

May 2022

Value Added Tax – Rules for Distance Sales – Enactment into French Law of Directive EU/2017/2455, Directive EU/2019/1995 and Decision EU/2020/1109 – Rectification of Errors Made by Non-French Sellers

Background

Tangible movable goods shipped by or on behalf of a seller from a Member State of the European Union (EU) to another Member State fall under the category of “distance sales” and not the intra-Community supply of goods if the buyer, residing in the Member State of delivery, is an individual or is exempt from the standard rules.

Until 30 June 2021, the tax rules applying to distance sales were based on the principle of VAT taxation in the country of delivery when annual sales exceeded a certain threshold amount set by each EU Member State (between €35,000 and €100,000).

Example: If in Year N-1, a seller established in Germany made distance sales to France in an amount above the applicable threshold, then the place of supply for distance sales made in Year N would be France.

If the same seller made distance sales in an amount equal to or below the applicable threshold in Year N-1, then the place of supply for distance sales made in Year N would be the Member State of dispatch (Germany), so long as the threshold is not exceeded. For distance sales made in Year N over and above the threshold and for subsequent distance sales, the place of supply would be the Member State of delivery (France).

New rules, amended by Article 147 of the 2020 Budget Act no. 2019-1479 of 28 December 2019, came into effect on 1 July 2021. Since that date, the threshold for distance sales has been harmonised to €10,000 across all EU countries, and the one-stop shop for declaring and paying VAT has been made available, on an optional basis, to sellers making intra-Community distance sales of goods.

When the reform took effect, it became apparent that some distance sellers had, for the period prior to 1 July 2021, incorrectly applied VAT in the country of dispatch to all their goods sold in the EU when their sales exceeded the thresholds in each Member State of delivery.

Non-French sellers who failed to comply with the applicable administrative procedures and tax filing obligations for distance sales of goods delivered to France are liable to be audited under the rules applicable to undeclared business activity. To this end, the French tax authorities will use the special ten-year time limit for recovery (as set out in Article L.176(2) of the Book of Tax Procedures), as opposed to the usual three-year limit, and the additional tax for which the seller is determined to be liable will be subject to interest on arrears, an 80% surcharge (pursuant to Articles 1727 and 1728

of the General Tax Code) and a fine for failure to file a declaration of trade in goods (pursuant to Article 1788 A-1 of the General Tax Code).

Opportunity to rectify

Non-French sellers who incorrectly collected VAT in the country of dispatch on distance sales of goods delivered to France are being encouraged to file a VAT rectification application with the French tax authorities by 30 September 2022.

This measure concerns sellers who:

- self-declare to the tax authorities. Sellers already under audit by the authorities are not covered by this measure.
- can prove, by providing documentation to the French authorities, that they paid VAT on the applicable distance sales in the Member State of dispatch.

Rectification procedure

Eligible sellers will need to submit documentation that clearly and thoroughly demonstrates the grounds for their rectification application to the Foreign Business Tax Department (SIEE) of the Tax Directorate for Non-Residents (DINR)¹ by 30 September 2022. This includes paper or electronic versions of amended returns (form CA3), indicating for each year the amounts of VAT that should have been paid on distance sales transactions, accompanied by supporting documents for these transactions. As a practical measure, sellers declaring a large number of transactions can provide a table that details, by year and by transaction, the amount of distance sales made and the corresponding VAT, which the tax authorities will cross-check.

Sellers must also demonstrate that they have not and do not intend to apply to the tax administration of the Member State from which their goods were dispatched for a credit for the VAT incorrectly paid in respect of the applicable distance sales transactions for a period exceeding the period covered by their rectification application. Sellers who have done so will need to withdraw their claim for credit for the years not covered by their rectification application in France. Sellers having already received such a VAT credit prior to the date of their application with France will need to adjust the period it covers to match the period applicable to the credit, pursuant to Article L.176(2) of the Book of Tax Procedures.

For all rectification applications received, the French authorities will notify the authorities in the Member State from which the goods were dispatched, informing them of the period covered, and will ask these authorities to provide information about any future credit claims filed by the sellers.

Sellers will have to fully settle any additional taxes they are deemed liable for.

The period applicable to rectifications is set out in Article L.176(1) of the Book of Tax Procedures, i.e. up to the end of the third year following the year in which the tax became payable pursuant to Article 269(2) of the General Tax Code.

Any tax owing will only be subject to interest on arrears at the legal rate (Article 1727 of the General Tax Code).

Example: A seller files a rectification application for distance sales delivered to France in 2019, 2020 and 2021 (up to 30 June).

¹ Mailing address: Direction des impôts des non-résidents, Service des entreprises étrangères, 10 rue du Centre, TSA 20011, 93465 Noisy-Le-Grand Cedex; email: siee.dinr@dgfip.finances.gouv.fr

- If it is determined that the seller obtained or may obtain a refund for VAT incorrectly paid in the country from which the goods were dispatched for only these three years, the rectification will only apply to transactions carried out in these three years (2019, 2020 and 2021 up to 30 June).
- If it is determined that the seller also obtained such a refund for 2017 and 2018 due to the statute of limitations applicable in that country, then the rectification will need to cover all five years (2017, 2018, 2019, 2020 and 2021 up to 30 June).