

Flash info VAT/Customs

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VAT and Customs implications of the generalisation of the reverse charge of VAT on imports

To self-charge VAT on imports into France, you will have to register and fall under the normal real regime!

From 1st January 2022, the import VAT reverse charge mechanism will be generalised (Law n° 2019-1479 of 28/12/2019, article 181).

This reverse charge mechanism will apply to **import flows to a B2B taxable operator in France**, i.e. to deliveries of goods from a third country to the European Union (EU) via France but also to flows from or to the French overseas departments and territories.

As a result, taxable persons established in the overseas departments (including French Guyana and Mayotte) have automatically obtained a French intra-Community VAT number issued by the services of the Directorate of Public Finances ("DGFIP").

With this reform the Government is pursuing several objectives:

- ✓ **Simplification of administrative procedures:** with the transfer of the management and collection of import VAT from the Customs authorities ("DGDDI") to the DGFIP, economic operators will only have to deal with one administration. As a result, import VAT will now be paid to the competent tax department and no longer to the Customs authorities;
- ✓ **Improving the cash flow of taxpayers:** this generalisation will allow the operator to collect and deduct simultaneously the import VAT on its VAT return, without cash advance.
- ✓ **Reducing the administrative burden for taxpayers:** this reform is intended to simplify the process with a partial pre-filling of VAT declarations and the creation of a dedicated reverse charge area on the Customs authorities website where certain data from import declarations will be accessible.

Note: the VAT free purchase regime quota (A12) and the so-called “42 Regime” will, in principle, be maintained but their interest will be more limited.

Highlights of the reform:

✓ **Obligation of prior VAT registration**

Since the import VAT is paid to the Tax authorities, it will be mandatory to fill in a VAT return (CA3) and to do so, to hold a **French intra-community VAT number valid as of January 1st, 2022.**

This compulsory VAT registration in France can be done directly by taxable persons established in France or by foreign taxable persons when they are located in the EU or in the UK. On the other hand, taxable persons not established in the EU will have to appoint a **French tax representative** beforehand, so that the latter can file the VAT registration application on their behalf.

It will be up to operators to check that obtaining this French VAT number does not affect the processing of other transactions, especially in terms of tax liability.

✓ **Filing of pre-filled turnover declarations and normal real regime**

Once registered for VAT in France, operators will have to file their VAT returns themselves or through a fiscal agent, when they are established in the EU. For traders established outside the EU, the filing of returns will be done through the fiscal representative in France.

An important change in this reform is **the pre-filing of the VAT return** from the data collected by the Customs authorities. This pre-filing of VAT returns will require operators to verify the amounts indicated by the Tax authorities. In practice, they will have to combine data from import customs declarations and the documents they have or that are sent to them by their customs representative. In order to facilitate verification operations, **the Customs administration will put a space dedicated to the reverse charge on its website.** Without further clarification to date, it is feared that the identification of the invoice, which is a key to entry for the taxable person, will not be included in the information transmitted by the administration. In particular, operators will have to turn to their registered customs representatives in order to reconcile the reverse charge amounts on the VAT returns (CA3), the customs import value and the invoiced amounts.

The legal and regulatory provisions require operators who carry out imports into France to settle the VAT according to the normal real regime. As a result, taxpayers who currently benefit from the simplified taxation regime will have to **opt for the normal real regime**, if they carry out import operations as of January 1, 2022.

✓ **VAT deduction**

Today, foreign operators who are not registered for VAT in France must file a refund claim, based on the 8th and 13th Directives, to recover French VAT on their input expenses. With the obligation to register in France to self-charge the tax due on importation, foreign operators will **have to charge the deductible VAT on their input expenses directly on their VAT returns.**

What to do in the absence of a valid French intra-community VAT number as of January 1, 2022?

From 1st January 2022, a taxable person not holding a valid French VAT number, will not be able to self-charge import VAT. The tax will therefore have to be paid to the Customs administration even if there is a risk that the taxable person will not be able to clear its products through customs. There is indeed a high risk that an import declarations cannot not be issued in the absence of a VAT number (valid moreover) recorded in box 44 of the import customs declaration. There is therefore a high risk, in this case, for the products to be blocked.

Nevertheless, an operator should remain able to regularize its VAT status by a further VAT registration and by application of the reverse-charge mechanism, independently from the customs process to be confirmed.

The VAT and Customs teams of KPMG Avocats are at your disposal for any questions on this subject.

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