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8. EXEMPTIONS WITHIN THE COUNTRY

8.1. *General*

There are two types of exemption.

True exemptions

These are exemptions without the right to deduction of previously paid VAT, i.e. input tax on purchased goods, services and imports is not deductible by the entrepreneur.

Exemptions with deduction (zero rating)

These exemptions are granted with the right to deduction of previously paid VAT, e.g. the input tax on purchased goods, services and imports is deductible by the entrepreneur. This is also applicable to, for example, intra-Community transfers of goods, exported goods, international transportation and services rendered in respect of exported goods, the supply of ocean going ships and aircraft for international traffic as well as supplies and services relating to such ships and aircraft (see 10.3.1.).

In this section a number of important true exemptions (without deduction) will be discussed.

8.2. *Exemptions in the public interest*

8.2.1. **Medical supplies**

The following supplies of goods and services are exempt from VAT:

- medical services rendered by:
 - public hospitals (Art. 256B CGI; Ruling 3A-4-88);
 - private hospitals, clinics, etc. whether or not they are organized on a non-profit basis, provided they are covered by the definition of Art. 31 of the Hospital Law (Law 70-1318 of 31 December 1970) (Art. 261(4)(1°bis) CGI; Ruling 3A-4-88) (there is no option to be subject to VAT). However, the exemption does not apply to additional services which are not part of the medical treatment, such as the supply of special food, beverages, the rental of television sets and telephones, etc.; and
 - private hospitals run by qualifying non-profit organizations which do not meet the definition of Art. 31 of the Hospital Law (Art. 261(7)(1°)(b) CGI);
- services rendered by physicians, medical specialists, dentists, midwives, nurses, masseurs, physical therapists, orthopaedists, chiropodists, etc. as well as services rendered by approved medical laboratories with a view to preventing, diagnosing or treating human diseases (there is no option to be subject to VAT) (Art. 261(4)(1°) CGI);. Services rendered by veterinarians are subject to VAT at the standard rate;
- dental prostheses supplied by dentists, dental surgeons and dental technicians as well as prostheses supplied by persons rendering medical services provided that such supply is an extension of such services, e.g. the supply of orthopaedic soles by a chiropodist, etc. (Art. 261(4)(1°) CGI);
- the supply, processing and services provided as an intermediary regarding human organs, human blood and mother's milk (Art. 261(4)(2°) CGI) as well as other products of human origin (Ruling 8 A-1-88);

- services rendered by taxable persons in connection with the supply of human organs, human blood and mother's milk, such as processing or acting as an intermediary (with the exception of the transportation of these products which is subject to VAT) (there is no option to be subject to VAT) (CGI, Art. 261(4)(2°)); and
- services rendered by taxable persons in the form of transport by ambulance (motorcars, boats, airplanes, etc.) as prescribed in Art. L 51-2 of the Public Health Code (there is no option to be subject to VAT) (CGI, Art. 261(4)(3°)).

8.2.3. Postal and broadcasting services

Supplies by public bodies are, generally, not subject to VAT. Thus, postal services are exempt (expressly provided in (CGI, Art. 256B)). However, services rendered by the telephone and telegraph services and by radio and television broadcasting bodies are subject to VAT (Doc. Adm. 3 A 114 Nos. 53-54).

8.2.4. Education

Certain teaching services are exempt from VAT (CGI, Art. 261(4)(4°)) (there is generally no option to be subject to VAT).

Four main groups may be distinguished:

- teaching within the French school system by public and private institutions at the elementary, secondary and university level, including technological instruction;
- training to maintain or improve job competence by government institutes (and under certain conditions also by non-governmental entities);
- teaching services rendered by individuals who are directly paid by their pupils; and
- teaching services rendered by charities (CGI, Art. 261(7)).

No exemption is available to language institutes, driving schools and sport schools, etc., unless they qualify for an exemption as a charity (Doc. Adm. 3 A 1133 Nos. 3 and 4).

8.2.5. Charities

The following supplies of goods and/or services by charities are exempt:

- goods supplied and services rendered by charities (philosophical, religious, political, patriotic and similar organizations) and trade unions to their members ("closed" associations) for a fixed contribution, provided, *inter alia*, that (CGI, Art. 261(4)(9°) in conjunction with CGI, Art. 261(7)(c) and (d)):
 - they have been created in conformity with pertinent laws and are non-profit organizations; and
 - their management is not financially interested in the result of the activities; and
 - their purpose is the furthering of the material or moral interests of their members;
- goods supplied and services rendered to their members by non-profit organizations ("closed" associations), which have a social, educational, cultural or sporting purpose, provided that the management is not financially interested in the results of the organization and that the supplies do not exceed 10% of the turnover (CGI, Art. 261(7)(1°)(a); Doc. Adm. 3 A 3151 Nos. 11-22);

3. is used for a building, less than 75 percent of which is used for human habitation, and the gardens and open areas that are necessary for such habitation (CGI, art. 1594-O(G)).³³

[iii]—Shares of Cooperative Real Estate Companies. Any sale, disposition or other transfer for consideration of shares of a cooperative real estate company (*société d'attribution*)³⁴ is treated, for purposes of Real Property VAT, as a sale, disposition or transfer of the corresponding portion of the underlying real property and is taxed as such (CGI, art. 257(7°)). A cooperative real estate company may be defined as a company, the shares of which entitle the shareholders to occupy, or to rent to third parties, a portion of the real property owned by such company (CGI, art. 257(7°)(1)(6)).

[4]—Exempt Transactions

Where specific provision of law so permits, certain economic activities which would normally be subject to VAT are exempt from tax. The principal activities or persons that are exempted from VAT are: certain insurance, banking and financial activities, certain not-for-profit activities of Not-For-Profit Associations,³⁵ doctors and other medical professionals, athletes, and lessors of unfurnished premises and certain furnished premises (CGI, arts. 261(4 and 7) and 261 C and D)). In addition, rentals of agricultural land and buildings may be exempt from VAT (CGI, art. 261 D). While the sale of used goods by the enterprise that used them is exempt, where the initial purchase, importation or supplying by the legal entity to itself (*livraison à soi-même*) of said goods gave rise to a total or partial VAT credit, which is virtually most cases, such exemption does not apply. CGI, art. 261(3). The exemption of economic activities from VAT necessarily entails the loss of the right to claim a tax credit for the VAT paid by the taxpayer upon the acquisition of goods or services related to such exempt activities.

While, as a general rule, the economic transactions of a *groupement d'intérêt économique*³⁶ and other forms of associations such as a *société de pluripropriété*³⁷ which render services to their members give rise to VAT, such business organizations may, under certain conditions, be exempt from the VAT imposed on services rendered (but not on goods sold) to its members if, and only if, said

³³ That portion of the Building Land which is not subject to Real Property VAT in situation [3] is subject to registration tax.

³⁴ See § 5.09[1][b] *supra*.

³⁵ See § 5.08 *supra*.

³⁶ See § 5.06 *supra*.

³⁷ See § 5.09[1][e] *supra*.

services are directly related to the respective activities of its members and if such activities are themselves not subject to VAT (CGI, art. 261 B (1)).³⁸

It is important to make the distinction between goods and services which are exempt from VAT and goods and services which are exonerated from VAT. This latter category includes, *inter alia*, those economic activities which relate to foreign commerce, such as international transportation, the exportation of goods, intra-Community delivery, and the rendering of services relating to goods to be exported or goods which are imported pursuant to the temporary admissions procedure (CGI, art. 262(I-II)). If an economic activity is exonerated from VAT, not only does it give rise to no VAT liability, as is the case with exempt transactions, but, in addition, it permits the person engaging therein to claim a VAT credit equal to the amount of VAT it paid on the goods or services it acquired in order to engage therein (CGI, ann. II, art. 242 OF).

Finally, certain of the economic activities which are exempt from VAT can, at the election of the taxpayer, be made subject to tax (CGI, art. 260).³⁹ Such an election may be advantageous for a taxpayer that incurs substantial business and capital expenses because he will be able to claim a tax credit equal to the amount of VAT he pays on the goods or services he uses in his business; moreover, where such an election is made, the taxpayer is exempt from payroll tax (CGI, art. 231(1)(1)).⁴⁰ A drawback to such an election, however, is the consequent increase in the price charged by the taxpayer which is detrimental to purchasers not entitled to claim a VAT credit.

[5]—VAT Credit System

As has been mentioned above, the VAT is a non-cumulative tax and is imposed only on the price of the services rendered or the goods sold. In order to ensure that only said added value is subject to VAT, a VAT credit system has been adopted which permits a taxpayer to claim as a credit against his VAT liability the global amount of VAT paid on the goods sold or the services rendered to him (CGI, art. 271(1)). It is to be noted that a VAT credit may be claimed by a taxpayer not only as a result of his purchases of goods which he transforms and resells to his clients, but, in addition, as a result of his purchases of fixed assets⁴¹ which he uses in connection with his business operations (CGI, ann.

³⁸ Even where a portion of the activities of such member(s) is subject to VAT, such exoneration is nevertheless upheld, provided, however, that such portion does not exceed 20 percent of each such member's turnover. 1979 *Instruction, supra*, at 34.

³⁹ The principal persons entitled to make such election are certain professionals; the principal economic activities which give rise to such election are the rental of certain unfurnished buildings where the tenant is subject to the imposition of VAT and certain banking and financial operations. CGI, art. 260.

⁴⁰ See § 13.07[1][d][i] *infra*.

⁴¹ See *infra* for definition of fixed asset.

II, art. 205). Unless specific mention is made to the contrary, the term "goods" will be used in the discussion that follows to refer to both goods and fixed assets.

[a]—Availability of VAT Credit. In order to claim a VAT credit, two conditions must be satisfied. First, the taxpayer claiming the credit must show that the goods acquired or the services received were necessary in order to carry out economic activities which themselves are subject to VAT (CGI, ann. II, art. 230(1)). As a general rule, therefore, no VAT credit may be taken as a result of VAT paid on goods and services used to effect exempt transactions.⁴² Secondly, a VAT credit can only be claimed if the amount of VAT imposed at the time of the sale of goods or the rendering of services is mentioned on a supporting document such as an invoice or a customs form (CGI, ann. II, art. 223(1-2)).

[b]—Claim of VAT Credit. As a general rule, the size of the VAT credit which a taxpayer may claim is equal to the VAT imposed on all goods purchased or services received by him during a given taxable period (CGI, art. 271(I)). Despite such general rule, however, no VAT credit may be claimed corresponding to the VAT paid by the taxpayer on certain economic transactions such as the purchase of goods which are ultimately consumed by the management or, more generally, the employees of the taxpayer, and any services purchased relating to such goods (CGI, ann. II, art. 236).⁴³ Finally, no VAT credit may be claimed corresponding to VAT paid by the taxpayer for petroleum products,⁴⁴ certain transportation services, the purchase of goods as well as services which are not at arm's length, or the purchase, lease or repair of passenger vehicles, planes, boats, etc. (CGI, arts. 271 and 298(4)(1°); CGI, ann. II, arts. 230(1), 237, 238(1) and 240).

After having determined that a VAT credit may be claimed, it is necessary to determine when it vests and when it may be claimed. A VAT credit vests as soon as the person who sold the goods or rendered the services to the taxpayer is liable for the VAT relating to the taxable transaction (CGI, art. 271(I)(2)).⁴⁵

A taxpayer may claim a VAT credit corresponding to VAT paid in connection with his acquisition of goods or services in the month that the VAT credit vested;

⁴² It is to be noted, however, that an important exception to this general rule exists in the case of exports and services rendered relating thereto which are exonerated but not exempt from VAT. Such exoneration is tantamount to the imposition of VAT at a rate of 0 percent. CGI, art. 271(IV)(c). See § 13.06[4] *supra* (distinction between exempt transactions and exonerated transactions).

⁴³ Examples of such goods include residences, pharmaceutical products, food and lodging supplied to such persons by the taxpayer. CGI, ann. II, art. 236(1).

⁴⁴ Certain taxpayers may, however, claim a VAT credit for a percentage of the VAT paid on purchases of petroleum products for specific types of vehicles. CGI, art. 298(4).

⁴⁵ See § 13.06[6][a] *infra*.

such credit may be used to offset the taxpayer's VAT liability on his taxable economic activities during said month (CGI, 271.(I)(3)).

[c]—VAT Credit Carry-Forward or Refund. Where a taxpayer has more VAT credits than VAT tax liability, he may carry such excess credits forward and offset them against the VAT due for the succeeding month (CGI, ann. II, art. 224(2)). If the amount of excess VAT credit at the end of a calendar quarter is equal to or greater than 760 euros, such amount will be refunded by the tax authorities quarterly; if the amount of such excess credit is not sufficient to give rise to a quarterly refund, but is in excess of 150 euros, the tax authorities will refund such excess annually; if the amount of such excess credit is less than 150 euros, it will not be refunded (CGI, ann. II, arts. 242-0 A and 242-0 C).

Requests for refunds must be made in compliance with strict procedural rules which, when the refund is not insubstantial, are strictly enforced by the tax administration. The principal requirements of such rules are:

1. the request for refund must be signed by either the highest officer of the taxpayer or a duly authorized employee by virtue of a power-of-attorney that has been filed with the registration tax authorities not later than the day before the request for refund is filed,
2. the request for refund as well as the VAT returns for the period showing a VAT credit must be filed on the exact day prescribed by law for its filing,
3. the taxpayer must be in complete compliance with all of the rules and regulations governing the VAT,
4. the VAT returns filed by the taxpayer for the three months preceding the quarterly request for a refund must each show a VAT credit, and
5. the taxpayer must be able to produce, upon due demand, all appropriate documentation relating to the VAT refund requested (LPF, art. R.197-4(1); CGI, ann. II, art. 242-0 C).⁴⁶

In principle, a VAT refund is paid by the tax authorities in no more than four months; during such waiting period, no interest is paid on the amount of such refund.⁴⁷ Exporters may obtain a monthly refund of VAT in certain circumstances (CGI, ann. II, art. 242-0 F).⁴⁸

⁴⁶ E.g., *Documentation Administrative*, §§ 3D-1211, ¶ 1 and 3D-1321, ¶¶ 1-17.

⁴⁷ *Ministerial Response*, [1980] *Journal Officiel* [J.O.] Déb. A.N. 5113. Interest is only paid if suit therefor is brought by the taxpayer. LPF, art. L.208.

⁴⁸ Exporters who have opted, with respect to one of, or the first two months of, a quarter to receive refunds of VAT on a monthly basis, may, upon the filing of the last refund request of the quarter, choose to return to the general refund procedure applicable to non-exporters discussed above. CGI, ann. II, art. 242-OF.

The ability of a corporate entity or an individual that is not established in France (hereinafter referred to as a "Non-Domiciliary") to file a request for a refund of French VAT which has been invoiced to him is governed by rules which vary depending on whether he is established in a Member State of the EU or not. A Non-Domiciliary that is established in a Member State of the EU and who does not engage in economic activities subject to French VAT may file a request for a refund of French VAT invoiced to him only if he uses the goods and services to which the VAT credit corresponds in connection with:

1. economic transactions which are taxable in his country of residence and which would permit a French VAT taxpayer to claim a VAT credit in connection therewith had they been carried out in France,
2. the rendering of international transportation services, or
3. the rendering of services relating to intangible personal property (CGI, art. 271; CGI, ann. II, arts. 242-0 M and 242-0 N).

A Non-Domiciliary that is not established in a Member State of the EU and who does not engage in economic activities subject to French VAT may file a request for a refund of French VAT invoiced to him only if he uses the goods or services to which the VAT credit corresponds in connection with:

1. the commercialization of goods that are themselves subject to French VAT,
2. the rendering of international transportation services, or
3. the rendering of intangible services (CGI, ann. II, art. 242-0 O).

Where a Non-Domiciliary that is established in a Member State of the EU files a request for a refund of French VAT invoiced to him, he must attach to such request a certificate attesting that he is a VAT taxpayer in his country of residence (CGI, ann. II, art. 242-0 R); where the Non-Domiciliary is not established in a Member State of the EU, he must appoint a tax representative who agrees to be liable for any reimbursement to the tax administration of VAT refunded to the taxpayer (CGI, ann. II, art. 242-0 S). In both instances, such request for refund must be filed no later than six months after the calendar year during which the VAT credit vested (CGI, ann. II, art. 242-0 Q).

[d]—Subsequent Disallowance of VAT Credit. If the taxpayer disposes of a fixed asset which gave rise to a VAT credit before the expiration of a specific holding period, a portion of such credit will be disallowed during the month of disposition (CGI, ann. II, art. 210).⁴⁹ Such disallowance is known as *régularisation*. Where the fixed asset consists of a building, the holding period is twenty years (CGI, ann. II, art. 210(I)); where the capital asset is not a building, the

⁴⁹ A disposition is deemed to include a sale, a contribution to the capital of certain types of companies or a loss incurred as a result of theft. CGI, ann. II, art. 210(I)(1).

holding period is five years (CGI, ann. II, art. 210(II)). Where the fixed asset disposed of is a building, the taxpayer must repay the total amount of the VAT credit that he previously claimed minus one-twentieth of such amount for each unexpired calendar year or part thereof of the holding period (CGI, ann. II, art. 210(I)). Where the asset disposed of is not a building, the taxpayer must repay the total amount of the VAT credit that he previously claimed minus one-twentieth of such amount for each unexpired calendar year or part thereof of the holding period (CGI, ann. II, art. 210(II)). The foregoing disallowance of VAT credits and the consequent payment of VAT are also required where the taxpayer ceases to do business (*cessation d'entreprise*) or ceases to be subject to VAT during the holding period of any given fixed asset (CGI, ann. II, art. 210(I)). It is important to note that many sales of used personal property are normally subject to VAT (CGI, art. 241(1)(3)(1°).

The effect of a disallowance of a VAT credit is often minimal because it is common practice for the taxpayer that disposes of a fixed asset to transfer to the purchaser thereof that portion of its VAT credit which is equal to the amount of VAT credit that is disallowed; inasmuch as the amount of the transferred VAT credit is usually added to the purchase price, the transaction is, for VAT purposes, a wash (CGI, ann. II, art. 210(IV)).

[e]—Taxpayers Partially Subject to VAT. Where the activities of a taxpayer are neither totally exempt from, nor totally subject to, VAT, a host of very complex rules apply to the amount of VAT credit which the taxpayer may claim (CGI, ann. II, arts. 212-16 and 219-20). Put simply, the rules pursuant to which taxpayers partially subject to VAT (*assujettis partiels*) must calculate the amount of VAT credit which they may claim are as follows. At the beginning of each calendar year, the taxpayer must compute the fraction of his total annual turnover for the prior year attributable to transactions giving rise to a VAT credit; the total amount of VAT paid by the taxpayer during the prior year is then multiplied by such fraction in order to determine the amount of VAT credit which the taxpayer may claim (CGI, ann. II, arts. 212 and 219(c)). If the fraction of the taxpayer's annual turnover giving rise to VAT increases or decreases by more than 10 percent in any calendar year subsequent to the year during which the goods or services giving rise to the VAT credit were acquired, the taxpayer must either claim an additional VAT credit or pay additional VAT (CGI, ann. II, art. 215). In the event that VAT is paid upon the acquisition of goods and services not used for the purposes of an economic activity subject in whole or in part to VAT, no VAT credit may be claimed.

[6]—Imposition of VAT

[a]—Event Triggering VAT Liability. Two events must be distinguished with respect to VAT liability: the event which triggers the imposition of VAT