for investments in so-called "solidarity-based companies". Benefiting from the "solidarity enterprise social utility "(ESUS) approval.

*The committee **adopted** amendment II-CF1704 (**amendment 3151**).*

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After article 44

*Amendments II-CF1661 and II-CF1662 by Mrs Bénédicte Peyrol are **withdrawn** .*

Additional article after article 44
Reinstatement of article 19 of the draft law on the harmonization of procedures for forced recovery of public debts

The committee has before it amendment II-CF1706 by the general rapporteur.

Mr. Laurent Saint-Martin, general rapporteur . This amendment reinstates in the second part article 19 of the bill, which had been placed by mistake in the first part, and which was consequently deleted during the examination of the first part.

*The committee **adopted** amendment II-CF1706 (**amendment 3150**).*

- 1 -

Article 45
Creation of a VAT group regime and revision of the scope of the autonomous grouping system

Summary of the device and main effects
The purpose of this article is on the one hand to reduce the scope of the system of autonomous groups of persons, on the other hand to transpose Article 11 of Council Directive 2006/112 / EC of 28 November 2006 on the common system of value added tax relating to the group VAT regime.
The system of autonomous groups of persons makes it possible to exempt from VAT the services provided by groups of persons exercising an activity exempt from VAT or for which they do not have the status of subject to VAT, on the condition that these services contribute to the performance of these exempt transactions and that they are invoiced at cost price. This device allows exempt operators to avoid VAT persistence - the fact of not being able to deduct input VAT - when they decide to pool certain services which, if they had been acquired from third parties in the group, would have is subject to taxation.
The Court of Justice of the European Union, in two decisions handed down on September 21, 2017, considered that the VAT directive only authorized the exemption from VAT of services provided by autonomous groups of persons when they are constituted by operators whose operations are exempt for general interest considerations, which excludes the insurance, banking and financial sectors, whose exemptions are motivated by other reasons.
The imperative compliance of domestic law with this case law, brought about by this article, is likely to generate a significant increase in the residual VAT within these sectors.
Thus, this article also transposes article 11 of the VAT directive relating to the VAT group regime, already applied in 19 Member States of the European Union.
This VAT group regime makes it possible to consider as a single VAT subject entities that are independent from a legal point of view, but closely linked to each other economically, financially and organizationally, which avoids imposing on VAT internal operations of the group.

Latest legislative changes
The autonomous group of persons, created by the Sixth Council Directive 77/388 / EEC of 17 May 1977, on the harmonization of the laws of the Member States relating to turnover taxes, has been transposed into French law by law n ° 78-1239 of December 29, 1978 of finances for 1979.
Main amendments adopted by the Finance Committee
The committee adopted this article without change.

I. THE RULE OF LAW

A. THE COST OF THE EXEMPTION WITHIN GROUPS OF COMPANIES

1. The non-liability to VAT or the exemption of a transaction loses the right to deduct related to the tax.

Value Added Tax (VAT) is defined as " *a general tax on consumption, exactly proportional to the price of goods and services, levied at each stage of the production and distribution process, but only on the added value of goods and services at each stage, thanks to the mechanism of the deduction of the input tax paid by the operator, and which is passed on to the final consumer* " [153] .

The VAT, whose origin is French, has logically been upset by the evolution of European construction.

The first step in the Europeanization of VAT was taken with the adoption, by the European Council, of the two directives of April 11, 1967: the first [154] is essential, in that it required Member States to abolish their turnover tax system and replace it with a common VAT system; the second [155] , more technical, aimed at clarifying the fundamental concepts. The Sixth Directive, of May 17 1977, then carried out an extensive harmonization of the tax in many areas [156] .

Currently, the common system of value added tax (VAT) is determined by **Directive 2006/112 / EC of November 28 , 2006, known as the " VAT Directive "** [157] .

According to article 2 of this directive, **are subject to VAT** :

- supplies of goods made for consideration in the territory of a Member State by a taxable person acting as such;

- intra-Community acquisitions of goods made against payment in the territory of a Membe State;

- supplies of services provided for consideration in the territory of a Member State by taxable person acting as such;

- imports of goods.

It is clear from the provisions of Article 9 of the VAT Directive that " *considered as a* ***taxabl*** *person who carries out, independently and whatever the place, an economic activity, whatever th aims or the results of this activity* ".

According to the same article, "an *economic activity is any activity of producer, trader o service provider, including mining, agricultural and liberal professions* ".

This definition is reproduced in Article 256 A of the General Tax Code (CGI), which specifie that the notion of taxable person is determined without regard to the legal status or the situation o persons with regard to other taxes, nor to the nature of their intervention.

This rule clearly affirms the real nature of VAT, the application of which is linked to th materiality of the transaction.

Being subject to VAT gives rise to the right to deduct VAT , that is to say the possibility o asking the tax authorities for the refund of VAT paid on goods and services acquired by the taxabl person. This VAT deduction is made physically within the periodic VAT return - the CA3 form presented to the tax authorities where the taxable person subtracts from the VAT due the deductibl amount ([158]) .

This right of deduction is therefore reserved for taxed transactions - and exceptionally fo certain exempt transactions - of the taxable person.

Non-taxable persons have no right to deduct VAT.

Individuals who do not exercise an economic activity in the usual way or employees who d not exercise an economic activity independently are considered as non-taxable persons.

Likewise, public authorities are not considered liable for VAT for the activities or operation they carry out as such ([159]) .

Taxable persons can carry out exempt transactions.

There is exemption when an operation falling within the scope of VAT is exempted fron this tax by a special provision.

The list of exemptions is exhaustive; the scope of each exemption is strictly interpreted.

The exemption of a transaction entails, in principle, the loss of the right to deduct th VAT which charged the elements of the price of this transaction ([160]) . This loss of the right t deduct has repercussions: if the customer of the exempted company is himself liable for VAT, he wil therefore not be able to deduct the tax which has charged upstream the cost price of his supplier fron that of which he is itself indebted.

Article 132 of the VAT directive thus exempts certain activities of general interest , suc as postal services or healthcare.

Article 135 of the same directive exempts certain other activities.

Fall into this category:

- insurance or reinsurance operations;

- the granting and negotiation of credits as well as their management by the person wh granted them;

- the negotiation and assumption of responsibility for commitments, sureties and other suretie and guarantees as well as the management of loan guarantees carried out by the person who grante the loans;

- transactions, including negotiation, relating to deposits of funds, current accounts, payments transfers, debts, checks and other commercial instruments, with the exception of the recovery o debts;

- currency transactions;

- operations, including trading but with the exception of custody and management, relating t shares, shares in companies or associations, bonds and other securities;

- the management of mutual funds.

The exemption of these transactions is endorsed, in domestic law, by article 261 C of th CGI.

Thus, if the operations relating to banking and financial operations fall in principl within the scope of VAT, only some of them are effectively taxable, because of the many cases o exemption ([161]) .

These numerous hypotheses of exempt transactions reduce the extent of the right to deduct i the banking and insurance sector.

2. The lack of a VAT group regime in France has led to the use of the regime of autonomou groups of persons by companies operating in sectors where most transactions ar exempt.

at. The notion of VAT group does not exist in French law

The concept of VAT group was introduced into Community legislation by Article 4 of th Sixth VAT Directive, in 1977 ([162]) .

This regime is now supported by article 11 of the VAT directive ([163]) gives Member State the possibility of introducing VAT group schemes (referred to as "VAT group" hereafter) into thei national legislation. This article provides:

' *After consulting the Advisory Committee on Value Added Tax (hereinafter referred to as the VAT Committee '), each Member State may consider as a single taxable person persons established i the territory of that same Member State who are independent of the legal point of view but which ar closely interrelated financially, economically and organizationally. A Member State which avails itsel of the option provided for in the first subparagraph may take all necessary measures to prevent th application of this provision from making tax fraud or tax avoidance possible.* "

This article is brief, which leaves it to the Member States to determine the modalities o application of the measure; the VAT directive does not contain any other provision which specificall concerns VAT groups.

On 1st November 2020, 19 Member States of the European Union have introduced VA grouping schemes into their legislation.

Only Bulgaria, Croatia, Greece, Lithuania, Poland, Portugal, Slovenia and France have no made such an introduction.

The objective of the provision relating to the VAT group is to allow Member States, for th purposes of administrative simplification, not to consider as distinct taxable persons whos independence is purely legal.

The concept of a VAT group

The VAT group is a fictitious entity created for VAT purposes, in which economic reality takes precedence over legal form. A VAT group is a taxable person of a particular type, which exists only for VAT purposes. It is based on the financial, economic and organizational links existing between the companies concerned.
If each member of the group retains its own legal form, the VAT group takes precedence over the legal forms of each entity with regard to VAT, and in this regard only.
Since the VAT group is considered as a single taxable person, it logically follows that, in accordance with Article 214 of the VAT Directive, it can only be identified for VAT by means of a single identification number, to the exclusion of any other individual number. This individual number of each member of the group is nevertheless kept by the tax authorities for the purpose of monitoring the group's internal activities.

Compared to third parties , the VAT group acts as a single taxable person. Accordingly, al supplies of goods or services made by a member of the group in favor of a beneficiary who is not member of the group are deemed to have been made by the group itself, and not by the member i question.

Likewise, supplies of goods and services made by a third party in favor of one or mor members of the group are considered to have been made in favor of the group itself.

Thus, the group's situation with regard to VAT and the treatment of its entry and exi transactions are in all respects comparable to those of a taxable person with several branches.

The first major singularity is linked to the rules governing the right to deduct applicabl to the group. As the VAT group is considered as a single VAT taxable person, the right to deduct th input VAT paid is determined on the basis of the transactions carried out in favor of third parties b the group as such.

In this regard, it should be recalled that Article 173 of the VAT Directive gives Member State several possibilities for determining deductible VAT.

If the general rule is that of **proportional deduction** - also called "pro rata deduction" established in Articles 174 and 175 of the same directive, a system of **direct allocation** is als possible so that the use of goods and services is better. reflected.

The right to deduct: direct allocation and proportional deduction

The 1 of I of article 271 of the CGI provides that the tax which encumbered the elements of the price of a taxable transaction - upstream tax - is deductible from the tax applicable to this transaction - downstream tax.
The fundamental principle of deduction on which the entire VAT system is built is thus posed.
The right to deduct is only justified in proportion to the use of expenses for carrying out taxable transactions.
Also, their use in part for carrying out non-taxable transactions - located outside the scope of VAT - implies a corrective action implemented by the allocation principle.
In other words, the operations carried out upstream must have a direct and immediate link with downstream operations giving rise to the right to deduct ([164]) . We are talking about direct assignment.
The absence of a direct link does not however exclude the deduction if the expenditure is part of the taxable person's overheads ([165]) : this is the proportional deduction.

This choice relating to the determination of the right to deduct input VAT paid may result i differences in deductible VAT between groups placed in similar situations but located in differen Member States.

The second major singularity emerges with regard to the internal operations of the TV group. The fact that the VAT group is treated as a single taxable person implies that transaction carried out for consideration between members of the same group are considered to have been carrie out by the group itself.

Thus, transactions internal to the VAT group do not exist with regard to this tax : the are outside the scope.

Recourse to the VAT group presents, in this respect, a substantial gain for the groups of whic certain members do not have a right to full deduction.

This is the case for companies in the banking and insurance sectors, most of whos transactions are exempt, which has the counterpart of not allowing these companies to recover th input VAT that has encumbered their transactions. This state of affairs leads to a phenomenon of **VA persistence** - also called "hidden VAT" - which generates costs contrary to the principle of ta neutrality.

The absence of a VAT group regime in French law has led such companies to resort to lega expedients.

b. This absence has led groups in the banking and insurance sector to use the grouping o resources regime in France, at the margins of European law, in order to limit thei persistence of VAT.

i. The consolidated VAT payment regime, satisfactory for the group's cash flow, has no effec on the persistence of VAT

France did not know, before 2012, any specific provision for declaration and payment of VA for groups of companies.

This is the fourth finance law for 2010 ([166]) which has implemented, on 1st January 2012 an optional consolidation scheme payment and reimbursement of VAT for such groups.

Desired by the management of large companies in order to streamline refunds of VAT credits this optional regime, defined in article 1693 *ter* of the CGI, allows the parent company of a group t pay VAT and taxes, contributions and fees declared on the annex to the VAT return, due by all th members of the group.

As the head of the group declares VAT alone, it naturally operates the fungibilization of th VAT credits and debts of all the group's entities in a single declaration, which constitutes a substantia cash advantage by limiting the amount of VAT. to be disbursed to return it to the Treasury and b advancing in time the allocation of credits normally carried over or reimbursable.

On the other hand, the consolidated VAT payment scheme has no impact on the neutralizatio of the group's internal VAT costs.

ii. The grouping of means makes it possible to compensate for the absence of a VAT grou regime *via* an extensive interpretation of European law

Pursuant to Article 261 B of the CGI, **the services rendered to their members by group formed by natural or legal persons exercising an activity exempt from VAT or for which they d not have the status of taxable person are exempt from this tax** on the condition that these service contribute directly and exclusively to the performance of these operations exempt or excluded fro the scope of application of VAT, and that the sums claimed from members correspond exactly to thei share of the expenses.

This provision stems from Article 132 of the VAT Directive, located in Chapter 2 of Title IX which concerns exemptions in favor of certain activities of general interest.

This exemption only applies to the provision of services provided between members of th group, to the exclusion of the delivery of goods.

● The notion of grouping

It is not required that the grouping be legally constituted, so that the notion of grouping cover both entities endowed with legal personality and simple de facto groupings, even if, in practice, th fragility of the recognition of the legal personality of the latter - and, therefore, of their asset capacit - limits the interest of not adopting the form of a registered corporate structure ([167]).

With regard to VAT, the members of the group must exercise an activity that is exempt or fo which they do not have the status of taxable person.

According to administrative doctrine ([168]), most public law bodies, non-profit organization whose management is disinterested, as well as banking and financial establishments or insuranc companies.

It may happen that some of the natural or legal persons who are members of a group are liabl for VAT for some of their operations, either on a compulsory basis or on option. Nevertheless, thi circumstance does not exclude *a priori* the benefit for the group from the exemption for the services i provides them when, for each of them, the percentage of revenue giving rise to the payment of the ta in relation to the total revenue reflects the clearly preponderant character transactions that escap taxation. This condition is presumed if this percentage is less than 20%: thus, if on December 31 of given year, it appears that a member of the group is liable for VAT on more than 20% of its annua revenue, the group shall lose the benefit of the exemption as from 1st January of the same year.

● Transactions likely to be exempt

Among the services that are most likely to give rise to the simple collection of reimbursemen of expenses, the tax authorities cite ([169]) :

- the provision of personnel or equipment;

- recruitment ;

- personnel management and pay;

- management and maintenance of premises or installations;

- computer work.

In addition, to benefit from the exemption of article 261 B of the CGI, the services must mee three cumulative conditions relating respectively to the quality of the customer, the use which is mad of the service and the mode of remuneration.

First , the services must be rendered to the members of the group.

Processing of services rendered to third parties

The groups of means can render services not only to their members but also to people who are foreign to them, these services then being subject to VAT under the conditions of common law.
However, according to the administration, if for a specific service the receipts from non-members reach or exceed half of those collected in total, the group must subject to VAT all the sums relating to this service, therefore including those invoiced to its members.
The Court of Justice of the European Union (CJEU) ([170]) and the Council of State ([171]) also admit the possibility for resource groups to render services to third parties but, unlike the administration, these courts do not set a threshold beyond which the services rendered to third parties would lose the benefit of the 'exemption for services rendered to members.

Second , the services provided by the group must contribute directly and exclusively to th performance of transactions exempt or excluded from the scope of VAT.

Use of the service

The services which are not directly necessary for the exercise of the activities of the members of the grouping cannot benefit from the exemption. This is the case, in particular:
- catering or accommodation operations;
- sales to be consumed on site;
- the provision of resources, in personnel or material, intended to meet the private needs of members.
While the services provided by the group should only be used by the member for carrying out transactions that do not give rise to the payment of VAT, administrative doctrine considers that this condition must be assessed with "breadth of vision" ([172]), and that the exemption should be granted in respect of services which are *essentially* intended for carrying out operationsexempt fromtaxation.

Third , the sums claimed from members must correspond exactly to their share in th common expenses.

The method of remuneration

In principle, the group can only ask its members for sums covering the amount of common expenses actually paid during the reference period.
These charges are understood to be:
- accounting charges which are certain in principle and in their amount incurred during the financial year, even if they have not been paid, in whole or in part, during the said financial year;
- linear or declining balance depreciation regularly recognized for common goods.
This distribution of common expenses must be made at least once a year.
It is carried out:
- by charging each member the exact cost of the expenses relating to the services rendered to him. When this cost cannot be determined precisely, case law requires that it be assessed as fairly as possible;
- by distributing, in the same proportion, the depreciation regularly recorded for the year as well as the costs to be paid.

Groups operating in the banking and insurance sectors wanted to seize the possibilit offered by article 132 of the VAT directive - and set out in the laws of the Member States of th European Union - in **order to avoid VAT residuals with regard to the provision of shared service directly necessary for the exercise of their activities** , including in particular **human resource** services , but also **financial, accounting, IT or administrative services.**

This practice has been able to develop in the absence of clear European case law. Indeed between 1977 - the date of the creation of autonomous groups of persons by the Sixth VAT Directive and 2017, the Luxembourg Court of Justice was only seized of three cases relating to the exemptio from VAT in such cases. groupings.

Above all, in its Taksatorringen decision dated 20 November 2003 ([173]) , the Court of Justic of the European Communities did not exclude the possibility for an insurance group to resort to th groups referred to in Article 132 of the VAT Directive.

This position has, more recently, evolved.

B. THE RESTRICTION OF THE SCOPE OF THE GROUPING OF PERSONS BY THE CJEU MAKES IT NECESSARY TO INTRODUCE THE GROUP VAT REGIME IN FRANCE

1. The scope of autonomous groups of persons has been restricted by the CJEU

The scope of the exemption for services rendered by a group to its members exercising a activity exempt from VAT or outside the scope was substantially restricted by the Court of Justice o the European Union, on the occasion of three judgments delivered on September 21 2017 ([174]) .

In the *DNB Banka* and *Aviva cases* , following preliminary questions relating to the situatio of groups made up of members carrying out banking and insurance activities, the Court wa essentially questioned on the principle and the modalities of assessment of the absence of distortion o competition and the comparison of the requirement for invoicing at cost price.

The question of whether or not to include banking, financial or insurance activities in th scope of the exemption was not submitted to the CJEU.

However - and conversely to the *Taksatorringen* decision - the two Advocates General hav suggested that the Court examine this point; they reached opposite conclusions.

Unlike Advocate General Melchior Wathelet who, in his conclusions on the *DNB Banka* case concluded that the group could be formed between members whose activity is exempt both on th basis of the provisions of Article 132 of the directive than on those of its Article 135 - which cove banking and insurance operations - Advocate General Juliane Kokott suggested to the Court to judg by reference to the analysis of the plan of the VAT directive.

However, Article 135 of the VAT Directive appears in a chapter reserved for "other activities" which are therefore determined residually in relation to the preceding chapter - in which article 13 appears - reserved for activities "of interest. general ".

Consequently, a grouping could benefit from the non-taxation of VAT on service rendered to its members only if it carries out an activity of general interest referred to in Articl 132 of the Directive.

The Court adopted this restrictive approach and estimated regardless of the wording of point of section 132 of the Directive, which does not include *per se* any restrictions that services performe by a group are not exempt only if they " *contribute directly to the exercise of activities of genera interest referred to in Article 132 of this directive* ", which excludes in particular the banking an insurance sectors.

The interpretation of the VAT directive given by the CJEU is binding on all Membe States, and in particular on France, whose national regulations are now found to be non compliant , since it admits within the scope of the special regime for groupings of means all activitie exempt from or outside the scope of VAT.

While a directive cannot, by itself, create obligations with regard to an individual and canno therefore be invoked against him, the CJEU has nevertheless specified that the principles of lega certainty and non-retroactivity apply. oppose that the exemption be called into question by th national authorities.

This reminder - by no means superfluous - is welcome in that the various Member States hav fostered a broad interpretation of the system of groupings of resources in the hermeneutical vacuu of the Court, of which the *Taksatorringen* decision constitutes, in this regard, a topical example.

2. An obligation to ensure compliance with domestic law relating to groupings of resource which subsequently makes it urgent to introduce a solution reducing the residual VAT fo groups of companies carrying out exempt activities

Respect for France's international commitments requires it to bring its legislation into lin with the case law of the Court of Justice of the European Union. Also, the aforementioned decision of September 21, 2017 require a reduction in the scope of groupings of means provided for in articl 261 B of the CGI.

In fact, this compliance is particularly unfavorable to groups of companies in the banking an insurance sectors.

Indeed, the reason for the success of the exempted means group in France is that the VA group regime does not exist there.

Although these conditions of application are different from those of the grouping of resource (see *above*), its effects approach them since by erasing the VAT in the relations between members o the group, the regime can protect them against persistence. of tax induced by internal relations with group formed in a sector not fully subject to VAT.

Strengthening the attractiveness of France in a *Brexit* context means saving such sectors a inappropriate additional tax cost, even though the vast majority of European Union member state have already implemented, for many years, the VAT group regime.

II. THE PROPOSED DEVICE

A. REVISION OF THE SCOPE OF AUTONOMOUS GROUPS OF PERSONS AND THE CORRELATIVE CREATION OF A VAT GROUP REGIME

1. The field of autonomous groups of people is reduced to fairer proportions

The **D of I** of this article **supplements article 261 B of the CGI by reserving the benefit o the autonomous grouping of persons to those who exercise an exempt activity " *on the basis of 4 with the exception of 10 °, and 7 of article 261* "of the general tax code.**

These activities are as follows :

- the **care** provided to people by members of the regulated medical and paramedica professions, by pharmacists, by practitioners legally authorized to use the title of osteopath chiropractor, psychologist or psychotherapist and by psychoanalysts holding a the diplomas required on the date of its issue, to be recruited as a psychologist in the hospital public service as well as th **work of** medical **biology analysis** and the **supply of dental prostheses** by dentists and prosthetists;

- **hospitalization and treatment** costs, including the costs of providing a single room, i private health establishments holding the authorization mentioned in Article L. 6122-1 of the Healt Code public;

- **care provided by private accommodation establishments for the elderly** mentioned in 6 of I of Article L. 312-1 of the Social Action and Family Code, covered by a global annual car package in application of article L. 174-7 of the social security code;

- **deliveries** , commissions, brokerages and manners relating to human **organs, blood an milk** ;

- the **transport of sick or injured people using vehicles specially equipped for thi purpose** by persons referred to in Article L. 6312-2 of the Public Health Code;

- services and supplies of goods which are closely linked to them, carried out within th framework of **primary, secondary and higher education, agricultural vocational training an continuing vocational training** ;

- the provision of services and the delivery of goods which are closely related to them, carrie out in the context of **childcare** by the establishments referred to in the first two paragraphs of Articl L. 2324-1 of the Public Health Code and providing care for children under three;

- the services provided by **legal representatives for the protection of adults** within th meaning of Article L. 471-2 of the Code of Social Action and Families;

- the **services and deliveries of goods** which are closely related to them provided to thei members, for a contribution fixed in accordance with the statutes, **by legally constitute organizations acting not for profit whose management is disinterested and which pursu objectives of a philosophical nature religious, political, patriotic, civic or union** , insofar as thes **operations are directly linked to the collective defense of the moral or material interests of th members** ;

- the provision of services and the delivery of goods ancillary to these services, with th exception of passenger transport and telecommunications, which come under the **universal posta service** ;

- services of a social, educational, cultural or sporting nature **rendered to their members** b legally constituted organizations acting not for profit, and whose management is disinterested;

- operations made for the benefit of all persons by non-profit organizations which have social or philanthropic character and whose management is disinterested , when the price charged have been approved by the public authority or when similar operations are not commonl carried out at comparable prices by commercial enterprises, in particular because of the disintereste assistance of the members of these organizations or the public or private contributions from whic they benefit;

- income from six charitable or support events organized during the year for their exclusiv benefit by non-profit organizations whose management is disinterested as well as by permanent socia organizations of local communities and businesses;

- the operations carried out by the approved intermediary associations, mentioned in article L 5132-7 of the labor code, whose management is disinterested;

- the services mentioned in D of article 278-0 *bis* and *i* of article 279 of the CGI, carried ou by associations approved in application of article L. 7232-1 of the labor code or authorized i application of Article L. 313-1 of the Social Action and Families Code, and the management of whic is disinterested, for the benefit of individuals or families mentioned in 1 °, 6 °, 7 ° and 16 ° of I o article L. 312-1 of the social action and families code, as well as for the benefit of the person mentioned in 1 ° of article L. 7232-1 of the labor code;

- the provision of services and the deliveries of goods which are closely related to them carried out in the places of life and reception mentioned in III of article L. 312-1 of the code of socia action and families;

- sales relating to articles manufactured by groups of the blind or of disabled workers approved under the conditions provided for by law n ° 72-616 of 5 July 1972, as well as repair carried out by these groups.

Thus, only care services, teaching activities, operations carried out in the context o childcare and the universal postal service, services provided by legal representatives for th protection of adults and union activities , " together in point 4, with the exception of 10 °, o

protection of adults and union activities - 1 together in point 4, with the exception of 10 , o article 261 of the CGI - as **well as the activities of non-profit organizations and works of a social philanthropic, educational, cultural or sporting nature, are eligible for the exemption from VAT provided by article 261 B of the CGI in terms of services rendered by autonomous groups o persons to their members.**

According to III of this article, this **reduction in scope should apply until 1st January 2023.**

2. A VAT group regime is integrated into French law

The **A of I** of this article inserts a new article 256 C within the general tax code. This article defines the VAT group regime thus introduced into French law.

These provisions come into force on 1st January 2022. However, as the entities interested in establishing a single taxable person will exercise their option by 31 October each year for the following year (and for 3 years in total - v. *infra*), **the new system will be fully operational on 1st January 2023.**

at. The constitution and development of the single taxable person

i. The conditions for forming the group

Any natural or legal person, **regardless of their sector of economic activity** , can form a VAT group, under certain conditions.

The following may request to constitute a single taxable person:

- **taxable persons who have in France the seat of their economic activity or a permanent establishment or, failing that, their domicile or their habitual residence** (1 of II of the *new* article 256 C of the CGI) **.** Permanent **establishments of foreign companies** located in France can therefore join the group. On the other hand, this is not the case for permanent establishments which are no located in France;

- and which, **although legally independent, are closely linked to each other in financial economic and organizational terms** (2 of II of *new* article 256 C of the CGI) **.**

These financial, economic and organizational links are required **cumulatively** and must exist **upon exercise of the option and continuously** during the period covered by the request.

Taxable persons controlled in law, directly or indirectly, by the same person - including the latter, **are considered to be financially linked** . This condition is satisfied when a taxable person or non-taxable legal person holds more than **50 % of the capital** of another taxable person, directly o indirectly, through other taxable persons or non-taxable legal persons - including therefore a company pure *holding* - **or more than 50 % of the voting rights of** another taxable person or a non-taxable legal person under the same conditions.

> **Presumptions of financial links for non-capitalistic entities**
> It is easy to assess the financial link in terms of capital entities.
> With regard to non-capitalistic entities, the *new* article 256 C II of the CGI poses presumptions of financial links. Thus, the following are also considered to be financially linked:
> - central bodies, funds and federations, as well as their members or affiliates;
> - members linked to one another as part of their membership in a mutual insurance group company (SGAM), as well as members linked to one another as part of their membership of a Solvency II group;
> - persons related to each other in compliance with the conditions required to establish combined accounts ([175]) ;
> - associations responsible for ensuring the governance of a joint social protection group, as well as associations and economic interest groups controlled by a summit association ([176]) .

Taxable persons exercising either a **main activity of the same nature** , or **interdependent** economic activities , **complementary** or pursuing a common economic objective, or an activity carried out **at least in part for the benefit of the other members, are considered to be economically related to each other.**

Subjects who are de jure or de facto, directly or indirectly, under **common management, or who organize their activities at least partially in concert, are considered to be related to each other in terms of organization .**

The group's perimeter is freely set by the various entities. Thus, several VAT groups can be created within the same economic group. However, **a taxable person can only be a member of one VAT group.** In addition, **a VAT group cannot itself be a member of another single taxable person** (1 of III of *new* article 256 C of the CGI).

> **The creation of the sole taxable person**
> The creation of the single taxable person is carried out on option formulated by the representative of this one to the tax service of the companies on which he depends; it can only be exercised with the agreement of each of the members of the single taxable person.
> This option constitutes a declaration of the creation of a business or activity within the meaning of article 286 of the CGI.
> Thus, the declaration must specify the name, domicile and representative of the sole taxable person, as well as the nature of the activity of each member. The list of members is accompanied by their individual VAT identification numbers, which were assigned to them before their integration into the single taxable person (F of I of this article, modifying article 286 of the CGI).

When entering the group, the VAT credit recorded by a member of the single taxable person for a period prior to the entry into force of the option for this regime cannot be subject to any transfer to a subsequent declaration made by the sole taxable person (6 of III of *new* article 256 C of the CGI) **.** This possible credit must be reimbursed to the member concerned under the conditions of ordinary law.

ii. The scope of the group and its evolution

The option must be formulated no later than **October 31** of the year preceding its application; it takes effect from 1st January following the year in which it was expressed. **The option necessarily covers a period of three calendar years** (3 of III of *new* article 256 C of the CGI) **.**

During these three years, the group's perimeter is intended to remain stable.

Indeed, the introduction of a new member can only take place if it is a taxable person who, on

the day the option takes effect, did not meet the conditions for links between members. ; coming to fil them, this candidate can join the group on request formulated by the sole representative, accompanie by the express agreement of the member concerned. This introduction would take effect from 1 January of the year following the year in which it was formulated.

On the other hand, a member who fulfills the aforementioned conditions on the day the optio takes effect and who has chosen not to join the VAT group could do so only after the mandatory three year period.

During this three-year period, the sole taxable person would be terminated as of right if th conditions for links between members were no longer fulfilled. This would be the case in particular i its penultimate member left the group. It would then be up to its sole representative to inform the ta administration without delay.

It should be noted that the accession or exit of a taxable person as a member of a VA group is assessed for tax purposes as a transfer of a total universality of goods , which has tw consequences (**B of I** of this article , amending article 257 *bis* of the CGI).

Firstly, the transactions carried out on this occasion are exempt from VAT, with regard t article 257 *bis* of the CGI.

Secondly, transfers of investment goods made in this context do not give rise to th regularizations of the right to deduct required by point 1 of 4 of III of article 207 of appendix II of th CGI.

At the end of the mandatory three-year period, the perimeter rules are relaxed.

Indeed, any new member fulfilling the conditions for links between members can join th TVA group. Likewise, a member may decide to leave the group with the agreement of th representative of the sole taxable person who would be responsible for informing the administratio before October 31 of the year preceding the said member's departure.

Following the triennial period, it may also be terminated at the sole subject o termination of the option made by its representative, with purpose of all group members agre (4th paragraph 3 III of *new* article 256 C of the CGI) **.** This denunciation would take effect from th first day of the second month following that during which it occurred.

b. The operating rules within the single taxable person

i. The concept of business sector

According to 3 ° of III of the new article 256 C of the CGI, " *any member of a single taxabl person is no longer a taxable person within the meaning of article 256 A. He constitutes a sector o activity* ".

Transactions carried out between members of the single taxable person become interna transactions with no incidence for the application of VAT.

The notion of business sector simplifies the monitoring of deduction rights:

- for the expenses specific to each member, the right to deduct must be determined under th conditions of common law by retaining only the transactions carried out with third parties;

- for common expenses - which are used by all or more members of the group - it is advisabl to apply the principle of allocation (see *above*) then, if necessary, the coefficient of fixed taxation o the member (s) for which the good or the service is used while retaining, here too, only the externa transactions.

ii. Uniqueness of registration and subscription of declarations

The single taxable person must be identified by an individual VAT identification numbe During the period of application of the regime, **the group is thus considered as a single subject fo the application of VAT.**

The members of the group no longer have any VAT declaration obligations; they mus nevertheless respect their accounting obligations and remain jointly and severally liable for th payment of the tax and the related penalties, up to the rights and penalties for which they would b liable if they were not a member of the single taxable person.

It is up to the sole taxable person to subscribe, monthly, VAT returns for all th transactions carried out by all of its members with third parties , and to pay the correspondin tax; the VAT credit recorded on these declarations is acquired for the sole taxable person.

iii. Control methods

If the members of the group are no longer considered as taxable persons with regard to VA the controls carried out by the tax authorities can only be conceived of with the person who holds th accounts relating to the controlled transactions.

Thus the **B of II** of this article introduces articles L. 16 F and L. 16 G in the book of ta procedures.

These new provisions specify that **the members of a single taxable person can be inspecte as if they were not members of the single taxable person, except for supplies and services t another member of said single taxable person.**

The possible financial consequences of such a control would be notified to the membe concerned, but should be brought to the attention of the **representative of the single taxable perso who would bear the burden** , prior to the recovery **.**

B. ECONOMIC AND BUDGETARY IMPACT

1. Budgetary, an impact difficult to estimate

at. Effect on VAT revenue

From the outset, the preliminary assessment of the article considers that " *the measure canno be quantified, since the creation of a single taxable person results* (from the exercise) *of an option* "

Undeniably, the provision of this new tax tool for groups of companies should have negative effect on VAT revenues, since the majority of intra-group flows are neutralized

negative effect on VAT revenues, since the majority of intra-group flows are neutralized.

However, **there is one notable exception to this principle which may reduce th budgetary cost of this article** : the services provided by a principal establishment established in third country to its branch established in a Member State constitute taxable transactions when th latter is member of a VAT group [177].

***Skandia* case law : an exception to the neutralization of internal VAT flows within a group**

The specific case in this case was as follows: an American company procured IT services from third-party suppliers. This American company then re-invoiced the services to its Swedish branch. The branch, which was part of a VAT group in Sweden, transformed the services acquired and then re-invoiced its services to companies in the *Skandia* group .

A 5% margin was applied both to the supply of services between the American company and its branch, and to the services rendered by that branch to other companies in the *Skandia* group .

The treatment applied to VAT was structured as follows:

- the first flow between the head office and the branch was considered to be outside the scope of VAT and did not give rise to the collection of VAT in Sweden [178] ;
- the flows occurring within the VAT group did not give rise to the collection of VAT either.

Thus, this structuring allowed companies that do not recover VAT to acquire services at a lower cost.

The Court was led to consider whether the supplies of services acquired from third-party providers, and consequently re-invoiced by a head office established in a third country to its branch established in a Member State, constituted transactions taxable at VAT when the latter is a member of a VAT group.

It was ruled that the branch forming part of a VAT group becomes independent of the head office and that, therefore, the services provided between the head office and this branch - in reality, between the head office and the VAT group - are subject to the tax.

Drawing the consequences of this analysis, the Court thus made the group liable for the VAT due in respect of the acquisition of the aforementioned services.

This *Skandia* decision results in residual VAT in the country of the main establishment or i the country of the branch, depending on whether the operations are carried out by the branch for th benefit of its main establishment or, conversely, by the main establishment. for the benefit of th branch.

This VAT retention constitutes additional budgetary revenue.

In addition, the reduction in the scope of sectors eligible to constitute an autonomous group o persons is also likely to lead to an increase in VAT residuals.

b. Effect on payroll tax revenue

The establishment of a VAT group should lead to an increase in the tax burden on th wages of employers who are members of a single taxable person.

Payroll tax

Provided for in articles 231 and following of the CGI, the payroll tax is a progressive tax based on the remuneration paid by certain employers. Its product is allocated to social security funds.

Its base is identical to that of the generalized social contribution (CSG), by reference to Article L. 136-2 of the Social Security Code.

This tax is due by employers domiciled in France who are not subject to VAT on their entire turnover. Concretely, this concerns employers:

- which are not subject to VAT;
- or who were not subject to VAT on at least 90% of their turnover for the year preceding that of payment of remuneration (in this second case, the tax is due on the basis of the ratio between the turnover not subject to VAT and the total turnover; this is the "subjection ratio").

Since 1st January 2018 in addition to the normal rate of 4.25% applicable to each payment, plus two levels exist:

- the rate of 8.50% applicable to the portion of compensation greater than 7,721 euros and less than or equal to 15,417 euros;
- the rate of 13.60% applicable to the fraction of remuneration above 15,417 euros.

The financial activities and insurance sectors represent around a third of the return, estimated for the year 2021 at 14.24 billion euros [179] .

In fact, the liability ratio used to calculate the payroll tax corresponds to a counter-pro rat deduction of VAT, but it includes in its calculation the transactions carried out excluding VAT.

In fact, this calculation method is worsened in the presence of a VAT group because taxabl transactions between entities of the group would thus be excluded from the scope of VAT, but woul remain included in the calculation of the tax liability ratio. on wages.

This positive impact on the payroll tax amounts, according to the Government's prio assessment, to 65 million euros taken from the financial sector.

According to the prior assessment of this article, the total budgetary cost of this article i approximately 150 million euros.

2. Economically, an interesting tool for groups of companies

The interest of the TVA group for groups of companies having a financial or insuranc activity, in a context of restriction of the scope of autonomous groups of persons to activities o general interest, is obvious.

Thus, the VAT group must allow French groups to remain competitive since it avoids an residual VAT on the group's internal flows.

Moreover, the establishment of the single taxable person is not intended to replace the regim for consolidating the payment of VAT in article 1693 *ter* of the CGI: its purpose, limited to th collection of the tax, is different ; it should therefore be brought to prosper for the entities which d not wish to go further in the integration.

It will be up to the groups of companies wishing this increased integration to operate a arbitration in order to choose the legal and organizational structure most suited to thei situation.

Indeed, the Skandia case law [180] previously mentioned must be assessed in the light of more recent decision, according to which the services rendered by a head office to its branches *whic are not part of a VAT group* are internal and therefore have no influence on rights. with deductio (which must be determined in relation to transactions carried out with third parties only) [181] .

Thus, whether or not belonging to a VAT group confers, depending on the interpretation of th deduction rights specific to each country, the status of separate taxable person or not. In fact, interna

deduction rights specific to each country, the status of separate taxable person or not. In fact, intra transfers would - or not, therefore - be considered as the service provided to a third party, with different consequences with regard to the proratization of deduction rights, a principle which should only play a residual role in matters VAT group, for the benefit of the assignment to the "sectors" created by this article.

These elements will be part of the arbitrations which will lead the related companies to form or not, a VAT group.

It should also be noted that the VAT group as it emerges from this article does not have the flexibility of an autonomous group of persons: unlike the latter, it does not allow one of its members to belong to several VAT groups, nor to a VAT group to belong to another VAT group.

In any case, **the deferred coming into force of this section** - on 1st January 2022 - then its operability - on 1st January 2023 - used to allocate economic actors the **time required to advance.**

The introduction of this regime potentially leads to substantial investments in order to structure the necessary information among the members of a group and ensure its collection and centralization, depending on the complexity and diversity of the information systems.

The application systems of accounting, management control and invoicing will also have to evolve, in order to trace the flows and meet, with the expected level of detail, the reporting obligations.

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Following the opinion of the general rapporteur, the committee successively ***reject*** *amendments II-CF1522, II-CF1520 and II-CF1528 by Mr François Jolivet.*

The committee ***adopted*** *article 45* ***without modification*** *.*

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After article 45

Following the opinion of the general rapporteur, the committee successively ***reject*** *amendments II-CF22, II-CF24, II-CF34 and II-CF35 by Mr Marc Le Fur.*

It has before it amendment II-CF148 by Mr Pierre-Yves Bournazel.

Mr. Laurent Saint-Martin, general rapporteur . This amendment concerns VAT on musical phonograms. Unfavorable opinion.

The committee ***rejects*** *amendment II-CF148.*

Following the opinion of the general rapporteur, it successively ***rejects*** *amendments II-CF37 II-CF23, II-CF32 and II-CF33 by Mr Marc Le Fur as well as identical amendments II-CF25 by M Marc Le Fur and II -CF1327 by Mr. Paul Molac.*

The committee is seized of amendment II-CF1689 by Mr Julien Aubert.

Mrs. Véronique Louwagie. This amendment aims to exempt the departmental fire and rescue services (SDIS) from the internal consumption tax on energy products (TICPE). This is an amendment that we have already tabled several times.

Mr. Laurent Saint-Martin, general rapporteur . I am still against it, even if I obviously share your concern to strengthen support and funding for SDIS.

The committee ***rejects*** *amendment II-CF1689.*

It examines identical amendments II-CF1290 by Ms. Véronique Louwagie and II-CF1318 by Ms. Émilie Bonnivard.

Mrs. Véronique Louwagie. I am going to take a little time to defend this amendment because it is dear to me: I have been tabling it for three or four years. It aims to restore fiscal and territorial fairness between all players in the trade through an ecological and behavioral incentive.

This is to allow local authorities to reduce their local taxes on buildings relating to physical businesses. But as I am very keen to preserve the budget of local authorities, I propose to compensate for this decrease by creating another recipe: an eco-responsibility tax.

This tax would apply to all physical deliveries of goods, with the following rate: 1 euro for transactions not exceeding 100 euros; 2 euros for transactions between 101 and 1,000 euros; 5 euros finally, for transactions of an amount greater than 1,000 euros.

I propose to exempt from these tariffs all deliveries which are carried out in communes not exceeding 20,000 inhabitants, as well as in communes which do not have a pick-up point. The idea is to encourage people to collect their deliveries from collection points, in an ecological way.

This amendment has three advantages: it restores a form of tax fairness; it allows local authorities to reduce the amount of the business property contribution (CFE) and the property tax on physical businesses; Finally, it has an ecological and environmental dimension, since it forces people who place orders to pick them up at a pick-up point.

Mr. Laurent Saint-Martin, general rapporteur . Ms. Louwagie, this is indeed an amendment that you have been presenting to us regularly, and for a long time, and we must recognize that it is topical.

However, there are two basic questions that really give me a problem.

The first thing that bothers me is that when you add intermediate taxes on the platforms, it's always the consumer who pays, in the end. You must be aware that your amendment will imply an increase in the price for the consumer, because e-commerce companies are not going to reduce their margins.

Secondly, I find it a bit anachronistic, even if I know that it is not fashionable to say that, to penalize online sales even though we encourage companies, especially SMEs, to develop it. . We devote 100 million euros to the digitization of companies, precisely because it has been shown that e-commerce is a real vector of business growth for merchants and companies. In this context, introducing a tax on electronic commerce does not seem to me to be a good signal.