EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
Value added tax

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VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
WORKING PAPER NO 1048

CONSULTATION
PROVIDED FOR UNDER DIRECTIVE 2006/112/EC

ORIGIN:	**France**
REFERENCE:	**Article 11**
SUBJECT:	**VAT grouping – follow-up**

1. INTRODUCTION

The French authorities consulted the VAT Committee on the introduction of the VAT grouping scheme into French legislation at its 117th meeting of 16 November 2020[1], in accordance with Article 11 of the VAT Directive[2].

The VAT group provisions have been transposed by Article 256 C of the French General Tax Code (CGI) and will enter into force as from 1 January 2023.

By this, the French authorities wish to further consult the VAT Committee with regard to the right of deduction and invoicing rules of the VAT group that are made subject to implementing measures.

The text of the consultation submitted by France is attached in annex along with the relevant draft legislation.

2. SUBJECT MATTER

Based on information provided, the right of deduction of the VAT group is determined according to the common rules set out in the French VAT legislation transposing Articles 168 to 175 of the VAT Directive.

Within that framework and for determining the deductible proportion, each member of the VAT group is deemed to constitute a separate sector of business within the meaning of Article 173(2) of the VAT Directive. According to France, that interpretation should not preclude the members of the VAT group to have their own distinct sectors of activity, referred to as "sub-sectors".

The deduction rules for the VAT group are then the following:

a) Expenditures used exclusively for transactions giving rise to the right of deduction or exclusively for transactions not giving rise to the right of deduction:

   The VAT group has full right of deduction with regard to expenses exclusively used by the group to carry out transactions that give rise to the right of deduction, according to Article 271 of the CGI which transposes Article 168 of the VAT Directive. Conversely, if the expenses are not, even partially, used for the purposes of eligible transactions, no deduction is possible.

   That principle applies irrespective of whether the expenditure incurred by a member is used solely by that member or is also used by several other members of the VAT group.

b) Mixed-use expenditures, used both to carry out transactions giving rise to the right of deduction and transactions not giving rise to the right of deduction:

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1 See Working paper No 1002.

2 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006).

As regards mixed-use expenditures, the VAT group has to determine the deductible proportion of VAT according to Articles 173 and 174 of the VAT Directive. However, there will be specific arrangements for the calculation of that proportion by the VAT group. In particular, where only one member uses the inputs the deduction shall be determined by using the pro-rata of that member which constitutes a sector of activity of the VAT group (sectoral pro-rata). In that case, the pro-rata can also be broken down to the level of a subsector of the member concerned, as appropriate. On the other hand, where several members use the mixed inputs, the deductible proportion shall take into account the relevant turnover of the members concerned. However, for reasons of simplification, the VAT group may also choose to apply to such mixed expenditure the pro-rata of the VAT group taking into account the total turnover of the group. Similarly, the overheads will be deductible according to the pro-rata of the VAT group.

2.1. Option to apply the pro-rata to all expenditures

As a general rule, France has made use of the option under Article 173(2)(d) of the VAT Directive, pursuant to which Member States may authorise or compel a taxable person to apply a deductible proportion in respect of all goods and services used for all transactions of the taxable person referred to therein (single pro-rata). That provision will also be applicable to the VAT group, however under specific arrangements: the option must apply only for a distinct sector of activity, that is, per member.

Example 1: In the case of a VAT group with four members, A, B, C and D, the VAT group may decide to apply the option for using the pro rata for all the expenditures of B and D, without exercising this option for A and B.

Moreover, France explains that the application of a single pro-rata to a member (sector) of a VAT group that is determined according to Article 174 of the VAT Directive to all the expenses of that member may create windfall effects, be prone to abuse or avoidance and lead to distortions of competition. In particular, the risk of abuse is linked to the fact that intra-group transactions cannot be included in the calculation of the pro-rata even though those supplies contribute to the taxable activity of the VAT group.

Example 2: A member of a VAT group, which operates in the banking sector, may carry out 98% intra-group transactions which are outside the scope of VAT and have only 2% of its turnover consist of supplies of services to third parties which are subject to VAT and eligible for deduction. The pro-rata of the VAT group is 15%.

According to France, the application of the common rules to determine the single pro-rata leads to a rate for that member of 100% as the calculation only takes into account its taxable turnover (2% of its activity) although 98% of the activity of the member contributes to taxable transactions by other members not giving rise to the right of deduction.

It follows that, to prevent abusive practices, the VAT group opting for the application of the single pro-rata to one of its members has to take into account in the calculation the intra-group transactions realised by that member.

The distinct method of calculation of the single pro-rata related to the option under Article 173(2)(d) of the VAT Directive is considered by France an anti-abuse measure under Article 11(2) of the VAT Directive. The pro-rata is a fraction determined as follows:

(1) In the numerator, the amount of the total annual turnover of the group member relating to transactions giving rise to the right of deduction, plus the multiplication between, on the one hand, the amount of the total annual turnover of that member related to intra-group transactions that would have been taxable in the absence of the VAT group and, on the other hand, the pro-rata of the VAT group, determined on the basis of the total taxable turnover of the VAT group;

(2) In the denominator, the amount of the total annual turnover of the VAT group member relating to taxable transactions, plus the total annual turnover of intra-group transactions by that member that would have been taxable in the absence of the VAT group.

Example 3: A VAT group has three members (distinct sectors of activity), A, B, and C. The taxable turnover of member A, that is the turnover relating to transactions by A with third parties, consists of an amount of 100 (taxed supplies) and 58 (exempt supplies). Member A has also carried out intra-group transactions (out of scope) for an amount of 70. The pro-rata of the VAT group (all sectors together) is 0.2. The VAT group has opted for the application of the single pro-rata to all expenses of the sector made up by member A, which will be determine as follows:

$$[100 + (70 \times 0.2)] / [(100 + 58) + 70] = 0.5$$

Thus, with regard to that option, any expenditure incurred by A, is deemed to be mixed, namely, contributing both to transactions giving rise to the right of deduction and transactions not giving rise to that right, including when the taxable transactions are made by other members of the group, and is assigned a pro-rata of 0.5.

2.2. Invoicing arrangements

According to Article 214 of the VAT Directive, the French VAT group will be assigned a VAT number that will be distinct from that of its members. It follows that, in line with the French legislation, the VAT group has to join the register provided for in Article R. 123-220 of the Commercial Code and get a SIREN number.

The VAT number of the VAT group has to be mentioned in the invoices issued by the group together with its name and address.

For monitoring purposes, and in particular to control the exercise of the right of deduction, it must be also mentioned in the invoices, the name, the address and the old VAT identification number of the member, through which the VAT group carries out the operation, together with the mention "member of a VAT group".

3. THE COMMISSION SERVICES' OPINION

3.1. Option to apply the pro-rata to all expenditures

As pointed out on several occasions[3], a major effect of forming a VAT group, which may have cash-flow advantages, is that transactions for consideration between the VAT group

[3] Communication from the Commission to the Council and the European Parliament on the VAT group option provided for in Article 11 of Council Directive 2006/112/EC on the common system of value added tax (COM(2009) 325 final); Working paper No 1002 *VAT grouping*.

members (intra-group transactions) are considered outside the scope of VAT and, as such, these transactions cannot give rise to a right of deduction[4].

It follows, in particular, that according to Article 168 of the VAT Directive, as interpreted by the Court of Justice of the European Union (CJEU), a VAT group is entitled to deduct only VAT on inputs (supplied by another taxable person) that are used for the purposes of its taxed supplies[5], namely, supplies made to third parties.

According to the CJEU, the rules set out in Articles 173 and 174 of the VAT Directive relate to input VAT on mixed-use expenditure connected exclusively with supplies that fall within the scope of VAT, which are both taxed and exempt[6]. Supplies that fall outside the scope of VAT must then be excluded from the calculation of the deductible proportion referred to in those Articles.

If the inputs are used both for taxable and non-taxable supplies (out of scope of VAT), Article 173 cannot be applied[7]. The VAT Directive does not provide the method or criteria for the apportionment of VAT incurred on inputs that are used both for taxable and non-taxable supplies. It is for the Member States to establish the appropriate measures, having regard to the aims and broad logic of the VAT Directive and, in particular, the principle of fiscal neutrality.

On that basis, the Member States must exercise their discretion in a way which ensures that deduction is made only for the part of the input VAT proportional to the value of transactions giving rise to the right of deduction. Hence, Member States have to lay down a method of calculation which objectively reflects the input expenditure actually attributed to each of the two activities[8]: taxable and non-taxable.

A VAT group (according to its *raison être*) will have both taxable supplies (taxed and/or exempt) made to third parties and non-taxable intra-group supplies. The latter, depending on the circumstances, may have or not a link (as input) to subsequent taxable supplies of the VAT group. However, the pro-rata system should apply only where the VAT group incurs expenditure for the purposes of both taxed transactions and VAT-exempt transactions carried out with third parties.

That said, with regard to the specific measures put forward by France (section 2.1) for the application of the general pro-rata by the VAT group, the Commission services would like to make to following remarks:

i. Point (d) of Article 173(2) of the VAT Directive does not allow the partial and sectoral application of the general pro-rata, as envisaged by France for the VAT group. The possibility to determine a deductible proportion for each sector of business of the taxable person is foreseen in points (a) and (b) of Article 173(2), and in any case that method must apply to all sectors of the taxable person coherently.

4 CJEU, judgment of 3 July 2019, *University of Cambridge*, C-316/18, paragraph 24. EU:C:2016:950.
5 *University of Cambridge*, paragraph 23.
6 CJEU, judgment of 13 March 2008, *Securenta*, C-437/06, paragraph 33, EU:C:2008:166.
7 CJEU, judgment of 6 September 2012, *Portugal Telecom*, C-496/11, paragraph 45. EU:C:2012:557.
8 *Securenta*, paragraphs 33-39.

ii. It is not clear whether the option made by France under point (d) of Article 173(2) of the VAT Directive will be applicable to mix-used expenditure.

iii. The interpretation given by France to Article 173 of the VAT Directive can result in inconsistencies, like in the example 2, where the member A of the VAT group does not incur any mix-used expenditure within the meaning of that Article. Under those circumstances, the conditions to enable applying the pro-rata are not fulfilled.

iv. The French method for the calculation of the single pro-rata itself, which takes into account the internal supplies of the VAT group, is found inconsistent with Articles 11, 173 and 174 of the VAT Directive and contrary to the principle of VAT neutrality.

v. That method cannot even be justified to prevent possible tax avoidance. On the contrary, it appears to be prone to abuses as it allows businesses to determine a pro-rata that is more favourable than the general VAT group pro-rata (example 3), with no objective justification.

The French delegation is invited to clarify these points.

3.2. Invoicing arrangements

The inclusion in the invoice of, not only the VAT identification number assigned to the group, but also the name, address and old VAT identification number of the member of the group, presents obvious advantages in order to monitor the correct exercise of the right to deduct. In particular, in a system as that envisaged by France where each of the members of the group is deemed to constitute a separate sector of business within the meaning of Article 173(2) of the VAT Directive.

However, this mention does not seem consistent with Article 11 of the VAT Directive, as interpreted by the CJEU. The CJEU stated in *Ampliscientifica*[9] that the members of the group cannot be treated as separate taxable persons for VAT purposes, adding that the treatment of the VAT group as a single taxable person precludes its members from continuing to be identified, within and outside their group, as individual taxable persons. This statement has been confirmed by the CJEU in subsequent cases (*Skandia*[10], *Danske Bank*[11]). Moreover, the invoicing arrangements do not seem compatible with Article 273(2) of the VAT Directive.

Therefore, in the opinion of the Commission services, the monitoring of the correct exercise of the right to deduct should be addressed but by means different from the inclusion in the invoice of the name, address and old VAT identification number of the particular member of the group.

The French delegation is invited to comment on this point.

9 CJEU judgement of 22 May 2008, *Ampliscientifica*, C-162/07, EU:C:2008:301, paragraphs 19 and 23.
10 CJEU judgement of 17 September 2014, *Skandia*, C-7/13, EU:C:2014:2225, paragraphs 28 and 29.
11 CJEU judgement of 11 March 2021, *Danske Bank*, C-812/19, EU:C:2021:196, paragraph 25.

4. DELEGATIONS' OPINION

Delegations are invited to give their opinion on the subject.

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ANNEX

Consultation from France

Subject: Introduction into French legislation of the single taxable person scheme provided for in Article 11 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (VAT Directive) – Implementing measures.

In accordance with Article 11 of the VAT Directive, during the 117th meeting dated 16 November 2020[1], the VAT Committee was consulted by the French authorities with a view to the introduction into French national legislation of the 'grouping' scheme provided for in those provisions. Following this consultation, the 'single taxable person' scheme was transposed into Article 256 C of the French General Tax Code (*Code général des impôts* – CGI).

It will effectively enter into force on 1 January 2023.

In this note, the French authorities request an additional consultation on the right of single taxable persons to deduct VAT, which is the subject of a regulatory measure, namely a decree in the Council of State[2], specifying the relevant procedures. In addition, this decree contains details concerning the rules for the identification and billing of single taxable persons.

I. Exercising the deduction rights of the single taxable person:

The deduction rights of the single taxable person are determined in accordance with the rules of general French law, as set out in Article 271 of the French General Tax Code and which derive directly from the provisions of Articles 168 to 175 of Council Directive 2006/112/EC. The procedures for exercising the right of deduction are, however, specified by decree and are set out in Articles 206 *et seq*. of Annex II to the French General Tax Code.

Within the framework of these principles, for the purposes of implementing the principle of allocation, each member of a single taxable person constitutes a sector of activity of the single taxable person within the meaning of Article 173(2) of the VAT Directive. This breaking down of members into sectors does not preclude the establishment, where appropriate, of sectors of activity within those sectors (hereinafter referred to as 'sub-sectors').

1. Principles of deduction within the single taxable person

In order to calculate the deduction, the principle of allocation is applied to:

a) Expenses exclusively used for transactions that qualify for deduction or for transactions that do not qualify for deduction

Thus, for expenses which can be allocated exclusively to transactions that qualify for deduction carried out by the single taxable person, there is a full right of deduction, in accordance with Article 271 of the French General Tax Code, which adopts the terms of

1 Working paper No 1002.
2 Decree appended to this request.

Article 168 of the Directive. Conversely, deductions are not possible for expenditure which is not, even partially, used for the purposes of qualifying transactions.

This principle applies regardless of whether an expense borne by a member is used solely by that member or is used by several other members of the single taxable person.

b) So-called 'mixed' expenses, used both for transactions that qualify for deduction and for transactions that do not qualify for deduction

For expenses deemed to be 'mixed', i.e. those which are used both for the purpose of transactions which qualify for deduction as well as for those which do not qualify for deduction, the deduction will be determined by applying a proportional deduction in accordance with Articles 173 and 174 of the Directive.

However, in order to calculate this proportion, the specific characteristics of the structure of the single taxable person, in particular with regard to the establishment of separate sectors, must be taken into account so as to ensure, depending on the situation, that the administration of the tax is simplified or to ensure better respect of the principle of neutrality and prevent possible abuse.

The proportional deduction is thus determined by taking into account the relevant transactions of the single taxable person: either those of the sector of the single taxable person (the member) affected by the use of the expense, those of the sectors affected by the use of the expense, or, by way of simplification, those of the group where the expense is used by several group members.

In other words, if a mixed expense is used by only one member, the deduction is determined by applying the proportional deduction of the sector of the single taxable person represented by that member. In the latter case, this proportional deduction may, where appropriate, be broken down to the level of a sub-sector of the member if necessary.

On the other hand, where a mixed expense is used by several members, the applicable proportional deduction takes into account the turnover of the members concerned that is subject to VAT. However, the single taxable person may also choose to apply the general proportional deduction of the single taxable person to such mixed expenditure common to several members, i.e. the proportional deduction that takes into account the total turnover of the taxable person ('group' proportional deduction).

Similarly, the 'general expenses' of the single taxable person will be eligible for deduction using the 'group' proportional deduction.

2. Option to apply the proportional deduction to all expenses

France has long exercised the option provided in Article 173(2)(d) of the VAT Directive, allowing a taxable person to apply a single proportional deduction to all goods and services it acquires[3]. This simplification measure thus allows taxable persons that carry out transactions that qualify for deduction and transactions that do not qualify for deduction to deduct the VAT on their expenditure up to their proportional deduction level.

3 CJEU, 14 December 2016, Case C-378/15, *Mercedes Benz Italia SpA*.

Although France has decided to also allow this option for single taxable persons, it will be exercised based on specific procedures that take into account two specific features of these entities.

First, this scheme can only be implemented at the level of each member of the single taxable person, i.e. at the level of the separate sector of activity that the member forms. Thus, in the case of a single taxable person, the option can only be exercised separately per individual member[4].

Second, calculating a single proportional deduction applicable to all the expenses of the member of the single taxable person under the conditions of general French law, as established in Article 174 of the VAT Directive[5], has proven likely to create bargain effects, risks of tax abuse or evasion and distortions of competition.

The following example illustrates this:

X is a member of a single taxable person STP that forms part of the banking sector, whose 'group' proportional deduction is 15%. X achieves 2% of its turnover for the benefit of third parties, resulting in the supply of services subject to VAT and qualifying for deduction. In addition, 98% of its legal turnover results from internal services (which are outside the VAT system because they are performed within the same taxable person) provided to the other members of the single taxable person, which use them to provide services to third parties that are exempt and do not qualify for deduction.

A calculation of the single proportional deduction carried out under the conditions of general French law gives a rate of 100% for X. Indeed, this calculation takes into account only the turnover subject to VAT, i.e. the turnover achieved with third parties outside the group (which represents 2% of its activity), whereas its activity consists primarily of intra-group transactions and contributes to taxable transactions carried out by other members which do not necessarily qualify for deduction.

The risk of abusive practices based on the option established in Article 173(2)(d) of the VAT Directive is thus linked to the performance of internal transactions within the single taxable person, which are not included in the calculated proportional deduction, but still contribute to the activity of the group as a whole.

Therefore, pursuant to the second paragraph of Article 11 of the VAT Directive, according to which, in the context of the transposition of the single taxable person scheme, Member States may take all appropriate measures to prevent the application of this provision from making tax evasion or avoidance possible, a specific method of calculating the proportional deduction that takes into account the transactions carried out internally by the member will be used.

Under this system, when the option to use a single proportional deduction, within the meaning of Article 173(2)(d) of the VAT Directive, is used for the sector of a single taxable person, this proportional deduction will be the ratio between:

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4 Example: in the case of a single taxable person consisting of A, B, C and D, the single taxable person may decide to exercise the option to apply the proportional deduction to all expenses of B and D, without exercising this option for A and B.

5 Transposed to subparagraph 3 of paragraph III of Article 206 of Annex II to the French General Tax Code.

- in the numerator, the total annual turnover of the member's transactions that qualify for deduction plus the product of, firstly, the total annual turnover of transactions carried out by the member for other members of the single taxable person which would have been subject to taxation in the absence of the establishment of that single taxable person and, secondly, a proportional deduction for the single taxable person determined on the basis of the total turnover of its taxable transactions;

- in the denominator, the total annual turnover of the member's taxable transactions plus the total annual turnover of transactions carried out by the member for other members of the single taxable person which would have been taxable in the absence of the establishment of that single taxable person.

Thus, as an example:

A single taxable person consists of three members (separate sectors of activity), A, B and C.

Of the taxable turnover, i.e. that achieved within the sector constituted by member A with third parties outside the single taxable person, an amount of 100 qualified for deduction (taxed transactions) and an amount of 58 did not qualify for deduction (exempt transactions). Member A also provided internal (non-taxable) services to members B and C, amounting to 70.

Furthermore, the proportional deduction for the single taxable person (all sectors combined) is 0.2.

STP has chosen to apply a single proportional deduction for all expenses in its sector A. This proportional deduction will thus be calculated as follows:

Single proportional deduction for A = [100 + (70 x 0.2)] / [(100 + 58) + 70] = 0.5

Thus, in applying this option, any expenditure borne by A is deemed to be mixed (contributing both to transactions that qualify for deduction and to transactions that do not qualify for deduction, whether carried out by itself or contributing to the taxable transactions of other members of the single taxable person) and is allocated a proportional deduction of 0.5.

II. Identification and statements which must appear on the invoice

In accordance with the provisions of Article 214 of the VAT Directive, the single taxable person is assigned an individual VAT identification number of its own[6], which is separate from that of its members. In particular, for French legislation, this means recording the number in the register provided for in Article R. 123-220 of the French Commercial Code and the assignment of a business identification (SIREN) number.

The VAT identification number of the single taxable person must appear on invoices issued by the latter, together with its name and address.

6 CJEU, 22 May 2008, Case C-162/07, *Ampliscientifica and Amplifin*, paragraph 23.

For monitoring purposes, and in particular for monitoring the exercise of deduction rights, the invoice must also bear the name, address and former VAT identification number of the member through which the single taxable person carries out the transaction, together with the words ‘Member of a single taxable person’.

Decree No of

on the procedures for the deduction of value added tax and the invoicing obligations of single taxable persons

Official Text No (NOR): ECOE2211195D

Groups affected: *Members of a single taxable person within the meaning of Article 256 C of the French General Tax Code (Code général des impôts – CGI).*

Subject: *Adapting the provisions governing the procedures for deducting and the rules for invoicing value added tax (VAT) as part of the transposition of Article 11 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.*

Entry into force: *the text will enter into force on 1 July 2022, with the exception of the provisions laid down in Article 1, which will enter into force following consultation with the Advisory Committee on VAT and no earlier than 1 January 2023.*

Notice: *the Decree adapts the VAT regulations relating to the determination of the amount of tax deductible and to the reporting and accounting obligations for the exercise of the deduction right established in Articles 206 and 209 of Annex II to the French General Tax Code and those relating to invoicing established in Article 242h A of the same Annex to the specific characteristics of single taxable persons constituted under Article 256 C of the same Code.*

The Decree provides that, for the purpose of determining the tax coefficient applicable to expenses incurred by the single taxable person which are used by several of its members and used both to carry out transactions that qualify for deduction and transactions that do not qualify for deduction ('mixed' expenses), the single taxable person may apply the tax coefficient resulting from all the transactions it has carried out, as determined under the conditions of point 1 of subparagraph 3 of paragraph III of Article 206 of Annex II to the French General Tax Code.

Where a single taxable person exercises the option, provided for by point 2 of subparagraph 1 of paragraph V of Article 206 of the same Annex, to apply a single tax coefficient to all its mixed and non-mixed expenses, this option will be implemented at the level of each of the separate sectors of its members. For VAT neutrality purposes and to prevent fraud or abuse, the single tax coefficient applicable to all the expenses of the member affected by the exercise of this option will be the subject of a specific calculation procedure taking into account the possible use of its expenditure for carrying out taxable transactions conducted by other members of the single taxable person. In addition, where this option is exercised, each year the single taxable person will be granted an additional month, i.e. not later than 25 May of year n+1, to definitively determine the single tax coefficient for year n applicable to the sector concerned and to carry out, where appropriate, any adjustments that may be necessary.

The purpose of the amendments made to Article 209 of Annex II to the above-mentioned Code, which is in line with the provisions of subparagraph 3 of paragraph III of Article 256 C of the French General Tax Code, is to establish a sector of activity for each member of the single taxable person, albeit without prejudice to the incorporation, where appropriate, of sub-sectors by these same sectors.

Furthermore, in the case of a transaction carried out by the single taxable person, the full name, address and value added tax identification number of the single taxable person and the member concerned must appear on the invoice issued by the member making the transaction, together with a statement regarding the existence of the single taxable person.

Finally, in order to enable, in accordance with Article 11 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as specified by the case-law of the Court of Justice of the European Union, and under the provisions of paragraph 6 of Article 286b of the French General Tax Code, the attribution of an individual VAT identification number to single taxable persons, Article R. 123-220 of the French Commercial Code now provides for the registration of the latter in the Sirene Business Directory.

References: *Annex II to the French General Tax Code and the French Commercial Code, as amended by the Decree, can be consulted, in their wording resulting from this amendment, on the Légifrance website (https://www.legifrance.gouv.fr).*

The Prime Minister,

Concerning the report of the Minister for the Economy, Finance and Industrial and Digital sovereignty,

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax;

Having regard to the French Commercial Code, in particular Article R. 123-220 thereof;

Having regard to the French General Tax Code, in particular Article 256 C thereof and Annex II thereto, in particular Articles 206, 207, 209 and 242h A thereof;

After hearing the opinion of the Council of State (Finance Section),

Decrees:

Article 1

Annex II to the French General Tax Code is amended as follows:

I. – In Article 206:

1. Point 2 of subparagraph 3 of paragraph III is replaced with the following provisions:

‘2. Where a taxable person has formed separate sectors of activity pursuant to Article 209, the turnover to be used for calculating the ratio defined in point 1 is the turnover of the sector or sectors for which the good or service is used or, where a single taxable person referred to in Article 256 C of the French General Tax Code so decides and the good or service is used by several of its members, the total turnover of the taxable transactions of that single taxable person.’;

2. In paragraph V:

a) Point 2 of subparagraph 1 is supplemented by a section which reads as follows:

'This option is exercised separately for each of the sectors mentioned in the second section of Article 209 and in subparagraphs 1 to 5 of paragraph I of the same Article. It applies to goods and services used for the purposes of taxable transactions in this sector.';

b) Subparagraph 2 is supplemented by a section which reads as follows:

'However, where the option provided for in paragraph VI is exercised for one of the members of a single taxable person, the coefficients mentioned in paragraph I, taking into account, where appropriate, the rounding provided for in the above section, will be definitively determined before 25 May of the following year.';

3. After paragraph V, a paragraph VI is added, which reads as follows:

'VI. – Where the option mentioned in point 2 of subparagraph 1 of paragraph V is used for one of the members of a single taxable person constituted under Article 256 C of the French General Tax Code, this option applies to all the expenses of that member. In this case, the ratio established in point 1 of subparagraph 3 of paragraph III for the determination of the tax coefficient is as follows:

a. In the numerator, the total annual turnover of the transactions that qualify for deduction, including subsidies directly linked to the price of those transactions, plus the product of, firstly, the total annual turnover of transactions carried out by the member for other members of the single taxable person which would have been subject to taxation in the absence of the establishment of that single taxable person, minus the amount relating to the transactions mentioned in point 3 of subparagraph 3 of paragraph III, and, secondly, a tax coefficient for the single taxable person determined on the basis of the total turnover of its taxable transactions;

b. In the denominator, the total annual turnover of the taxable transactions, including subsidies directly linked to the price of those transactions, plus the total annual turnover of transactions carried out by the member for other members of the single taxable person which would have been taxable in the absence of the establishment of that single taxable person, minus the amount relating to the transactions mentioned in point 3 of subparagraph 3 of paragraph III.'

II. – Subparagraph 4 of paragraph II of Article 207 is supplemented by a section which reads as follows:

'Where the option established in point 2 of subparagraph 1 of paragraph V of Article 206 is exercised for a member of a single taxable person constituted under Article 256 C of the French General Tax Code, the adjustment will be made before 25 May of the following year.'

III. – Paragraph I of Article 209 is supplemented by a point 6 which reads as follows:

'6. Each member of a single taxable person referred to in Article 256 C of the French General Tax Code, without prejudice to the sectors formed by that member in accordance with the second section and points 1 to 5 of this paragraph I.'

IV. – After point 5 of paragraph I of Article 242h A, a point 5a is inserted, which reads as follows:

‘5a Where the supply of goods or services is carried out by the member of a single taxable person constituted under Article 256 C of the French General Tax Code, the statement “Member of a single taxable person” and the name, address and individual value added tax identification number of that member;’.

Article 2

After point 5 of Article R. 123-220 of the French Commercial Code, a point 5a is inserted, which reads as follows:

‘5a The single taxable persons in relation to value added tax referred to in Article 256 C of the French General Tax Code;’.

Article 3

The provisions of this Decree will enter into force on 1 July 2022. However, the provisions of Article 1 will enter into force following consultation with the VAT Committee mentioned in Article 398 of Council Directive 2006/112/EC referred to above, and no earlier than 1 January 2023.

Article 4

The Minister for the Economy, Finance and Industrial and Digital Sovereignty is responsible for the execution of this Decree, which will be published in the *Official Journal* of the French Republic.

[Date]

By the Prime Minister:

The Minister for the Economy, Finance and

Industrial and Digital Sovereignty,

Bruno Le Maire