

VAT ALERT

The French tax authorities (FTA) update its guidelines on the relationship headquarter-branches and VAT groups

Following EU case law (ECJ, 17 September 2014, case C-7/13, Skandia America Corp and ECJ, 11 November 2021, case 812/19, Danske Bank) and national case law (CE, 4 November 2020, n° 435295, Société BNP Paribas Securities Services), the FTA update its guidelines on transactions carried out within the same legal entity for the benefit of an entity belonging to a VAT group in another EU Member State (Bofip amended on 29 December 2021: [BOI-TVA-CHAMP-10-10-20](#); [BOI-TVA-CHAMP-20-50-20](#); [BOI-TPS-TS-20-30](#)).

The FTA recall the principle according to which, when a legal entity subject to VAT has several establishments, whether located in different States or not, transactions carried out between these establishments are not subject to VAT. However, the FTA specify that, by exception, such principle does not apply if one of the entities belongs to a group constituting a single taxable person ("VAT group").

Thus, the following are now taxable for VAT purposes:

- Transactions that entities (headquarter or branch) not located in the member State of the VAT group carry out for the benefit of that group or acquire from the group;
- Transactions carried out between entities (headquarter or branch) belonging to different VAT groups constituted in different Member States.

The following remain not subject to VAT:

- Transactions carried out between entities of the same legal person when they are located outside the Member State where the VAT group is formed;
- Transactions carried out between entities located in the Member State of the VAT group, as these transactions constitute internal transactions of the VAT group.

Finally, the FTA provide clarifications regarding the rules applicable to these transactions. Thus:

- Services rendered between entities belonging to the same legal person, when one of them belongs to a VAT group, are taxable at the place of the business customer's entity;
- Both the VAT group and the entities not located in the Member State of the group are subject to the obligations of registration and declaration of taxable transactions under the conditions of common law;
- The deductibility of the VAT on the costs incurred in carrying out these transactions is assessed in the light of the nature of these transactions (whether they give rise to a right to deduct or not). At the same time, the deductibility of the VAT on these transactions is assessed at the level of the business customer, taking into account the nature of the customer's subsequent transactions.

This update will be even more important as France has introduced an optional VAT group scheme, which will be effective from January 1st, 2023.

For more information, please do not hesitate to contact us.



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