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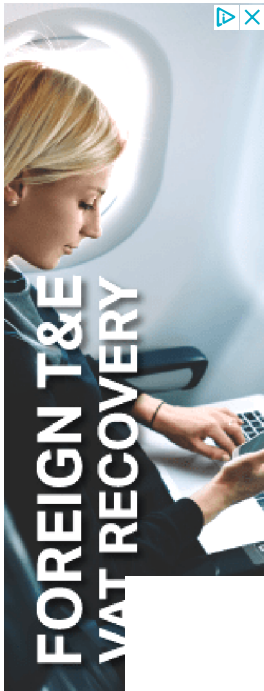


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COVID-19: Tracks and solutions to manage your VAT reporting obligations in these troubled times

The chronicle of Nathalie Habibou, lawyer specializing in VAT and indirect taxes

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As part of the various measures implemented in tax and social matters following the COVID-19 epidemic, it has been confirmed on several occasions that the deferral measures (in particular in the area of corporate tax) cannot in no case concern indirect taxes, and therefore VAT. Also, companies are required to meet their declarations and VAT payment deadlines during the health crisis. However, certain measures have been put in place to lighten the burdens of companies encountering proven difficulties.

Posted by Nathalie Habibou on Tuesday April 14, 2020

What are the special measures for declaring and paying VAT?



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Gradually, in order to take into account the difficulties encountered by certain companies, measures have been implemented, either formally or informally.

1. Informally, on written request (via the administrator account for filing CA3 declarations), certain companies were able to request the application of the following two measures:

- Payment schedule for the VAT due for a period. This makes it possible to request the postponement of the deadlines for March and April next (at this stage), without the application of late interest and penalties.
- Deferral of VAT payments for the VAT due on invoices issued (deliveries of goods or services with the person liable for payment having opted for debits) but

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not collected by the person liable for payment.

In practice, these possibilities must be accepted by the tax office concerned, and there can be no guarantee that they will be systematically granted.

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This measure targets businesses in activity but having difficulty in preparing their declarations.

- 50% of the VAT for the previous month (February or March), or, if the company has already used a deposit in the previous month, 50% of the amount declared for month M-2 (January or February). This measure targets companies whose activity has been stopped since mid-March (total closure) or is in very sharp decline (estimated at 50% or more).

Correspondingly, a declaration of regularization must be filed at the end of the confinement. This will include the actual elements drawn from the activity of the months for which a deposit has been paid, after allocation of these.

- Make use of the administrative tolerance of paid holidays (BOI-TVA-DECLA-20-20-10-10 §260) by making an estimate of the VAT due for one month and paying, within the time limit set for the deposit of the declaration, a deposit corresponding to this amount. In principle, a margin of error of 20% will be tolerated by the tax authorities.

In practice, the above measures from this note can be applied by operators, without prior authorization from the tax administration. Nevertheless, care should be taken in their implementation since they will be subject to ex-post controls by the tax administration.

3. Finally, in a press release dated March 22, Gérald Darmanin, Minister of Action and Public Accounts, announced the possibility of requesting expedited

2. More formally, the DGFIP - in a note dated April 2, 2020 - clarified that:

- For companies with a drop in their turnover linked to the Covid-19 crisis, it is possible, exceptionally and for the duration of the confinement, to pay a lump sum VAT payment.

Therefore, this measure should therefore apply to transactions carried out for the months of March 2020 and April 2020. In practice, the lump sum deposit can be determined as follows:

- 80% of the VAT for month M -1 (February or March), or, if the company has already used a deposit the previous month, 80% of the amount declared for month M-2 (January or February).

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processing of requests for reimbursement of VAT credits.

What implications for operators subject to the margin VAT system?

When the VAT is determined according to the margin, the taxable base often results, in practice, from the difference made by the service providers between the sums collected and the expenses incurred monthly.

In this current period, operators operating in the tourism sector could find themselves in a negative margin situation (expenses incurred / disbursed greater than receipts).

The VAT treatment applicable to this negative margin is not the subject of specific comments from the tax administration, and this point was recently raised with the European Commission.

It should nevertheless be borne in mind that such a negative margin should not result in the adjustment of VAT. In fact, only the " *positive* " margin can lead to the collection of VAT and its transfer to VAT declarations.

In other words, and without the agreement of the tax administration, **the finding of a negative margin for the month of March 2020 or for a later period during confinement should not result in (i) adjustment of the VAT** initially collected for previous periods, (ii) deduction of the VAT incurred on purchases and (iii) deduction of VAT corresponding to the amount of the negative margin.

How to manage the billing obligation during the containment period?

As a reminder, under French law, the validity of the scanned copy of a paper invoice or a simple PDF invoice is only recognized if a reliable audit trail is set up (article 289-VII of the General Code of taxes).

For an invoice to be considered an electronic invoice, **the entire invoicing process must be electronic.**

In addition, an electronic invoice is only valid in the event that the company secures the invoice by means of, (i) a certified electronic signature or, (ii) the implementation of an exchange system electronic information (ie EDI).

The French tax administration has just specified in an internal note dated March 30, 2020, that these obligations are relaxed during the confinement period .

Thus, it is **temporarily** admitted that invoices issued in paper form and then scanned, can be sent by email by any supplier to its client, without the need to send the corresponding paper invoice by post.

The invoice will be considered valid including for the purposes of recovering the input VAT.

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This internal note from the DGFIP (control service) **also authorizes the customer, during the confinement period, to store the scanned invoice received by email in PDF format.**

At the end of this period, the customer will nevertheless be required to store said invoice by printing it, or by scanning it in accordance with the specific provisions of article A. 102 B-2 of the LPF (ie time-stamped PDF format, and secure by means of an electronic signature or any equivalent secure device).

In other words:

- For the confinement period, the scanned paper invoice sent by email is now accepted.
- At the end of the confinement period, the scanned invoice received during the confinement period must be stored in printed form, or in electronic form provided that the specific requirements are met.

In practice, as a safety measure, the operators concerned must be attentive to the following points:

- Particular attention should be paid to the risk of duplication, especially if the suppliers decide to send the invoice after the confinement period paper by post.
- It will be necessary to respect the storage obligations at the end of confinement
- It is compulsory to write a synthetic documentation of the reliable audit trail to cover the procedure used during the confinement period

I hope that this summary will be useful in these troubled times, dear Readers, and wishes you to take care of yourself, your teams and your loved ones!

Nathalie HABIBOU

Lawyer at the Paris Bar, is a partner in the firm Arsene where she is responsible for activities focused on VAT. For 12 years, she has supported companies and groups, French and international, on a daily basis with regard to VAT & indirect taxes (in advice and in litigation). She is also a member of the Association of Practitioners of European VAT (APTE), and of the Institute of Tax Advocates (IACF).

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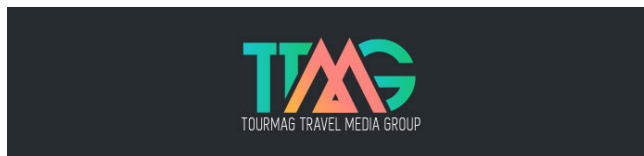
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