

VAT on payments on account of goods: What's new on 1st January 2023

From 1st January 2023, where a payment on account is made, VAT on the supply of goods will be payable on receipt of the payment on account by the supplier and no longer on delivery of the goods.

Old regime: due on delivery of the goods

Until 31 December 2022, there are two different rules regarding the liability for VAT in case of receipt of an advance payment.

They depend on the nature of the sale. In the case of **goods, no VAT is payable on the payment of the deposit**. It is the completion of the supply that constitutes the chargeable event and the moment when the VAT becomes chargeable. In the case of services, on the other hand, VAT is due upon payment on account.

In 2021, the Administrative Court of Appeal of Nantes finally ruled that this rule was contrary to the EU VAT Directive and more specifically to Article 65. **This article states that VAT is due upon payment of a deposit, regardless of the nature of the transaction: goods or services.**

Definitions and reminders

The deposit

The advance payment corresponds to a transaction which has already been partly completed. The trader and the consumer are each obliged to fulfil their commitment. A contract, an order form or the payment of a deposit are considered to be commitments. The trader must supply the goods or services and the consumer must buy the goods or services provided for in the contract (unless otherwise agreed between the two parties). If either party withdraws or changes their mind, they may be ordered to pay damages.

The advance

The advance payment corresponds to a transaction that has not yet started. The trader or the consumer can go back on his commitment. The money advanced is lost for the consumer if he cancels his purchase or order. On the other hand, the trader who does not supply the goods or services must reimburse twice the amount paid to the consumer.

The regime as from 1st January 2023: due upon receipt of the advance payment on delivery of the goods

The Finance Act 2022 has corrected this situation by **aligning the system of advance payments on goods with that of services as from 1st January 2023.**

Article 269(2)(a) of the General Tax Code stipulates that as from 1st January 2023: *"For the supplies referred to in points (a) and (ab) of Article 1, VAT shall become chargeable when the chargeable event occurs. However, in the case of an advance payment, the tax shall become chargeable at the time of its collection, up to the amount collected.*

However, for the supply of electricity, gas, heat, refrigeration or similar goods giving rise to successive statements of account or collections, the liability to pay may, at the option of the taxpayer, arise at the time of the debit; in any event, it arises as soon as advance payments are received and up to the amount of the advance payments, when they are requested before the occurrence of the chargeable event or debit.

Thus, the VAT on the supply of goods becomes chargeable to the seller as soon as he receives advance payments for the amount actually received. And by reciprocity, the VAT that has become payable by the seller is then recoverable by the customer.

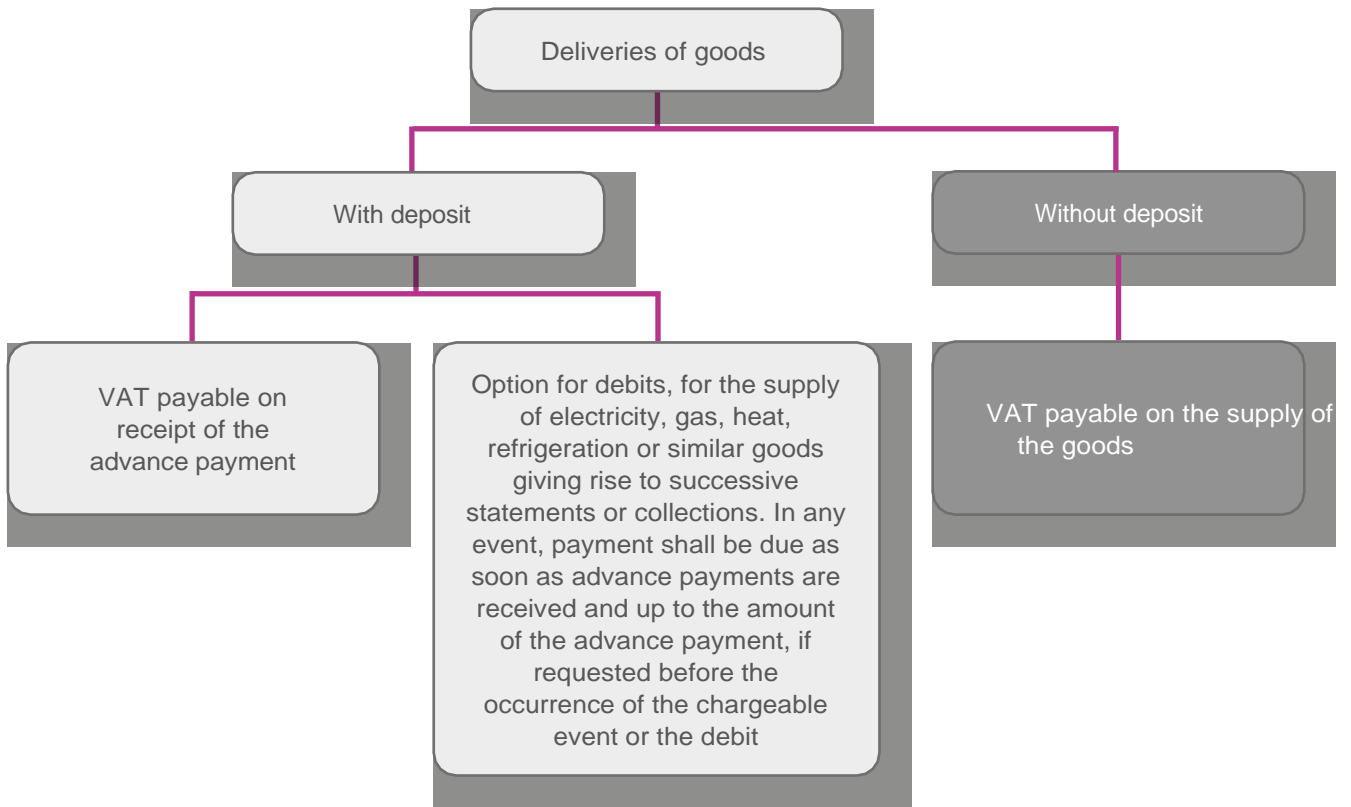
If there is no advance payment, VAT is payable upon payment on delivery.

What are the consequences?

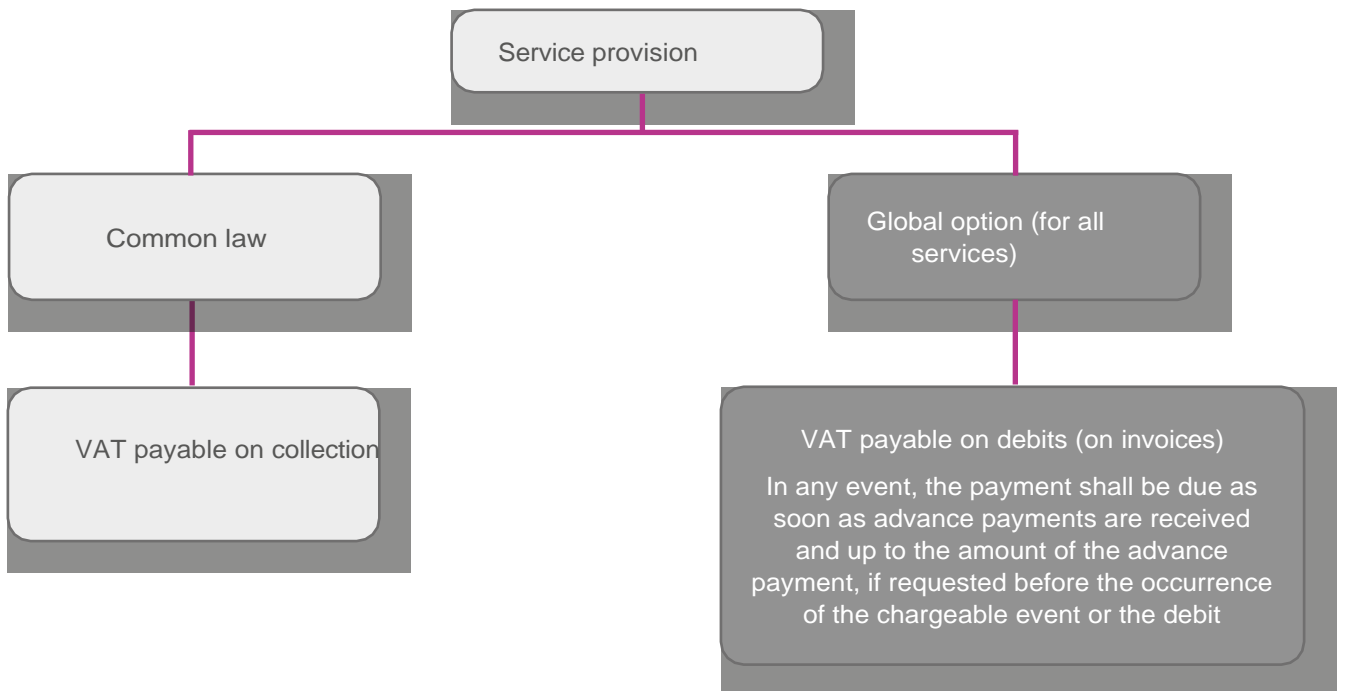
From now on, if the taxpayer wishes to obtain a down payment from his customer, he will have to issue a "down payment" invoice that complies with all the formal requirements for VAT purposes.

He will have to draw the consequences for his VAT return.

Summary scheme of VAT liability for supplies of goods



Summary scheme of VAT liability for supplies of services



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