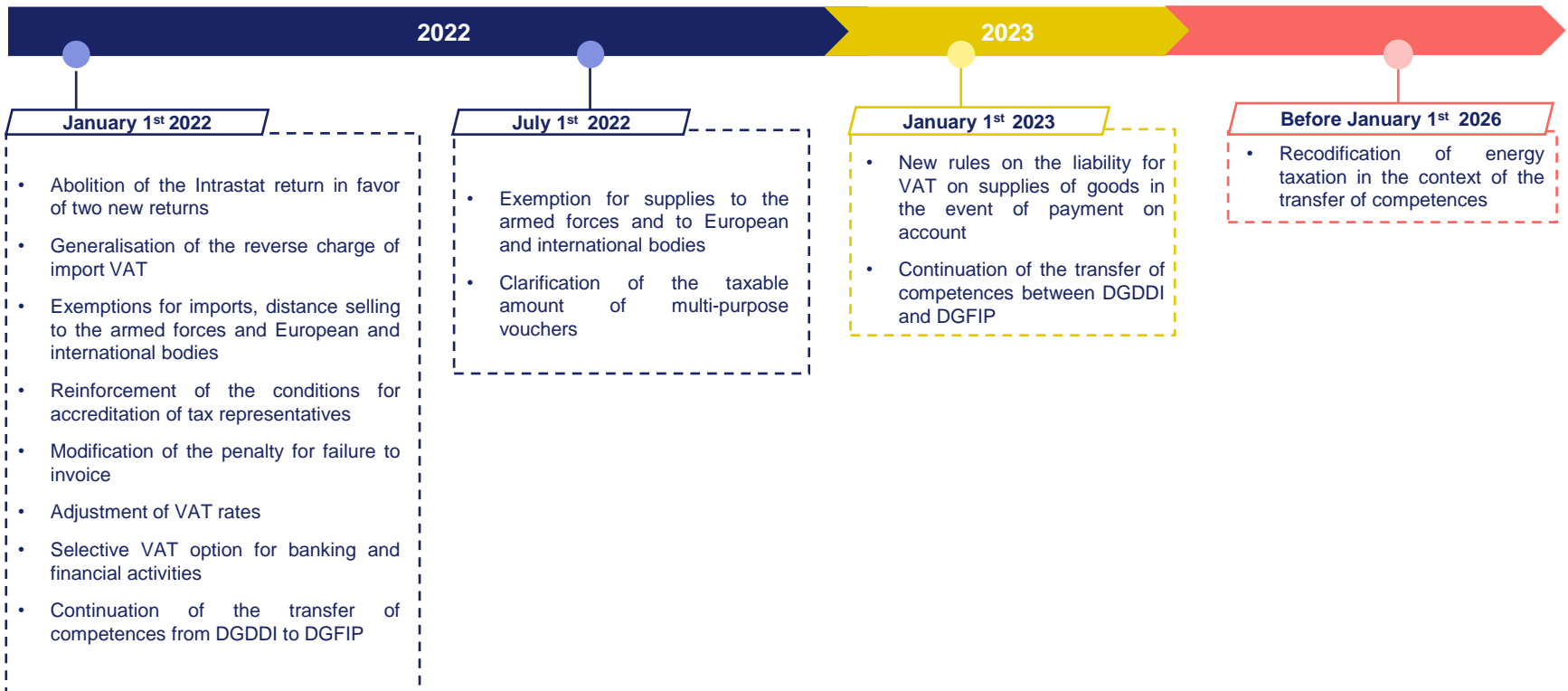
Businesses should, as of now, **anticipate the new measures** presented in this document and review their business flows to assess the impact of the new rules on their business.

It will be necessary **to comply as soon as possible in order to avoid any serious financial consequences**, and companies should also **identify the opportunities offered by these new rules**.

Finally, with regard to **the new VAT return model**, companies will have to develop their **internal processes to integrate the new lines of the return**.

As the Finance Bill 2022 has not yet been fully adopted, some amendments may still be added. Of course, we will keep you informed of any changes that may affect the Company.

Our Customs and VAT teams are at your disposal to assist you in these changes.





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Main measures affecting the physical flow of goods



SUPPRESSION OF THE INTRASTAT RETURN ("DEB") IN FAVOUR OF TWO NEW RETURNS

Context

For transactions carried out from January 1st, 2022, the Intrastat return, which is currently filed monthly by companies, on dispatch from the first euro, and/or on arrival, above the €460,000 threshold, would be abolished.

As a reminder, the current DEB merges two statistical and fiscal returns, namely (i) the statistical data return (also known as the Intrastat return) and (ii) the return of recapitulative statements of intra-Community trade in goods, which makes it possible to check compliance with intra-Community VAT rules (also known as the EC Sales List).

The objective of the Finance Bill 2022 would be to separate the collection of statistical data from that of tax data. Thus, companies would be responsible for two new monthly returns :

- ✓ **The response to the statistical survey**, which would include intra-Community trade in goods, both on arrival and on dispatch, with no turnover threshold.
- ✓ **The recapitulative statement** of deliveries of goods within the European Union, which would only include dispatches.

In practice, data will continue to be reported via the DEBWEB application, with an evolution of the system to distinguish the two reports.

1 Entering the recapitulative statement on dispatch

Are you concerned ?

All companies carrying out B2B transactions to the European Union should file a recapitulative statement, spontaneously, from the first euro.

The recapitulative statement will only concern dispatch flows and not arrivals.

Which data are concerned ?

Recapitulative statement

- **Value (euros)**
- **Schemes** : 10 (return of stock on consignment), 20 (transfer of stock under a contract of deposit (on dispatch)), 21 (intra-Community supplies or similar transfers of stock), 25 (commercial adjustment leading to a reduction in value - rebate, discount, drawback), 26 (commercial adjustment leading to an increase in value), 31 (re-invoicing in the context of a triangular operation (where the intermediary B is in France))
- **VAT identification number of the EU purchaser**

How ?

In order to simplify the administrative procedures for businesses, the recapitulative statement will be pre-filled automatically thanks to the information provided in the statistical survey (for businesses subject to the survey). These data will be processed by the DGFIP and may be exchanged between the tax services of EU Member States for the purposes of VAT control of intra-Community transactions.

What sanctions ?

In case of non-compliance, the current penalties will be maintained (e.g. €15 for each omission or inaccuracy in the returns filed, and €750 per missing return).



SUPPRESSION OF THE INTRASTAT RETURN ("DEB") IN FAVOUR OF TWO NEW RETURNS

2

Response to the statistical survey on dispatch and arrival

Are you concerned ?

The companies concerned by the statistical survey will only be those included in a sample determined annually. These would be informed at the end of the year, by mail and e-mail, of their obligation to respond to the survey the following year.

For 2022, the companies concerned should be informed of their obligation to respond to the statistical survey during December 2021. While theoretically the current turnover threshold of €460,000 at arrival would no longer be relevant, in practice the sample selected should correspond to businesses that filed returns in 2021.

Which data are modified ?

Statistical survey (modified data)

Nature of transaction : modification of codes

Country of origin : on arrival and on dispatch (non-preferential origin is provided for in the customs regulations)

Customer identification VAT number : on dispatch for regimes 21 (intra-Community supplies or similar stock transfers) and 29 (other dispatches such as dispatch for the provision of services, dispatches of goods for assembly or installation). The VAT number will not be required where the recipient is a non-registered customer (e.g. intra-EU distance sales of goods)

How ?

In case of absence of flows, nil returns would have to be made. This was not the case previously.

What sanctions ?

From January 1st, 2022, the Statistical Service will be responsible for checking these returns. The following sanctions are provided for by law 51-711 of June 7th, 1951 :

- ✓ **Refusal to participate in the survey** : after formal notice, an administrative fine up to 25,000 euros could be applied (increased to 50,000 euros in the event of a repeat offence within three years).
- ✓ **Failure to respond, or knowingly giving inaccurate response** : an administrative fine up to €150 could be applied (increased from €300 to €2250 per offence, in the event of a repeat offence within three years).

Practical focus

- Companies must, as of now, anticipate future changes and proceed to the review of their flows to determine what changes to consider.
- In summary, for the most frequent intra-EU flows, the changes to be anticipated would be, by way of example, as follows :
 - **On arrival** : the transactions will have to be included in the statistical survey if the trader receives an invitation to do so. For intra-Community acquisitions of goods and similar stock transfers : scheme code 11, nature of transaction 11 (unchanged).
 - **On dispatch** : **For intra-Community supplies of goods and similar stock transfers** : scheme code 21, nature of transaction 11 (unchanged) - use the same procedure code 11 for the recapitulative statement. **For sales on consignment** : the first statistical return must include the scheme code 29 and nature of transaction 32, then at the time of sale, the second statistical return must include the scheme code 21, nature of transaction 11. Please note that the recapitulative statement should report scheme 20 at the time of the transfer, then scheme 21 at the time of the sale. **For distance sales of goods** : scheme code 29, nature of transaction 12 - not reported in the recapitulative statement.



Context

Article 181 of the Finance Act for 2020 provides for the transfer to the DGFIP of the collection of import VAT (VAT I) on January 1st, 2022, and the generalisation of the reverse charge of VAT I. As a reminder, the reverse charge mechanism consists in collecting and deducting VAT simultaneously on the same VAT return (in case of full deduction right). **As from January 1st, 2022**, the reverse charge of import VAT will no longer be optional for traders who meet the four cumulative conditions set out in Article 1695 II of the French Tax Code, but will be a **mandatory general regime** applicable to all importers without condition. Only VAT I due on importation by non-taxable persons will remain collected by the DGDDI. **As a result, all taxpayers who wish to carry out import operations in France must be registered for VAT purposes.**

What is changing

From a customs point of view

- For taxable importers identified for VAT in France:
 - Delta G / Delta X: document code 1008 followed by the French intra-community VAT number.
 - Delta H7: Code FR7 followed by the French intra-community VAT number.
- For non-taxable importers not identified for VAT in France: Special mention G0008 (delta G / X / H7)

From a VAT perspective

- The VAT return will be **pre-filled** on the basis of the information reported on the customs returns.



To go further

For further details, please refer to BOD 7440 of November 23rd, 2021, and the two related notes to operators.

How?

In order to facilitate the procedures for taxable persons, it is planned that the VAT return will be pre-filled from the 14th of the month following the liability for VAT, based on the information communicated to the Directorate General of Customs and Excise. This pre-filled data will have to be carefully checked by taxable persons. If necessary, the amounts may be corrected.

The return will then have to be completed with the non-pre-filled data (e.g. in the case of a quota of duty-free purchases)

In practice, the 2022 version of the VAT return (CA3) includes new lines intended for the reverse charge of import VAT (see slide 15) :

- Line A4 : imports (other than petroleum products) taxed - pre-filled
- Line E4 : imports (other than petroleum products) not taxed - pre-filled
- Line E6 : imports under suspensive tax regime (other than petroleum products)
- Line I1 to I6 : for VAT rates applicable to imports - partially pre-filled (RFS outputs not pre-filled)



Practical focus

- It will be up to traders to check the information reported and in particular to **verify the consistency of customs returns/invoices relating to the elements making up the VATI base / VAT returns**. It will be necessary in this respect to liaise with the freight forwarder to ensure of the pre-filled amounts or, if necessary, **to create a space on the dedicated Customs website** (<https://www.douane.gouv.fr/sinscrire-et-creer-un-compte-personnel-sur-douanegouvfr>) in order to obtain the details of the data declared. This will make it possible to avoid the fine of 5% of the deductible sums applicable for failure to reverse-charge (when the right to deduct is complete).
- Relationships with registered freight forwarders / customs representatives, as well as contractual arrangements, should ensure sufficient traceability of information.**
- DROM companies that do not currently have a valid VAT number should be automatically assigned one by the DGFIP as of October 29th, 2021.



EXEMPTION FOR THE BENEFIT OF THE ARMED FORCES AND EUROPEAN AND INTERNATIONAL BODIES

Context

The Finance Bill for 2022 transposes into domestic law various VAT exemptions, which were previously framed by administrative doctrine (*BOI-TVA-CHAMP-30-20-10*) and provides for VAT exemption measures for certain transactions.

What is changing

On the one hand, all VAT exemptions currently applied in the context of diplomatic and consular relations, for the benefit of European and international bodies and NATO armed forces, **would be consolidated in the French Tax Code** (transposition of Article 151 of the VAT Directive).

On the other hand, VAT exemptions would be provided for the armed forces of the Member States of the European Union when they are assigned "**to a defence effort carried out with a view to implementing an activity of the Union within the framework of the common security and defence policy**". The exemption would apply only to purchases exceeding €150 exclusive of tax, to supplies of goods and services to such bodies, to imports and to intra-Community acquisitions of goods (which will be subject to the distance selling regime).

⇒ **Exempt transactions would be eligible for deduction under the same conditions as if they were subject to VAT.**

From when ?

These measures would apply **from July 1st, 2022**. However, the exemptions relating to imports, distance selling and the measures relating to VAT deduction would apply **from January 1st, 2022**.

Practical focus

- For sellers, these transactions will not give rise to a change in their deduction coefficient.
- In addition, the invoices issued for these transactions will have to include the mention of the corresponding text justifying the exemption. These transactions will also have to be reported, if necessary, in statistical returns as distance sales of goods.

Context

In the same way, the Finance Bill for 2022 provides for a VAT exemption as part of the fight against the Covid-19 pandemic.

What is changing

Furthermore, retroactively, for transactions whose chargeable event occurs as from after January 1st, 2021, imports of goods and purchases of goods and services made by the Commission or an European body, in the performance of tasks entrusted to them **for the purpose of combating the Covid-19 pandemic**, would be exempt from VAT.

Practical focus

- For all of these transactions, invoices should include the exemption measure with reference to the relevant text.



RECODIFICATION OF ENERGY TAXATION IN THE CONTEXT OF THE TRANSFER OF COMPETENCES

Context

Article 33 of the Finance Bill for 2022 provides for the empowerment to continue the recodification by ordinance of taxes on goods and services (e.g. excise duties on energy, alcohol and tobacco, taxes on the transport sector and on industrial and craft products).

What is changing

The draft of a Code of Taxes on Goods and Services communicated to certain operators provides in particular for the following taxes to be grouped together under the heading "excise duties on energy" : the domestic consumption tax on energy products (TICPE), coal (TICC), natural gas (TICGN) and electricity (TICFE), as well as the special tax applied overseas in substitution for the TICPE (TSC).

In line with the transfer of competences enacted by previous finance laws, the Finance Bill for 2022 **provides that the collection by the Directorate General of Public Finances (DGFIP) of debts, penalties and late payment interest relating to the above-mentioned energy taxes** will come into force on the dates set by the decree.

From when ?

These measures would apply from the date set by the decree and at the latest from January 1st, 2026.

In practice, the publication of the decrees is expected as soon as possible.

Practical focus

- The new stage of the transfer of competence on January 1st next will confront operators with **considerable legal uncertainty**, particularly **in the absence of a clear doctrine** on the day the new provisions come into force. This is why we believe that a **strict interpretation** of these provisions should be given priority before any doctrine is published.
- With regard to the TICFE :
 - Advance payments of TICFE made before 1 January 2022, for electricity deliveries from January 1st, 2022, the tax must still be paid to the DGDDI ;
 - TICFE refund requests relating to consumption paid in 2020 and 2021 remain the responsibility of the DGDDI. In this respect, companies are invited to send their claims for refund to the local office (or energy) **before June 30th, 2022** ;
 - Any **regulatory reference** on an energy invoice may have to be modified, which should be anticipated.

The background features a solid green field with several large, dark blue abstract shapes. A prominent circle is located in the upper left quadrant. To its right, a large, irregular shape with a curved top edge extends towards the right side of the frame. In the lower right, another large, dark blue shape curves upwards and to the left, partially overlapping the green background.

Measures affecting VAT liability, base and rates

2 MEASURES AFFECTING VAT LIABILITY, BASE AND RATES



NEW RULES ON THE CHARGEABILITY OF VAT ON SUPPLIES OF GOODS ON ACCOUNT

Context

The Finance Bill for 2022 amends Article 269 of the French Tax Code and makes VAT payable upon receipt of the payment on account in respect of supplies of goods.

What is changing

VAT due on payments on account, relating to supplies of domestic goods, within the territorial scope of French VAT, would no longer be payable at the time of the actual supply of the goods, but **at the time of collection of the payments on account, up to the amount collected.**

From when ?

This measure would apply to accounts received from January 1st, 2023.



Practical focus

- This would allow businesses to deduct the VAT incurred at the time of payment on account, and would simplify the declaratory treatment at the level of suppliers by aligning the treatment already applicable for supplies of services with supplies of goods.



CLARIFICATION OF THE TAX BASE FOR MULTI-PURPOSE VOUCHERS (“BUM”)

Context

Ensuring compliance with Community law, and in particular with Article 73 bis of Directive 2006/112/EC, Article 9, III, 6° of the draft Finance Law for 2022 completes the provisions relating to the determination of the tax base of multi-purpose vouchers.

What is changing

The provisions of Article 266(1)(aa) of the French Tax Code are supplemented to provide that, in the absence of information on the consideration for the multi-purpose vouchers, the taxable base is **the monetary value indicated on the multi-purpose vouchers or in the relevant documentation, less the relevant VAT.**

From when ?

This measure would apply from July 1st, 2022.

Context

The Finance Bill for 2022 provides for the adjustment of VAT rates applicable to the agri-food and health sectors.

What is changing

In the agri-food sector

- The Finance Bill for 2022 provides for the application of the **reduced rate of 5.5% to products intended for human consumption throughout the production chain.**
- This change will simplify the currently applicable rules which depend on the level of processing of the product.

In the health sector


- The Finance Bill for 2022 provides for the application of the **reduced rate of 5.5% to innovative medical devices benefiting from an early and derogatory support.**
- The Bill adjusts the scope of application of the **reduced rate of 2.1%** on blood products in order to take into account, especially, the VAT exemption from which **human blood and its derivative products** should benefit (BOI-TVA-CHAMP-30-10-20-30).

From when ?

These adjustments would apply from January 1st, 2022.

Practical focus

- These adjustments should be, as of now, anticipated by ensuring **the correct setting of VAT rates in the computer systems.**

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**Measures affecting
reporting obligations and
invoicing**



MODIFICATION OF THE PENALTY FOR FAILURE TO INVOICE

Context

In a decision n°2021-908 QPC of May 26th, 2021, the Constitutional Council censured the provisions of Article 1737(I)(3) of the CGI on the failure to invoice ([commentary by our teams](#)). In an amendment to the Finance Bill for 2022, the legislator has taken this censure into account and introduced a new penalty regime.

What is changing

Taking into account the points raised by the Constitutional Council, the new regime provides for the application of the 50% fine to be **systematically moderated through the arrival of differentiated ceilings depending on whether or not the transaction has been recorded.**

- If the transaction has not been recorded, the fine will be limited to €375,000 per financial year (this sanction is in line with that provided for in commercial matters by Article L441-6 of the Commercial Code).
- However, where the transaction has been recorded, the fine is reduced to 5% and may not exceed €37,500 per financial year

It is specified that this new regime would also apply to the failure to produce the note provided for in Article 290 quinquies of the French Tax Code in respect of real estate work supplied to private individuals by a VAT payer.

From when ?

This measure would apply, as from January 1st, 2022, to ongoing audit and litigation procedures, concerning the penalty provisions less severe than those they replace.



Practical focus

- In order to apply these sanctions, the tax authorities could use the tools at their disposal.
- In particular, and without the Company having to justify the accounting of the transactions, it could consider that they have been correctly accounted for, and thus apply the maximum fine of €37,500, by using the Accounting Entry File (“FEC”) requested at the beginning of the tax audit.
- Finally, it could also try to question the authenticity of the origin, the integrity of the content and the legibility of the invoices in the event of the absence or insufficiency of Reliable Audit Trail (RT) documentation.
- It is therefore necessary, as of now, to ensure that (i) the transactions are properly recorded and thus the FEC is compliant and (ii) that a sufficiently detailed PAF documentation exists within the Company.



STRENGTHENING OF THE CONDITIONS FOR ACCREDITATION OF FISCAL REPRESENTATIVES

Context

As part of the objective to fight fraud and in connection with the E-Commerce reform, the Finance Bill for 2022 imposes new accreditation conditions for tax representatives.

What is changing

These conditions would aim to ensure, in particular, of their **fiscal and economic ethics, of the adequacy of their means to ensure their mission of representation and their financial solvency.**

However, it is specified that persons accredited before 1 January 2022 would have two years to comply with the solvency requirement (by January 1st, 2024, at the latest).

From when ?

This measure would apply to accreditations granted from January 1st, 2022.



Measures affecting banking and financial activities



REDEFINITION OF THE OPTION FOR BANKING AND FINANCIAL ACTIVITIES

Context

The Finance Bill for 2022 provides that the global option under Article 260 B of the French Tax Code will now apply on a transaction-by-transaction basis.

Are you concerned ?

These new provisions concern persons who carry out operations related to banking, financial activities and, in general, trading in securities and money.

This includes the following taxable persons: banks, management companies, credit institutions, financial institutions, investment service providers, discounters, remitters and money changers, etc.

What is changing

Article 260 B of the French Tax Code allows actors in the banking and financial sectors **to opt for the taxation** of transactions relating to banking, financial activities and, in general, to trade in securities and money when they are, by their nature, exempt from VAT pursuant to Article 261, C of the French Tax Code.

Under the current system, the option, when exercised, applies **to all eligible transactions**.

The Finance Bill for 2022 amends Article 260 B of the French Tax Code and provides that this option will apply to each transaction and not by a global way. The option thus becomes selective.

How ?

As it stands, the text does not provide any further details on the **practical arrangements for implementing this selective option**. For the time being, it should be considered that it will continue to be exercised by means of a **simple written declaration on company letterhead** to the public finance center of the place where the profession is exercised (BOI-TVA-SECT-50-10-30-20 n°100).

Thus, certain practical questions remain, and answers will have to be provided as soon as possible, particularly on the following points :

- Processing and, if necessary, formalities for the renewal of **current options** ;
- Need to exercise the option **on a client-by-client basis**, or on a **transaction-by-transaction basis**, even within transactions carried out for the same client .

From when ?

In the absence of details on the date of entry into force of this new system, it should be assumed that it will be implemented **from January 1st, 2022**.

Practical focus

- In order to anticipate the changes that will come into force on January 1st, 2022, it is up to taxable persons in this sector **to determine, as of now, the transactions that they wish to subject to VAT and to anticipate, if necessary, the modification of the configuration of their systems**.
- In addition, it is necessary to assess the impact of this tax liability on their **right to deduct coefficient**, on the **regularisation of the right to deduct their fixed assets**, as well as the consequences in terms of **payroll tax**.

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Your contacts



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