

VAT ALERT UPDATE

No, the French government does not allow deferral of payment or VAT reduction during the coronavirus crisis but temporarily relaxed VAT calculation and "paper" invoicing rules

On 17th March 2020, the French government issued support measures for businesses in France and in particular, allows companies to benefit from an automatic 3-month deferral of payment without proof/justification (i) and to request a tax reduction in case of specific difficulties that a deferral of payment would not be sufficient to overcome (ii).

However, deferral of payment or reduction of tax are only allowing for direct taxes as corporate income tax, payroll taxes and local taxes.

That means that it is not possible to request a deferral of payment or a tax reduction for VAT.

Consequently, if VAT is paying late, the company will receive from the French tax authorities a formal notice asking for the payment of the VAT amount due + 0.2% per month for late interest + 10% of penalties. Of course, it would be possible to claim a refund of penalties and late interest explaining the situation but it is not at all sure that the French tax authorities will accept to cancel the penalties and the late interests (normally late interests are always due and not remitted by the tax authorities; it is easier to get cancellation of 10% penalty).

The only VAT measure taken by the French government until now was an immediate tax refund, like refunds VAT credits.

However, on 6th April 2020, the French tax authorities added 2 new measures on their website which temporarily allow companies to assess the VAT amounts declared on a flat-rate basis and to benefit from a relaxation of the rules on "paper" invoicing regarding the right to deduct.

Indeed, companies subject to the normal VAT regime, which are currently unable to collect all the elements necessary to prepare their VAT returns, in the current context of confinement, are authorized by the French tax authorities to submit a VAT returns based on a flat-rate assessment of the tax due. The terms and conditions of this assessment differ according to whether or not they have experienced a fall in their turnover due to the Covid-19 crisis:

- For all companies unable to make their VAT returns correctly: the French tax authorities allow these companies to perform an estimation of the VAT due for a month and to pay, within the time limit of the filing of the VAT return, a down payment corresponding to this amount. A margin of error of 20% of the amount actually due is tolerated;
- For companies that have suffered a decrease in their turnover due to the epidemic: for these companies, the French tax authorities also accept, exceptionally and for the containment period determined by the French government, that they may submit their VAT returns for the months of March and April 2020 by paying flat-rate VAT instalments, calculated on the basis of the amount of tax declared for the previous month(s), under the following conditions:
 - o For the VAT return due for March (submitted in April), the companies concerned may pay a lump-sum deposit equal to 80% (or 50% for companies that have closed down completely since mid-March or whose activity is estimated to have fallen by 50% or more) of the amount declared for the VAT due in February (submitted in March) or, if they have already made a deposit the previous month (February), a lump-sum deposit equal to 80% (or 50%) of the amount of VAT declared for January (submitted in February);

- For the April VAT return (submitted in May), the same VAT return and payment modalities as for March will be granted if the confinement period is extended and makes it impossible to submit a regularization return at that date.

A VAT return of regularization will have to be filed at the end of the containment. This will include the actual elements drawn from the activity of the months for which a down payment was paid, after deduction of these amounts.

Finally, the French tax authorities allow companies to benefit from a relaxation of the rules on "paper" invoicing regarding the right to deduct.

By principle, an invoice that was originally issued on paper and then scanned, sent and received by e-mail is not an electronic invoice but a "paper" invoice. Thus, when invoices are issued on paper, only the original paper document can in principle justify the deduction of VAT.

However, due to the difficulties encountered by companies in terms of invoicing, the French tax authorities allow, during a period of health emergency, that these "paper" invoices, issued in paper form and then scanned, may be sent by electronic mail by any supplier to his customer, without the need for the relevant paper invoice to be sent by post, including for the purposes of the recipient's right to deduct.

Please note that, as when invoices are sent in "paper" form, controls establishing a reliable audit trail must, however, be implemented by the taxable persons who issue and/or receive them, in order to guarantee the authenticity of the origin, the integrity of the content and the legibility of these paper invoices, whether or not they are scanned for storage.

In addition, "paper" invoices may in principle be stored, both by the supplier and by the customer, on IT support, subject to conditions, or on paper support.

For the period of the national health emergency, the French tax authorities allow the customer to keep the "paper" invoice received by e-mail in PDF format. However, at the end of this period, it will be the client's responsibility to keep it on paper by printing it or to scan it.



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