

VAT ALERT

French tax authorities publish guidelines on e-commerce reform and open it to public consultation

Since July 1st, 2021, the VAT Package on e-commerce has come into force in France. This new regulation has deeply modified the VAT rules governing cross-border e-commerce of goods with individuals.

The French tax authorities' comments have been highly expected and have amended and/or added no less than 11 guidelines: [BOI-TVA-CHAMP-10-10-40-60](#), [BOI-TVA-CHAMP-20-20-30](#), [BOI-TVA-BASE-20-40](#) (§ 300 à 310), [BOI-TVA-LIQ-20-10](#) (§ 390), [BOI-TVA-DED-10-20](#) (§ 190 à 240), [BOI-TVA-DECLA-10-30](#), [BOI-TVA-DECLA-20-20-60](#), [BOI-TVA-DECLA-20-20-60-10](#), [BOI-TVA-DECLA-20-20-60-20](#), [BOI-TVA-DECLA-30-10-15](#) and [BOI-TVA-DECLA-30-20-10-10](#) (§ 100 à 130).

The French tax authorities open a public consultation on these guidelines until October 13th, 2021 included in order to receive comments from the interested parties. These comments must be sent to the French tax authorities via the following email address: bureau.d1-dlf@dgfip.finances.gouv.fr. Only signed comments will be considered.

It is also specified that the current version of the guidelines is already applicable and can therefore be opposed to the French tax authorities from now on and until their possible revision following the consultation.

These guidelines allow to clarify the new regime in force by providing the following summary tables:

- **Eligibility requirements for "OSS non-EU", "OSS EU" and "IOSS" portals ([BOL-TVA-DECLA-20-20-60-10](#))**

- Summary table of the taxable persons and transactions eligible for these three specific schemes in France

Special schemes	Transactions concerned	Eligible taxpayer	Obligation to appoint a tax representative or an intermediary
Non-EU OSS	BtoC supply of services located in the EU	Taxable persons not established in the EU who provide BtoC supply of services located in France	No
OSS UE	IC distance sales	Any taxable person who: - has its headquarters in France; or - has its headquarters outside the EU and a permanent establishment in France; or - carries out IC distance sales from France; or - facilitates domestic deliveries to France by persons not established in the EU	Yes, for taxable persons who are not established in the EU or in a third country listed in Article 1 of the Decree of May 15, 2013. The tax representative has a permanent establishment in France.
	Delivery of goods within the EU facilitated by the use of an electronic interface		
	BtoC supply of services located in the EU provided by a taxpayer established in another member state that the member state of consumption		
IOSS	Direct or indirect distance sales of imported goods	Any taxable person who carries out the transaction (including as a facilitating taxable person), if applicable via an intermediary	Yes, in the following cases: - the taxable person is not established in the EU or Norway; - the taxable person has its headquarters in the EU other than in France. The intermediary has its headquarters in France or has its headquarters outside the EU and a permanent establishment in France.

*"Non-EU OSS" scheme: is a one-stop shop mechanism which allows, under some conditions, taxable persons not established in the EU to declare and pay to a single Member State, the VAT on all services supplied to non-taxable persons whose taxable place is in the EU;

*"EU OSS" scheme: is a one-stop shop mechanism which allows, under some conditions, to declare and pay to a single Member State (Member State of identification) the VAT on all the transactions concerned which are localized in the EU. Transactions covered by the "OSS EU" scheme are supplies of services to non-taxable persons whose place of taxation is in a Member State other than the Member State in which the person using the scheme is established, IC distance sales carried out by the person using the scheme and all domestic supplies facilitated by the use of an electronic interface carried out by the person using the scheme;

*"IOSS" scheme: is a one-stop shop mechanism that allows certain taxable persons to declare and pay to a single Member State the VAT relating to all distance sales of goods imported from third territories or countries that they perform with an intrinsic value not exceeding EUR 150;

*Indirect distance sales of imported goods: import into France and distance sales of imported goods to a buyer located in another EU Member State;

*BtoC supply of services located in the EU: supply of services to a person not subject to VAT and located in the EU;

*"Facilitating" taxable person: a taxable person who facilitates, using an electronic interface such as a marketplace, interface, portal or similar means, the supply of goods in the EU by a taxable person not established in the EU to a non-taxable person.

- Summary table of shipments eligible to the "IOSS" scheme

The "IOSS" scheme applies to all distance sales of goods imported shipments whose intrinsic value (excluding delivery charges) does not exceed EUR 150.

However, are excluded from this regime products subject to excise duty (energy products, alcohol and alcoholic beverages, and manufactured tobacco).

Nature of the products	Invoice		Intrinsic value	Eligibility to the IOSS scheme
	Goods	Charges		
Subject to excise duty	N/A	N/A	N/A	No
Not subject to excise duty	160	Not mentioned	160	No
Not subject to excise duty	140	Not mentioned	140	Yes
Not subject to excise duty	140	20	140	Yes

- **VAT Deduction on distance sales of goods imported** ([BOI-TVA-DED-10-20](#) -§190 à 240-)

Category of distance sales of goods imported	Transaction facilitated by an electronic interface	Value of the shipment	VAT on imports into France
Direct distance sales of goods imported	No	≤ EUR 150	Deductible by the seller if he is appointed importer (distance sales of goods imported taxable in France). Otherwise, not deductible (distance sales of goods imported not taxable in the EU). Exempt of VAT if the "IOSS" portal is used (distance sales of goods imported taxable in France).
Direct distance sales of goods imported	No	> EUR 150	Deductible by the seller if he is appointed importer (distance sales of imported goods taxable in France). Otherwise, not deductible (distance sales of goods imported not taxable in the EU).
Direct distance sales of goods imported	Yes	≤ EUR 150	Deductible by the facilitating taxpayer (distance sales of goods imported taxable in France). Exempt of VAT the "IOSS" portal is used.
Direct distance sales of goods imported	Yes	> EUR 150	Not deductible by the facilitating taxpayer (distance sales of goods imported not taxable in the EU).
Indirect distance sales of goods imported	No	≤ EUR 150	Exempt of VAT when the seller uses the "IOSS" portal. If not, import located in the Member State of destination in application of the Customs clearance rules.
Indirect distance sales of goods imported	No	> EUR 150	Deductible by the seller if he is appointed importer (distance sales of goods imported taxable in the member state of destination). Otherwise, not deductible and double taxation (importation taxable in France and distance sales of goods imported taxable in the member state of destination)
Indirect distance sales of goods imported	Yes	≤ EUR 150	Exempt of VAT when the facilitating taxpayer uses the IOSS portal. Otherwise, the import is localised in the member state of destination in application of the Customs clearance rules.
Indirect distance sales of goods imported	Yes	> EUR 150	Deductible by the seller if he is appointed importer (distance sales of goods imported taxable in the member state of destination). Otherwise, not deductible and double taxation (importation taxable in France and distance sales of goods imported taxable in the member state of destination).

- **Person liable for VAT for e-commerce transactions facilitated by an electronic interface ([BOI-TVA-DECLA-10-30](#))**

- Summary table of persons liable for VAT on imports into France for transactions facilitated by an electronic interface

Nature of the transaction	Intrinsic value of the shipment	Liable for VAT on the import transaction.
Direct distance sales of goods imported (import into France to France)	≤ EUR 150	Facilitating taxpayer
	> EUR 150	Facilitating taxpayer
Indirect distance sales of goods imported (import into France to France)	≤ EUR 150	Facilitating taxpayer
	> EUR 150	Person appointed as the actual recipient of the goods on the import return (normally the seller so that the right to deduct can be used)

- Summary table of the taxable person liable for VAT on domestic supplies of goods

Place of departure	Place of arrival	Nature of the transaction	Supplier established in EU	Facilitated by an electronic interface	Tax payer
France	France	Domestic supply	Yes	No	Supplier
France	France	Domestic supply	Yes	Yes	Supplier
France	France	Domestic supply	No	No	Supplier
France	France	Domestic supply	No	Yes	Facilitating taxpayer

- Summary table of the taxable person liable for VAT on an IC distance sale of goods

Place of departure	Place of arrival	Nature of the transaction	Supplier established in EU	Facilitated by an electronic interface	Tax payer
UE Member state	France	IC Distance sale	Yes	No	Supplier
UE Member state	France	IC Distance sale	Yes	Yes	Supplier
UE Member state	France	IC Distance sale	No	No	Supplier
UE Member state	France	IC Distance sale	No	Yes	Facilitating taxpayer

- Summary table of the taxable person liable for VAT on a distance sale of imported goods

Place of departure	Country of import	Place of arrival	Facilitated by an electronic interface	Value of the shipment	Tax payer
Third country	UE Member state	France (indirect distance sale of goods importated)	No	N/A	Seller
Third country	UE Member state	France (indirect distance sale of goods importated)	Yes	> EUR 150	Seller
Third country	UE Member state	France (indirect distance sale of goods importated)	Yes	≤ EUR 150	Facilitating taxpayer
Third country	France	France (direct distance sale of goods importated)	No	N/A	Seller, if he has appointed himself as importer on the import declaration. Otherwise, no VAT is due in France on the distance sale import of goods (which is localised outside the EU).
Third country	France	France (direct distance sale of goods importated)	Yes	> EUR 150	No VAT is due in France on distance sale import of goods (which is localised outside the EU)
Third country	France	France (direct distance sale of goods importated)	Yes	≤ EUR 150	Facilitating taxpayer

• **Record-keeping requirements for taxable persons exploiting electronic interfaces**
([BOI-TVA-DECLA-30-10-15](#))

Taxpayer status	Taxable persons liable for VAT without option for a specific regime	Taxable persons liable for VAT who have opted for the special regime OSS EU or OSS non-EU	Taxable persons liable for VAT who have opted for the special regime IOSS	Taxable person facilitating e-commerce transactions without being deemed to have purchased and performed the transaction
Legal provision	VAT Directive art. 242 and art. 242 bis French tax code art. 286, I, 3°	VAT Directive art. 242 and 242 bis Council implementing regulation art. 54 quater-1-a) and 63 quarter French tax code art. 298 sexdecies F, 9 and 298 sexdecies G, X French tax code ann. IV, art. 41 quinquies A	VAT Directive, art. 242 and 242 bis Council implementing regulation art. 54 quater-1-a) and 63 quater French tax code art. 298 sexdecies H, X French tax code ann. IV, art. 41 quinquies B	VAT Directive art. 242 bis Council implementing regulation art. 54 quater-2 French tax code art. 286 quinquies French tax code ann. IV, art. 41 quinquies C
Content of the records	See BOI-TVA-DECLA-30-10-10	<ul style="list-style-type: none"> a) The Member State of consumption in which the goods are supplied or the services are provided; b) The type of services provided or the description and quantity of the goods supplied; c) The date of the supply of goods or services; d) The taxable amount, with the currency used; e) Any subsequent increase or decrease in the taxable amount; f) The VAT rate applied; g) The VAT amount due, with the currency used; h) The date and amount of payments received; i) Any advance payment received prior to the delivery of goods or services; j) When an invoice is issued, the information on the invoice; k) For services, the information used to determine the place where the customer is established or has his domicile or habitual residence, and for goods, the information used to determine the place of departure and the place of arrival of the shipment or transport of the goods to the customer; l) Any evidence regarding a possible return of the goods, including the taxable amount and the VAT rate applied. 	<ul style="list-style-type: none"> a) The Member State of consumption in which the goods are supplied; b) The description and quantity of the goods delivered; c) The date of delivery of the goods; d) The taxable amount, with the currency used; e) Any subsequent increase or decrease in the taxable amount; f) The VAT rate applied; g) The VAT amount due, with the currency used; h) The date and amount of payments received; i) When an invoice is issued, the information on the invoice; j) The information used to determine the place of departure and arrival of the shipment or transport of the goods to the purchaser; k) Evidence of a possible return of the goods, including the taxable amount and the VAT rate applied; l) The order number or unique transaction number; m) The unique number of the shipment when that taxable person is directly involved in the supply. 	<ul style="list-style-type: none"> 1° the name, postal address and electronic address or website of the supplier whose supplies are facilitated through the use of the electronic interface and, if available: <ul style="list-style-type: none"> (a) The VAT individual identification number, or, in the absence of such identification, the national tax number of the supplier or provider; b) The bank account number or number of virtual account of the supplier or provider; 2° a description of the goods, their value, the place where the dispatch or transport of the goods ends, together with the time of supply and, if available, the order number or unique transaction number; 3° A description of the services, their value, information in order to establish the place and time of delivery and, if this information is available, the order number or the unique transaction number.

Do not hesitate to contact us in case of any questions.

Dominique VILLEMOT and Nathalie LAY
Lawyers at Villemot & Associés

Contacts: dominique.villemot@villemot-associes.com / nathalie.lay@villemot-associes.com