

# Overview of the recent changes in French tax law concerning e-commerce and online platforms

The French Finance Bill for 2020 contains several measures modifying the e-commerce VAT regime and the tax obligations of online platforms which are described below.

## ▪ Joint liability of platforms

### Specific measures introduced by the French Parliament

The Anti-fraud Bill published on 23 October 2018 has introduced a joint liability of the operators of online platforms whose activity exceeds a threshold of 5 million unique visitors per month. This Bill has introduced a procedure which may ultimately lead the operators to be jointly liable for VAT due by taxable persons carrying out transactions through their intermediaries.

According to this procedure, the French Tax Authorities (“FTA”) report to an operator that a taxable person is likely to disrespect the VAT obligations. The operator must take measures to enable the person to regularise this situation. The operator has to inform the FTA of the measures taken.

Then, if the FTA’s assumptions still remain one month after the notification of the measures or if the operator has not notified the person, the FTA give the operator a formal notice to take additional measures or to exclude the person of the platform. Again, the operator has to inform the FTA of the measures taken.

Finally, if one month after the information by the operator (or in the absence of information : one month after the formal notice) the operator has not followed the instructions of the FTA, the operator becomes jointly liable for the payment of VAT.

The Finance Bill modifies the definition of the involved platforms and broadens the scope of the mechanism. From 1 January 2020, the operators of online platforms through which tax payers carry out their activity are jointly liable for the payment of the VAT due by these taxpayers. For the purpose of assessing the scope of that joint liability, operators are thus defined as undertakings which, in their capacity as operators of an online platform, bring persons together at distance, by electronic means, with a view to the sale of goods, the supply of a service or the exchange or sharing of goods or services.

### The measures<sup>1</sup> resulting from the transposition of the European Directive on e-commerce<sup>2</sup>

From 1 January 2021 the following taxpayers will be deemed to have acquired and supplied the goods and will therefore be liable for VAT on the sales in question:

- The taxpayer who facilitates, by using an electronic interface such as a marketplace, platform, portal or similar device, distance sales of goods imported from third territories/countries contained in consignments with a value not exceeding €150;

- The taxpayer who facilitates, by using an electronic interface such as a marketplace, platform, portal or similar device, the supply of goods within the EU by a taxpayer not established within the EU to a non-taxable person (whether it is a domestic supply or an intra-Community distance sale)<sup>3</sup>.

In these conditions, the chargeable event and liability for VAT

In addition, operators facilitating the supply of goods or services to non-taxable persons will be required to keep a register of such supplies. This register will be sufficiently detailed to allow verification that VAT has been correctly applied. The register will be made available to the FTA, at its request, by electronic means. It will have to be kept for a period of ten years from 31 December of the year in which the transaction has been carried out.

## ▪ Publication of a list of non-cooperative platform operators

The Bill allows the publication on the FTA website of the list of platform operators considered as non-cooperative because they do not repeatedly comply with their tax obligations on French territory.

This publication targets the operators who are penalised for the second time within a 12-month period for failure to comply with their reporting or information obligations<sup>4</sup>.

This online publication will not be maintained for more than one year. Once the platform operator has paid all the taxes or fines that motivated the publication, the publication will be removed from the FTA’s website without delay. The FTA is also obliged to publish on its website any court decision pronouncing the discharge of a tax or cancelling a fine that has been published.

## ▪ Traceability of packages transiting through logistics warehouses

The economic model of e-commerce, which connects EU consumers with economic operators from all over the world, is based on the existence of a network of warehouses and logistics platforms, allowing the fast delivery of previously imported goods. The fight against VAT fraud in e-commerce therefore requires better traceability of physical flows.

<sup>3</sup> Platforms would also be liable for import VAT when they facilitate the sale to consumers located in France of imported goods from third countries, however the actual recipient of the goods will remain jointly liable for payment of the tax.

<sup>4</sup> - Failure to take necessary measures for the regularisation of a user suspected of fraud ;  
 - Lack of response to the FTA’s right of communication;  
 - Lack of annual transmission of information relating to the transactions of users of the platform;  
 - Lack of VAT declarations;  
 - Absence of declarations of the tax on digital services (Gafa Tax).

<sup>1</sup> Exclusive of the joint-liability measure determined by the French Parliament.

<sup>2</sup> The Directive 2017/2455 of 5 December 2017 also introduces a new regime for Intra-Community sale distance of goods and a new regime for distance sale of imported goods.

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The Finance Bill introduces a communication right for the FTA which can be directly exercised toward warehouses and logistics platforms, making it possible to trace the flow, the nature, the owner and the origin of imported goods. The communication to the FTA at its request of information on the owners of goods stored by the logistics centres and sold on-line will enable the FTA to identify taxpayers not established in France and not registered for VAT.

This reform will make it easier to combat unfair competition from sellers located outside the EU who do not pay VAT and thus enjoy an advantage over their competitors who comply with their tax obligations.

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