



PATF

Programme d'Appui à la Transition Fiscale
en Afrique de l'Ouest



VAT GUIDE

for Tax Administrations of ECOWAS Member States and the Islamic Republic of Mauritania

ASSISTANCE TECHNIQUE COURT TERME

Beneficiaries: ECOWAS Commission and WAEMU Commission

Produced by Boubacar SONKO and David HOLLINRAKE
Under the supervision of PATF Long Term experts

September 2021



Implemented by:



**Adam Smith
International**



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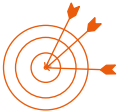


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ACRONYMS AND ABBREVIATIONS

ECOWAS	ECONOMIC COMMUNITY OF WEST AFRICAN STATES
EM	ECOWAS MEMBER STATES AND MAURITANIA
EXCLUDING TAX	DUTY FREE
EXCLUDING VAT	EXCLUDING VALUE ADDED TAX
GUIDE	THE VAT PRACTICAL GUIDE FOR ECOWAS MEMBER STATES AND MAURITANIA
OHADA	ORGANIZATION FOR THE HARMONIZATION OF BUSINESS LAW IN AFRICA
TAX INCLUDED	ALL TAXES INCLUDED
THE COMMUNITY	ECOWAS MEMBER STATES AND MAURITANIA
THE DIRECTIVE	THE VARIOUS ECOWAS AND WAEMU DIRECTIVES ON VAT
THE VAT PRACTICAL GUIDE	THE VAT PRACTICAL GUIDE FOR ECOWAS MEMBER STATES AND MAURITANIA
VAT	VALUE ADDED TAX

FOREWORD

This document was prepared in fulfilment of a mandate aiming at "developing a VAT Practical Guide for the two Commissions highlighting applicable rules and processes from best international practices." *Member States' Tax Administrations will use the Guide to ensure harmonized application of VAT rules in the ECOWAS' sub-region.*

The aim of the VAT Practical Guide for the Tax Administrations of the ECOWAS Member States and Mauritania is to provide users with a tool for a harmonized understanding of the Community's VAT system and general VAT rules and ensure that throughout the Community, taxpayers are subjected to the same rules, regardless of their nationality and/or country of the Community in which they reside. This VAT Practical Guide is therefore intended for use by tax officials in the Member States of the Community, whether they are part of the administration of a State which already applies VAT or of the administration of a State in the process of implementing VAT, to harmonize national legislation in line with the Community² Directives on VAT.

The VAT Practical Guide for ECOWAS member States and Mauritania was prepared based on the rules enacted by:

- > Protocol No. A/P2/7/96 of 27 July 1996 establishing the Value Added Tax (VAT) in the Member States;
- > Directive C/DIR.1/05/09 harmonizing the laws of ECOWAS Member States about Value Added Tax (VAT);
- > Directive C/DIR.2/12/17 relating to the modification of Directive C/DIR.1/05/09 harmonizing the legislation of ECOWAS Member States regarding Value Added Tax (VAT);
- > Directive No. 02/98/CM/WAEMU of December 22, 1998, harmonizing Member States' VAT legislation, amended by Directive No. 02/2009/CM/WAEMU of March 27, 2009.

The VAT Practical Guide for ECOWAS incorporates elements of administrative doctrine taken from various notes, circulars, administrative responses, and other administrative acts produced by the tax authorities of the Member States of the Community and made available.

This Guide refers to the two ECOWAS Directives (Directive C/DIR.1/05/09 and Directive C/DIR.2/12/17) because not all the States of the Community are members of WAEMU.

Another reason of this focus is that the same rules of those two documents, with a few nuances, are found in Directive No. 02/98 of WAEMU³.

1 Terms of reference for the recruitment of two (2) short-term experts for the preparation of a VAT Practical Guide for tax administrations of ECOWAS Member States (page 6)

2 ECOWAS Member States and Mauritania

3 Directives are acts which are binding on all Member States of the Union, but are not directly applicable, unlike the Regulation. Member States must, of course, transpose the Directives, but are only bound by the objectives they set and the results to be achieved (Letter No. 534 of June 6, 2017, from the Director General of the DGID of Senegal)

Before the development of the Guide, the authors conducted documentary research and analyzed a certain number of VAT Guides available on the net and/or published⁴. This made it possible to collect relevant experiences from jurisdictions that have improved their VAT systems to meet modern practices and produce a document that meets internationally referred standards

In addition, the relevant experiences in different countries have helped the authors highlight ideas that practitioners are likely to be curious about. These ideas may help renew some practices that have become obsolete or ineffective. The essential rules to remember and recommendations for improvement are presented in illustrated charts.

The authors would like to stress that the recommendations for improving the VAT system should neither be interpreted nor considered as rules of positive⁵ law by the user of the Guide, as they do not correspond to the rule currently applicable.

It is important to clarify that the VAT Practical Guide is not intended to amend or propose amendments to the Directives. Rather, it provides a clearer understanding of the Community provisions, leading to a better application of the law by the Member States.

The authors of this Guide present their appreciation to the representatives of ECOWAS Member States and the Islamic Republic of Mauritania for their profound contribution to the drafting of this document.

They are particularly grateful to the Linpico/Adam Smith Technical Assistance team for their guidance and advice while preparing the document.

The VAT Practical Guide for Tax Administrations of the ECOWAS Member States and Mauritania is presented as Fact Sheets with an introductory section. An annex is attached to it.

When drafting the Guide, we thought it was important to present the main amendments resulting from the revision of the ECOWAS VAT Directive. It is important to stress that these.

4 Benchmark: Guide to VAT in Algeria (2021); VAT Guide (Revue Fiduciaire Group 2019-2020 edition – France); Djibouti VAT Guide; Moroccan VAT Credit Refund Guide; Guide to VAT (Canada), ... Administrative doctrine of Senegal

5 "Positive law" means, at a given time, all the rules applicable in a specific legal space, whether it is a unitary State or a group of States such as ECOWAS or WAEMU.

INTRODUCTION

What is value added tax (VAT) ?

Value-added tax (VAT) is an **indirect consumption tax** that, at each stage of production or distribution, **affects the added value (or margin)** in such a way that, at the end of the goods or services cycle, the **overall tax burden** corresponds to the **tax calculated on the retail price to the consumer**.

The diagram below shows the various stages in the creation of gross margin (added value) :



According to Economists⁶, Value Added measures the wealth created by a company. It corresponds to the difference between the value of goods and services, on the one hand, and the value of intermediate consumption used, on the other.

In accounting, Value Added (VA) is an intermediate balance that measures the economic value (or wealth) added by a company's activity.

It is calculated schematically as follows :

$$\text{Value Added} = [(\text{Value of goods and services} - \text{Value of intermediate consumption}) + \text{Commercial margin}]$$

⁶ INSEE in France

What are the characteristics of VAT?

The table below shows the main characteristics of VAT :

Characteristics of VAT	Definition
VAT is a real tax	VAT is applied to resources, i.e., natural, or legal persons' expenditure or consumption of goods or services.
VAT is an indirect tax	VAT is paid into the State treasury, not directly by the end consumer (the actual payer), but by companies of all kinds (the legal payer) that produce and distribute goods and services and collect them.
VAT is an "ad valorem" tax (tax on the value) ⁷	VAT is calculated on the value of goods and services, not on their quantity, volume, or weight.
VAT is a neutral tax in economic circuits	VAT is neutral as it does not constitute a charge for the company (the legal debtor). VAT is charged to the end consumer (the actual taxpayer).
VAT is established based on the mechanism of split payments	At each stage of production and distribution, tax is charged on the value added to the goods or service so that, at the end of the production or distribution cycle, the overall tax burden on the value added corresponds to the tax calculated on the retail price to the final consumer ⁸ . Split payment is obtained using a deduction mechanism that enables eligible Taxpayers to deduct the VAT charged on their purchases of goods and services from the VAT collected on their sales. The deduction mechanism thus eliminates any residual ⁹ VAT in the product's cost price.
VAT is based on the mechanism of taxation - deduction.	At the various stages of the economic circuit, the legal debtor acts as follows: <ul style="list-style-type: none"> - he calculates and charges his customer the VAT due on the sales or services he provides (output VAT or gross VAT); - he deducts from this tax the tax charged on the cost price of the transaction (deductible VAT); - he pays the difference between the tax collected and the tax deductible to the State (net VAT due). <p>If the deductible VAT cannot be fully offset against output VAT, the taxable person has a VAT credit that can be carried forward to the next VAT return(s) or refunded under certain conditions defined by current tax regulations.</p>

7 On the contrary, specific taxes or excise duties which relate to a quantity and not to a value such as VAT which relates to the value of a good or service.

8 As part of the split payment process that characterizes the transaction of VAT, each company in the chain of transactions participates in the tax collection process and pays the proportion of tax corresponding to its margin, i.e., the difference between the VAT paid to its suppliers and the VAT received from its customers. Thus, the tax is in principle levied on the "added value" created at each stage of production and distribution. In application of the split payment mechanism, the VAT "passes through the companies" to charge only sales to the end consumer. (Mechanisms for the effective collection of VAT/GST where the supplier is not located in the taxing jurisdiction. OECD 2017 – page 12)

9 A situation in which the VAT incurred is not deductible for the company. To recover the VAT incurred but not deductible, the company passes it on in the sale price of its goods, thereby compromising its competitiveness.

First passed into law in 1954 in France, where it was invented, VAT has made a remarkable breakthrough. Today, it is a powerful lever for mobilizing domestic resources, providing most countries that apply it with over 30% of total tax revenues. VAT obeys the accepted tax policy principles embodied in the Ottawa Framework Conditions on Taxation, as shown in Chart 1 below:

Chart 1: VAT management is in line with tax policy principles (as per the Ottawa framework conditions on taxation)

The accepted principles of tax policy in consumption taxes were adopted by the ministers of the world's countries in 1987 and are globally applicable to VAT in national and international trade.

These principles are summarized as follows:

Neutrality: Taxation should aim to ensure neutrality between different forms of trade, between companies in similar situations and similar transactions between domestic and foreign companies, and between international and domestic trade;

Efficiency: The costs of tax discipline for business and administration should be reduced as much as possible;

Certainty and simplicity: Tax rules should be clear and easy to understand so that businesses can anticipate the tax consequences of a transaction, particularly regarding when, where, and how tax is calculated and declared;

Efficiency and fairness: Taxation should provide the right amount of tax at the right time. Opportunities for fraud and tax evasion should be minimized while ensuring that countermeasures are proportionate to the risks involved;

Flexibility: Tax systems should be flexible and dynamic to follow the pace of change in technology and business transactions.

What is the VAT administration mechanism ?

VAT administration is based on the Taxation-Deduction mechanism described below:

1. The Taxable person collects the VAT charged to his customers.
2. The Taxable person deducts the VAT incurred (charged by his suppliers) from the VAT collected.
3. The Taxable person determines the VAT due or payable (VAT collected - VAT deducted).
4. The Taxable person declares his transactions according to the periodicity fixed by law (he pays the VAT due if the balance is positive or records a VAT credit if the balance is negative).

The table below describes the mechanism as follows:

VAT collected	Deductible VAT	VAT due	Periodic statement of transactions
<p>1. The Taxable person includes VAT in his invoices to customers.</p> <p>2. He collects VAT from his customers on behalf of the State.</p> <ul style="list-style-type: none"> This is called <i>VAT collected</i>. <p>3. The basis for calculating the VAT collected is the selling price of the goods or services that the taxable person provides to customers, including, where applicable, some additional expenses.</p>	<p>When the taxable person purchases goods or services, he pays VAT to his suppliers, which the State authorizes him to deduct.</p> <ul style="list-style-type: none"> This is called <i>deductible VAT</i>. <p>The taxable person will be able to deduct the VAT paid from the VAT collected¹⁰.</p>	<p>The taxable person determines the VAT base of the VAT credit to report.</p> <p>1. If: <i>VAT collected</i> > <i>supported deductible VAT</i>: then the Taxable person will have to pay the VAT due.</p> <p>2. If: <i>VAT collected</i> < <i>supported deductible VAT</i>: then the taxable person has a VAT credit chargeable on his next declarations or refundable under some conditions¹¹.</p>	<p>1. VAT is a tax with spontaneous periodic declaration and payment.</p> <p>Indeed, the Taxable person spontaneously produces a VAT return to the State at each period.</p> <p>2. The purpose of the declaration is to liquidate the VAT he owes to the State. It results from the difference between the deductible VAT and the collected VAT.</p> <p>3. The periodic VAT declaration makes it possible to inform the administration of the following:</p> <ul style="list-style-type: none"> the amount excluding tax of sales or services invoiced to customers and the VAT due on these transactions; the amount excluding tax on sales or services paid to suppliers and the deductible VAT on these transactions.

VAT works based on a tax on the amount of sales or services provided and on the deduction of VAT paid on goods and services purchased by the company.

VAT thus appears, for the company, as an *economically neutral* tax¹².

To preserve its neutrality on economic activity, the application of VAT is based on the principle of *the Taxation - Deduction mechanism*, under which the taxable person, legally liable, proceeds as follows in the various stages of the economic circuit:

1st time	The taxable person calculates the tax payable on his sales or services.
2nd time	The taxable person deducts the deductible tax applied to the cost price components.
3rd time	The taxable person transfers the difference (VAT due) between the VAT collected and the deductible VAT to the Public Treasury.

¹⁰ The right to full deduction of the input tax throughout the chain of transactions, with the exception of the final consumer, guarantees the neutrality of the tax whatever the nature of the product, the structure of the distribution chain and the technical means implemented for its supply (stores, home delivery, Internet). Due to the split payment, the VAT “passes through the companies” and only applies to sales to the end consumer.

¹¹ There are two main methods of implementing the split collection process without taxing companies, allowing successive registered taxpayers to deduct the VAT paid on their purchases from that due on their sales.

NB : *The final consumer bears the ultimate burden of VAT when purchasing a good or service. In this sense, collecting companies function as intermediaries between the State and the customer.*

In this case, the company is simply the transit point for the tax, as it pays the VAT paid by the customer to the Treasury, while the State authorizes it to deduct or reimburse the VAT it pays to its suppliers.

When a company sells to individuals, the latter pays the purchase price plus VAT, but only the price without VAT belongs to the company. In fact, after deducting any input VAT paid, the company must pay back the VAT collected from the customer.

Illustrative example:

The company buys an item for 800,000 before tax, with VAT charged at 18%.

> i.e., $VAT = [Amount\ without\ tax\ (800,000) \times 18\%] = 144,000$

The company is reselling this property with a profit of 200,000.

Retail price, excluding tax, is 1,000,000 (800,000 + 200,000) with 18% VAT.

> i.e., $VAT = [Amount\ excluding\ tax\ (1,000,000) \times 18\%] = 180,000$

> i.e., $Sale\ price\ all\ taxes\ included = [Amount\ excluding\ tax\ (1,000,000) + VAT\ (180,000)] = 1,180,000$

The amount collected from the customer (corresponding to the sale price, including tax): 1,180,000.

Deductible VAT = 144,000

VAT collected = 180,000

VAT to be paid to the State: $180,000 - 144,000 = 36,000$

Since VAT is applied to the added value paid by the final consumer (in this case, the purchase cost is already subject to VAT, i.e., 800,000 excluding tax), the VAT due to the State is that paid by the final consumer, i.e., $200,000\ excluding\ tax \times 18\% = 36,000$.

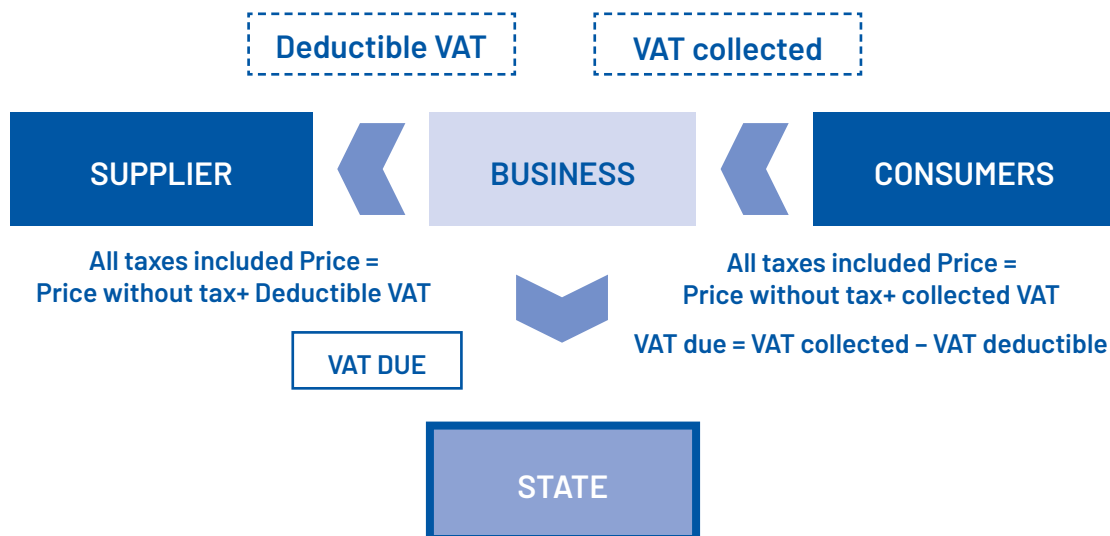
By applying VAT to the total amount, i.e., $800,000\ excluding\ tax + 200,000\ excluding\ tax (1,000,000\ excluding\ tax \times 18\% = 180,000)$, the same amount, i.e., $800,000\ excluding\ taxes$, has been taxed twice. To ensure the neutrality of the second taxation and the principle of taxation on the margin, the amount of the first taxation is deducted, i.e., $VAT\ due = 36,000 (180,000 - 144,000 = 36,000)$.

-
- the indirect subtractive method (“transaction-based method”): each operator charges VAT at the prescribed rate on each of its sales and provides the buyer with an invoice indicating the amount of tax charged. The buyer is then able to deduct the input tax paid from the input tax invoiced on his sales and pay the balance to the tax authorities or receive a refund if applicable.
 - the direct subtractive method (“entity-based method”): the tax is applied directly to an accounting measure of value added, determined for each company by deducting the VAT calculated on eligible purchases from that calculated on taxable sales.

NB: Like almost all countries that operate a VAT system, the States of the Zone follow the indirect subtractive method.

12 Si la TVA est fiscalement neutre, puisqu'elle n'est pas supportée par l'entreprise, elle joue, toutefois, un rôle important dans la gestion de la trésorerie de l'entreprise. En effet, en utilisant les entreprises comme intermédiaire pour collecter la TVA, l'état perturbe quelque peu leur gestion trésorerie. En effet, si la collecte de la TVA permet la plupart du temps d'encaisser momentanément la TVA pour le compte de l'état, elle demande aussi de la rembourser ce qui génère des sorties de trésoreries importantes parfois difficiles à gérer lorsque la trésorerie de l'entreprise est tendue.

The diagram below shows the VAT taxation-deduction mechanism:



Who are taxpayers liable to VAT?

The legal taxpayer:

- It is the **person or business** that collects VAT while selling or distributing a service or goods.

The real debtor:

- It is the **final consumer** who bears the VAT.

For this reason, VAT is :

- collected by **intermediaries** (producers, traders, service providers, etc.) who are **legally liable**.
- paid definitively by the **final consumers**, who are the **true debtors**.

Important:

VAT collected by State = VAT paid by the end consumer

See "2.1. Annex to the VAT Practical Guide": Example of a transaction subject to VAT:
Practical case

Implementation of VAT in ECOWAS

Each ECOWAS Member State has introduced (or is required to introduce) a VAT system, fully compliant in principle with Directive C/DIR.1/05/09 of May 27, 2009, on the harmonization of the laws of ECOWAS Member States relating to Value Added Tax (VAT), as amended by Directive C/DIR.2 /12/17, as well as Directive no. 02/98/CM/WAEMU of December 22, 1998, harmonizing the VAT legislation of WAEMU member states, amended by Directive n° 02/2009/CM/WAEMU of March 27, 2009.

In the VAT Practical Guide in ECOWAS, the term " VAT Directive " is used to designate the two (02) ECOWAS¹³ VAT Directives and the WAEMU VAT Directives.

This Guide refers to the ECOWAS Directives because not all ECOWAS member states are members of WAEMU, plus the same rules, with a few nuances, are found in WAEMU Directive n° 02/98.

Adaptation of the VAT practical guide for the tax administrations of ECOWAS Member States and Mauritania

The VAT Practical Guide for Tax Administrations of the ECOWAS Member States and Mauritania is presented as Fact Sheets, preceded by a **General Introduction** and an Annex.

The **Technical Sheets** present and analyze the various aspects of VAT. The provisions of the VAT Directive relating to the VAT topic covered are reproduced verbatim at the start of each Data Sheet.

Annex (i) reproduces the common lists of VAT-exempt products annexed to the VAT Directive, (ii) deals with practical cases on some tricky VAT issues, and (iii) presents some modern international VAT practices.

13 Les Directives sont des actes qui s'imposent à tous les Etats membres de l'Union, mais ne sont pas d'application directe, au contraire du Règlement. Les Etats membres doivent, certes transposer les Directive, mais ne sont liés que par les objectifs qu'elles fixent et les résultats à atteindre (Lettre n° 534 du 6 juin 2017 du Directeur Générale de la DGID du Sénégal)





SHEET 1

TAXABLE PERSONS LIABLE TO VAT

SHEET 1

TAXABLE PERSONS LIABLE TO VAT

Sheet 1 on taxable persons liable to VAT deals with the following questions:

- Which individuals and companies are liable for VAT?
- What are the VAT tax regimes and thresholds?
- And finally, what are the tax obligations of those liable for VAT?

The concept of liability is fundamental in VAT because it gives the taxable person the prerogative to collect VAT and exercise the right to deduct VAT

Chart 2: Notion of the taxable person in the VAT system

The status of a taxable person results from carrying out, independently, transactions relating to an industrial, commercial, non-commercial, agricultural, extractive, or artisanal activity.

In other words, the taxable person means any person who carries out transactions falling within the scope of VAT, whether these transactions lead to the payment of VAT or are exempt from it.

The notion of a taxable person is particularly important in the VAT mechanism. The quality of taxable person confers on its holder:

- the right to charge the VAT to his customers (i.e., he calculates it and adds it to his price) and thus guarantees the collection of this tax.
- the right to deduct input VAT paid.

Chart 3: Transactions performed by a Taxable person: Price (all taxes included)

The prices charged by a taxable person in his transactions with his customers include all taxes unless they are expressly exempt from VAT.



1.1. PERSONS LIABLE TO VAT

The natural and legal persons subject to VAT in the Member States are referred to in Articles 4 and 16 of the VAT Directive.

Directive C/DIR.1/05/09 harmonizing the legislation of ECOWAS Member States regarding Value Added Tax (VAT)

Article 4:

Are subject to VAT, natural or legal persons, including public authorities and bodies governed by public law, carrying out taxable transactions (...), in particular:

1. Importers

2. Producers:

By producer, we mean:

- a) Natural or legal persons who, on a principal or ancillary basis, extract, manufacture or transform goods, either for the manufacture of other products or for final use;
- b) Natural or legal persons whom de facto replace the manufacturer to carry out either in his factories or outside these all transactions relating to the manufacture or the final commercial presentation of the products, whether these are sold under the mark or in the name of those who carry out the transactions;
- c) Natural or legal persons with third parties carry out the transactions referred to in paragraphs a and b of Article 3 paragraph 2 above;
- d) Manufacturers who give a product its final form, on behalf of a prime contractor, by working on or with movable goods they do not own and to which they simply apply their expertise;

3. Building contractors and any natural or legal person carrying out building work on their behalf or behalf of third parties;

4. Rental or leasing companies

5. Traders: are considered traders, anyone who usually buys to retail, as is or after reconditioning movable or immovable goods;

6. Service providers

7. Natural or legal persons, under whatever name they act and whatever their situation regarding all other taxes:

- who have been authorized to receive goods or services free of tax or under the gain of a reduced rate when the conditions of this exemption or this rate are no longer met, circumstances making the tax or additional tax payable.
- who sell or deliver on behalf of other taxpayers.
- who carry out taxable transactions on behalf of foreign companies.

The persons defined above are subject to VAT regardless of their legal status and situation regarding other taxes, the form, or the nature of their interventions.

However, legal persons under public law are not subject to VAT for their administrative, educational, social, cultural, and sporting services when their non-taxation does not lead to distortion in competition conditions.

NB: All natural or legal persons, including public bodies and organizations governed by public law, are subject to VAT, regardless of their legal status, situation regarding other taxes, or the form or nature of their activities if they carry out transactions falling within the scope of VAT.

a- Importers

An "importer" is a natural or legal person who carries out an importation transaction, i.e., who buys goods from abroad for consumption in the territory of a Member State.

The importer is, therefore, liable for VAT based on the import transaction he carries out.

The Draft VAT Directive (currently being validated) clarifies the definition of goods importation in the following wording:

Import means the cross-border movement of goods across the customs border of a Member State.

b- The producers

By producer, we mean:

- Natural or legal persons who, on a principal or ancillary basis, extract, manufacture, or transform goods, either to manufacture other products or for final use.
- The natural or legal persons who de facto replace the manufacturer to carry out either in his factories or outside these, all transactions relating to the manufacture or the final commercial presentation of the products, whether these are sold under the mark or in the name of those who make transactions.
- Natural or legal persons who have third parties carry out the transactions referred to above.
- Manufacturers who give a product its final form, on behalf of a prime contractor, by working on or with movable goods which they do not own and to which they simply apply their expertise.

c- Building contractors and any natural or legal person carrying out building work on their behalf or behalf of third parties

A "building works contractor" is a person who, professionally or occasionally through a business, uses materials intended for the construction, maintenance, repair, or transformation of a building.

Thus, the status of building works contractor is recognized for the company which carries out the maintenance work on its buildings for its own needs. On the other hand, this quality is refused by those who take no part in the direction or the execution of the work.

The project manager responsible for the construction of a building and the payment of the invoices of the other participants in the construction, on behalf of his client, under the terms of the contract concluded with the latter, is assimilated to a contractor of real estate works.

As such, he shall pay VAT on the total amount paid by the customer after deduction of the tax charged to him by the contractors.

d- Rental or leasing companies

Leasing is a rental financing transaction linking a professional, the lessor, to a client, the lessee. It allows companies to rent materials, equipment, and buildings and acquire them at the end of the contract.

Leasing companies are those which, regularly, purchase movable or immovable properties with the intending to place the disposal of a lessee who has the option of acquiring, by the end of the lease at the latest, all or part of the leased property, in return for an agreed price which takes into account, at least in part, the payments made as rent.

e- Traders

Traders are people who normally purchase movable or immovable goods for resale, either as is or after reconditioning.

f- Service providers

A service provider is a person who carries out transactions other than the supply of goods.

Chart 4: VAT liability of service providers

The tax definition of the concept of "service provider," which refers to persons carrying out transactions other than the supply of goods, considers that priori all economic operators are subject to VAT unless they are exempt.

g- Other natural or legal persons subject to VAT

Natural or legal entities are also subject to VAT, regardless of the name under which they operate, and their situation about all other taxes, are those :

- who have been authorized to receive goods or services tax-free or at a reduced rate when the conditions for this exemption or reduced rate are not or are no longer fulfilled, circumstances which render the tax or additional tax liable;
- who sell or supply on behalf of other taxpayers;
- who carry out taxable transactions on behalf of foreign companies.

1.11. Legal persons or bodies governed by public law engaged in industrial or commercial activities under private-sector conditions

Chart 5: Criteria for VAT liability for persons governed by public law

Persons or bodies governed by public law are subject to VAT:

- when they carry out industrial or commercial activities regardless of their status;
- and that they carry out these activities using means and methods comparable to those used by natural or legal persons under private law.

Thus, if a public-sector body carries out a profit-making activity, it is subject to VAT on that activity.

NB: However, legal entities governed by public law are not subject to VAT on their administrative, educational, social, cultural, and sporting services when their non-taxability does not distort conditions of competition.

1.12. A taxable person not resident in the Member State

The liability of operators who are not resident in the Member State and the methods of taxation are defined in Articles 16 and 17 of the Directive.

The draft Directive currently being validated provides additional information to former Article 17, which becomes Article 16 (see New Draft VAT Directive).

- 1) Member States shall determine the tax obligations of taxpayers not established in their territory who carry out taxable transactions in their territory.
- 2) To avoid overlapping taxation or non-taxation, the Member States must comply with any measures proposed by the Community jurisdiction for this purpose.

Directive C/DIR.1/05/09 harmonizing the legislation of ECOWAS Member States regarding Value Added Tax (VAT)

Article 16:

1. Where a taxpayer is not resident in a Member State, he shall designate a solvent accredited representative residing in the said State, who shall undertake to fulfill the obligations relating to VAT and shall be responsible with him severally for the payment of the tax.
2. In case a representative is not appointed, the VAT and, if necessary, the related penalties must be paid by the client on behalf of the person who does not have a stable establishment in the State.

Article 17:

1. Member States shall lay down the tax obligations of taxpayers undertaking taxable transactions without being established on their territory.
2. However, to prevent cases of double taxation or non-taxation, the Member States should comply with all the measures proposed by the Community jurisdiction in that regard.

When not resident in the Member State, the natural or legal person who carries out a transaction (provision of services) subject to VAT in the Member State must have a representative resident in the said Member State to complete the formalities to which the taxable persons are subject and to pay the VAT on his behalf.

Member States determine the tax obligations of taxable persons not established in their territory who carry out taxable transactions there.

Chart 6: Tax representative, key concepts to remember

To be accredited, the tax representative of a taxpayer not resident in the Member State must offer guarantees of solvency and credibility. For example, he must not have a history of fraudulent behavior.

The representation must be formalized. It cannot be presumed and must be based on a formal act expressly designating the person being represented (correspondence addressed to the tax authorities - stating the name, address, and tax identification number of the tax representative - or a written mandate).

NB: In the absence of the designation of a tax representative¹⁴, it is up to the beneficiary of the services of the non-resident service provider to withhold and pay back the VAT on the service received.

> **Practical case of VAT on transactions carried out with non-resident Taxable persons in "Annex 9 of the VAT Practical Guide". Page 151**



1.2. VAT TAX REGIMES AND THRESHOLDS

The VAT regimes and thresholds for taxable persons are set out in articles 5 to 7 of the VAT Directive:

*Directive C/DIR.1/05/09 harmonizing the legislation
of ECOWAS Member States regarding Value Added Tax (VAT)*

Article 5:

Each Member State shall determine a VAT-free annual turnover threshold, on which any natural or legal person shall be liable to VAT, according to the actual regime, no matter the legal form or nature of the activities carried out.

Nonetheless, each State shall have the power to automatically subject to VAT natural or legal persons and persons engaged in a noncommercial activity.

Article 6:

The amount of the yearly turnover, including all duties and taxes which constitute the liability threshold, shall be between:

- USD 12,000 and USD 200,000 for the supply of goods;
- USD 10,000 and USD 150,000 for the provision of service.

These amounts shall be subject to a review by the Council of Ministers upon the proposal of the Commission, to consider the dynamics of the economies in the Community.

Article 7:

The Member States shall have the power to institute a simplified actual regime or other regimes of equivalent effect for small or medium-scale enterprises or industries (SME (Small and Medium Enterprise) or SMI (Small and Medium Industry) (Small and Medium Industry)), with a view to limiting the declaration obligations and facilitating the administrative management of companies whose annual turnover excluding VAT is lower than the agreed threshold. However, Member States shall also have the power to authorize companies or any other service provider to formulate an option for their liability.

The VAT Directive provides for three VAT liability regimes based on turnover, thus constituting thresholds for VAT liability :

- the actual (normal) regime;
- the simplified actual regime;
- and the option regime.

14 Difficulties in appointing a tax representative for certain transactions: The appointment of a tax representative used to be a common practice when cross-border transactions were relatively few in number, and each transaction involved fairly large amounts. However, notwithstanding the tax representative's ability to facilitate tax collection and recovery, the mandatory nature of this type of appointment can have unexpected consequences. Foreign suppliers faced with the obligation to appoint a tax representative in the taxing jurisdiction may decide to limit their trade with that jurisdiction, or deliberately fail to comply with the taxing jurisdiction's rules, particularly in the case of transactions involving relatively small amounts or profit margins. For a company with low sales in the taxing jurisdiction, the cost of appointing a tax representative may be disproportionate to its revenues, particularly in cases where the tax representative transfers the risk of non-compliance to the foreign service provider by requiring it to provide a guarantee. It may be difficult for suppliers to engage a representative who is willing to play this role when he is jointly or severally liable for the foreign supplier's VAT obligations. These undesirable consequences should be given particular attention when designing an identification-based collection system. (Mechanisms for the effective collection of vat/gst when the supplier is not located in the taxing jurisdiction © OECD 2017 - page 33).

1.21. VAT liability under the actual regime (normal)

The draft VAT directive currently being validated proposes to remove the VAT thresholds, leaving it up to each Member State to set its own threshold according to its autonomous capacity and economic structure. The new wording of Article 6 is reproduced below :

Each Member State determines the annual sales threshold, excluding VAT, above which any natural or legal person is subject to VAT, according to the actual regime, regardless of the legal form or nature of the activities carried out.

For each Member State, the threshold is set according to its ability to manage its VAT portfolio but according to its economic structure, which differs from one country to another.

1.22. VAT liability under the simplified actual regime for SMEs and SMI¹⁵

Member States have the option of instituting a simplified¹⁶ actual regime or other regimes with equivalent effects for SMEs or SMIs, with a view to limiting reporting obligations and facilitating the administrative management of companies whose annual turnover is below the threshold adopted.

Taxable persons under the simplified actual regime or regimes with equivalent effects gain from simplified procedures for declaration procedures, periodicity of reporting obligations, and payment of VAT.

Chart 7: Simplified actual regime = simplified formalities

In some Member States of the Community, taxable persons subject to the simplified actual regime are subject to formalities every quarter.

In Mali, the taxable person subject to the simplified actual regime is subject to a single annual declaration¹⁷.

1.23. VAT liability by option

Member States have the power to authorize companies or any other service provider to formulate an option for their VAT liability.

Chart 8: Methods of application of the option by each Member State

The option of being subject to VAT is open to taxable persons who, in principle, achieve a turnover below the thresholds set by the Directive.

The methods of application of the option are left to the initiative of each Member State¹⁸.

15 The criteria for defining a Small and Medium Enterprise (SME) and a Small and Medium Industry (SMI) differ from one State to another.

16 ~~Dans certaines juridictions des États de l'Union, les assujettis relevant du régime du réel simplifié sont soumis à des formalités tous les trimestres. Un État comme le Mali soumet les assujettis relevant du réel simplifié à une seule déclaration annuelle.~~

17 NB: Modernizing tax regimes is an urgent reform if we are to mobilize significant amounts of VAT. In particular, the introduction of a synthetic tax regime for the efficient administration of small businesses offers the advantages of simplified management, which can be achieved by applying a single tax rate to annual sales. This reform goes hand in hand with the desired raising of the VAT threshold, since companies under the synthetic tax regime no longer collect VAT. In addition to reducing the cost of tax administration, the reform makes it easier to reconcile tax information with sales declared by the taxpayer, with the dual aim of taxing those who have not made declarations and adjusting the taxable bases of those who under-report their sales. Moreover, the taxpayer's obligations are lightened by the fact that he files just one return a year. Example: Mali.



1.3. OBLIGATIONS OF TAXABLE PERSONS

The obligations to which taxable persons liable to VAT are bound are specified in Articles 16, 17, 42 to 47, 50, and 51 of the Directive reproduced below :

*Directive C/DIR.1/05/09 harmonizing the legislation
of ECOWAS Member States about Value Added Tax (VAT)*

Article 16:

1. Where a taxpayer is not resident in a Member State, he shall designate a solvent accredited representative residing in the said State, who shall undertake to fulfill the obligations relating to VAT and who shall be responsible with him severally for the payment of the tax.
2. In case a representative is not appointed, the VAT and, if necessary, the related penalties must be paid by the client on behalf of the person who does not have a stable establishment in the State

Article 17:

1. Member States shall lay down the tax obligations of taxpayers undertaking taxable transactions without being established on their territory.
2. However, to prevent cases of double taxation or non-taxation, the Member States should comply with all the measures proposed by the Community authorities in that regard.

Article 42:

1. Any person liable for VAT must, within the periods fixed by each Member State, subscribe to the territorially competent Tax Authority, a declaration of existence with a request for registration.
2. The Tax Authority of each State shall accomplish the registration formalities in keeping with the procedure provided for by its legislation.
3. A taxpayer may claim the status of a taxable person only after registration and receipt of a Taxpayer Identification Number.

Article 43:

A declaration of transfer, cessation, or modification must be submitted to the territorially competent Tax Authorities within the periods fixed by each Member State.

Article 44:

Taxpayers, by option shall be subjected to the same obligations of the declaration regime and the same management rules as fully-fledged taxable persons.

Article 45:

Taxpayers under the actual regime must keep regular accounts as provided for by legal and regulatory provisions. Member States may limit this obligation according to VAT regimes other than the actual regime.

Accounting documents, as well as supporting documents for transactions carried out by the taxpayer, especially purchase invoices must be kept for a period of ten years after the year in which transactions were noticed in the account's books.

18 Best practice suggests that the option regime should be administered with the utmost care, given the instability of companies in this situation, and to avoid it becoming a refuge regime. More often than not, companies under this regime gain from a right to deduction without actually collecting VAT from their customers. They find themselves in a situation of chronic VAT credit, thus undermining the effectiveness of VAT. In such conditions, companies that fail to meet their reporting obligations will find themselves withdrawn from the regime, which is a preferential regime and not a right. Current trends in some countries are to eliminate the option regime, once it has become ineffective and its effects inhibit the effectiveness of VAT (e.g., Cameroon).

These documents must be presented upon request by the tax authorities, barring which the sanctions prescribed by the provisions of the General Tax Code of each Member State will apply.

Article 46:

1. All taxable persons must issue an invoice for goods delivered or services rendered to another taxpayer, as well as deposits received under the transactions and leading to tax liability.
 2. The invoice must show in particular:
 - the serial invoice numbers.
 - the name, address, and identification number of the taxpayer who issued the invoice.
 - the kind of transactions carried out.
 - the rate of taxation, specifying the principal cost and additional cents, the tax-free cost, and the corresponding tax; and the amount, including all taxes.
 - the name, address, and taxpayer identification number of the client.
-

Article 47:

For partially taxable persons, transactions submitted to value-added tax must be distinguished from those not submitted.

For each transaction requiring the issue of an invoice, the following must be indicated:

- non-taxable base of the transaction;
 - the taxable base, applicable rate, and VAT base
-

Article 50:

1. The tax liable shall be paid spontaneously according to the periodicity in force in each Member State.
 2. Taxpayers shall be bound to give a monthly tax return to tax revenue or the relevant department in conformity with the model prescribed by the tax authority.
 3. The tax return on the previous month's transactions must be accompanied by payment. It shall be executed even if no business was made during the month in question and shall, in that case, bear the heading "NIL."
 4. Exporters shall be required to append to their monthly tax returns the customs references of the exports made on repatriation of funds on the export sales whose refund is requested.
-

Article 51:

The declaration for a given period must be deposited within the deadline for the deposit of the tax return prescribed by the General Tax Code of each Member State, accompanied by the means of payment authorized by each Member State.

Taxable persons liable to VAT are subject to the same obligations in all member states:

- registration (before starting their activities and in case of cessation or modification of activities).
- keeping regular accounts
- issuing invoices in compliance with certain formalities.
- declaring and paying VAT.

1.31. Declaration/Registration with the Tax Authority

The rules and procedures for registering taxable persons are defined in Articles 42 to 44 of the VAT Directive.

1.31.1. Declaration of Existence

Any person liable for VAT must, within the time limits set by each Member State, file a declaration of existence with the competent local authority, together with an application for registration.

The deadlines for registration are set by each member state.

It is up to each member state to determine the documents and procedures for registration.

It is also the responsibility of each country's tax authorities to carry out the registration formalities in accordance with the procedure laid down by the country's legislation.

Chart 9: Registration of Taxable Persons

In all cases, taxpayers can only claim to be taxable persons once they have been registered in the tax file and assigned a tax identification number¹⁹.

International best practices recommend setting up (if not already done) the electronic registration procedure to facilitate formalities for businesses, avoid errors in re-entering information by the administration and contribute to the interoperability of systems with the aim of interconnecting tax information systems, cross-checking tax information and strengthening the tax landscape²⁰.

NB : A foreign company (non-resident) awarded contracts requiring the opening of a permanent establishment in the State must submit a declaration of existence for registration purposes.

1.31.2. Declaration in case of transfer, cessation, or modification of activities

A declaration of transfer, cessation, or modification of activities must be filed with the territorially competent tax authorities within the deadlines set by each Member State.

The Member State has the prerogatives to set the deadlines and procedures for the declarations of transfer, cessation, or modification of activities.

The various events affecting the life of the company must be reported to the administration; these include, in particular, registration (creation of the company, opening of a branch, establishments, etc.), modifications to the operating or exploitation conditions (modification of the articles of association, legal form, merger, partial contribution of assets, etc.) and cessation of activity (temporary or definitive).

1.31.3. Declarations of Taxable Persons by Option

Taxable persons by option are subject to the same reporting obligations and the same management rules as taxable persons by transaction of law. These rules are set by each Member State in compliance with the VAT Directive.

¹⁹ Tax authorities must ensure that taxable status is considered at the time of company registration. The current practice of processing VAT transactions once the VAT return has been filed faces two obstacles: (1) the monitoring and processing of failure to file returns is skewed by the fact that the administration considers companies that fail to file their returns within the legal deadlines to be in default; (2) taxpayer files are not reliable, as there is always a significant discrepancy between the number of taxable persons and the number of tax filers.

²⁰ The best practice is for the default ratio to be the result of the number of registered taxpayers divided by the number of monthly returns filed.

1.32. Accounting obligations

1.32.1. Regular bookkeeping

Taxable persons subject to the actual (normal) regime must keep regular accounts as provided for by legal and regulatory texts.



NB : Member states may limit the accounting obligations of taxable persons subject to vat regimes other than the actual (normal) one.

Chart 10: Accounting obligations/simplified regime

Each Member State is free to limit the accounting obligations for taxpayers subject to the simplified actual regime.

Conversely, taxpayers subject to the " actual " (normal) regime must comply with all the accounting obligations laid down, with no possibility of limitation.

International best practice recommends that member states develop electronic accounting procedures within their jurisdictions. Taxpayers who record their accounts using accounting or management software must do so, for the purposes of control by the tax authorities, using secure or certified software or systems.

1.32.2. Storage of accounting and supporting documents: 10-year period

The accounting documents, as well as the supporting documents of the transactions carried out by the taxpayer, in particular the purchase invoices, must be kept for a period of ten (10) years²¹ after the year during which the transactions were recorded in the accounting entries.

All such documents must be provided at the request of the tax authorities; otherwise, they may be subject to penalties in accordance with the provisions of each member state.

The ten (10)-year retention period also applies to information, documents, data, computer processing, or information systems forming part of a company's internal controls. They may, at the taxpayer's option, be kept on paper or in electronic form, whatever their original form.

1.32.3. Cases: Accounting obligations of partially taxable persons

For partially taxable persons (see 8.4), transactions subject to VAT must be distinguished from those which are not²².

For each transaction resulting in the establishment of an invoice, the following must be indicated:

- the non-taxable base of the transaction.
- the taxable base, the applicable rate, and the amount of VAT.

This method is called the "sectoring rule."

21 This 10-year period is consistent with the period set by accounting standards (Article 23 of the OHADA Uniform Act on accounting law and financial information) and international practices.

22 Processing and Practical Case: Partial Registered taxpayers – See Sheet 13-6

This involves tracking separately, within the company's accounts, the data specific to each of the distinct sectors created under the distinct types of activities carried out (acquisitions of goods or services, disposals of fixed assets, transfer of these goods between sectors, etc.).

These same sectors will therefore allow the company to isolate categories of transactions coming under the same VAT regime (exempt or taxed).

Thus, two sectors must be constituted:

- the exempt transactions sector.
- the taxable transactions sector.

1.33. Billing obligations

Chart 11: Billing justification

VAT is based on the fundamental principle that the tax included in the price of a taxed transaction is deductible from the tax applicable to that transaction.

From a formal point of view, the deduction is subject to taxpayers' possession of a document bearing a distinct reference to VAT. In most cases, this document, which justifies the right to deduct, is the invoice issued by the supplier of the goods or services.

This is the main reason invoices issued by taxable persons are subject to special rules.

1.33.1. Issuing invoices

Every taxable person must issue an invoice for goods supplied or services provided, as well as for any deposits received in respect of these transactions for which tax is due.

Chart 12: Electronic invoices

International good practice recommends that Member States encourage the development of electronic invoicing procedures.

An electronic invoice is an invoice (or a flow of invoices) created, transmitted, received, and archived in any electronic form.

For an invoice to be considered an electronic invoice, the entire invoicing process must be electronic.

Thus, an invoice initially designed on paper, then scanned, sent, and received by e-mail does not constitute an electronic invoice but a scanned paper invoice.

1.33.2. Mentions on invoices

The invoice must show:

- the serial invoice numbers;
- the name, address, and identification number of the taxpayer who issued the invoice and the kind of transactions carried out;
- the rate of taxation, specifying the principal cost and additional cents;
- the tax-free cost and the corresponding tax; and the amount, including all taxes;
- the name, address, and taxpayer identification number of the client.

NB : Improper mentions of VAT on an invoice:

Any person who mentions VAT on an invoice or any document in lieu thereof is liable for this tax solely because of their invoicing. The supplier/service provider who invoices VAT at an incorrect rate or on an expressly exempt transaction is liable for VAT.

Chart 13: Electronic signature

International best practice recommends that Member States adopt the new regulations on “qualified electronic signatures.”

A "qualified electronic signature" is an advanced electronic signature based on a qualified certificate and created by a secure electronic signature creation device. The authenticity of origin, integrity of content, and legibility of an electronic invoice can be ensured by means of such a signature without any additional measures. To be certain that the public key belongs to the person or company signing the document, it is necessary to use an electronic certificate, a document in an electronic form signed by a third party, called a certification services provider, who attests to this link.

Business relationships are increasingly conducted digitally and without physical contact; digitization has become the rule since the health crisis.

Measures should be taken to set up a data security mechanism that is identical in all member states.

For example, security by means of computer data exchange and/or the introduction of an electronic signature system (qualified or not).

(VAT Guide "*Groupe Revue Fiduciaire*" 2686)

1.34. Liquidation, declaration, and payment of VAT

1.34.1. Liquidation of VAT

Tax liquidation involves applying the VAT rate to the tax charge (base) to determine the amount of tax due.

In other words, to liquidate VAT is to carry out the transaction, which leads to determining the amount of the tax.

1.34.2. Monthly statement of transactions

Declaring VAT consists of carrying out the declarative formalities according to a periodicity and specific rules.

Taxable persons are required to submit a declaration based on the model produced by the tax authorities of each Member State.

> **The declaration must concern the transactions of the previous month.**

Statement of the month M → Transactions of the month M-1

The declaration must be filed even if no business was done during the previous month (M-1). In this case, the form produced by the tax authorities must be marked "NIL. "

Once completed, the declaration must be forwarded to the relevant department in the Member State.



The declaration relating to a given period must be filed within the deadlines provided, accompanied by the means of payment authorized by each Member State.

In practice, the declaration must bear a certain number of mentions:

- the denomination or name of the taxpayer;
- the tax registration number of the taxpayer;
- the taxpayer's address;
- monthly turnover;
- taxable turnover;
- untaxed turnover;
- VAT collected;
- VAT paid;
- VAT credit;
- VAT remaining due.

The taxpayer must produce a table summarizing the deducted VAT charged by his suppliers and mentioning the name, address, and tax identification number of the latter.

NB: Exporters must append to their monthly declaration the customs references of the exports made to the repatriation of funds on export sales for which a refund is requested.

Chart 14: Electronic declaration and pre-established declaration

International good practice recommends that Member States (as is already the case in some) put in place the “tele declaration” procedure.

Tele declaration allows taxable persons to complete their declaration electronically and file said declaration on an electronic platform.

Electronic filing has an advantage both for the tax administration, which saves administrative costs, and for the taxpayer in terms of time and efficiency. It also facilitates the integration of dematerialized data into the tax administration's computer system.

For small businesses, international good practice recommends, in the absence of tele declaration, setting up a pre-established declaration system (as is the case in some Member States). The pre-established declaration facilitates the administrative formalities for the taxpayer and allows the reduction of the cost of the administration of the tax and thus helps to reinforce a better adherence to the declaration system.

NB: The dematerialization and digitization of procedures presuppose the establishment of a reliable and secure computer system.

1.34.3. Submission of the declaration and payment of VAT

The VAT return for a given period must be filed or transmitted within the time limit set by the Member State.

The declaration must be accompanied by payment of the VAT due by the means authorized by the State.

NB : The taxpayer should not wait to receive a tax notice or reminder. Declaration and payment must be made spontaneously.

VAT may be paid through the following means of payment, in general: electronic payment, bank or postal check, transfer, cash, payments by mobile money, etc.

Chart 15: Electronic payment/Payment by mobile money

Most Member States have set up an electronic payment system known as “telepayment.”

It allows taxpayers to pay their taxes electronically (internet) by ordering their bank to make the transfer to the Treasury account.

The digitization of payment procedures is a gain for the Tax Administration, which saves money in administrative management and traceability of funds. For his part, the taxpayer gains in terms of time and efficiency²³.

Some jurisdictions have also set up a system for paying taxes and duties by mobile money, especially for small taxpayers.

23 The use of electronic payment methods is recommended to allow non-resident suppliers to remit the tax due electronically. This not only reduces the administrative burden and cost of the payment process for the supplier but also the payment processing costs for tax administrations. Jurisdictions could consider accepting payments in the currencies of their major trading partners. (OECD 2017 – Page 49)



SHEET 2

TRANSACTIONS SUBJECT TO VAT

SHEET 2

TRANSACTIONS SUBJECT TO VAT

“Transactions subject to VAT” are transactions that fall within the scope of VAT. Conversely, transactions outside the scope of VAT are not subject to VAT.

To process taxable transactions, it is necessary to:

- (i) specify the basic principles governing transactions subject to VAT and,
- (ii) present all the taxable activities covered by the VAT Directive.



2.1 BASIC PRINCIPLE GOVERNING TRANSACTIONS SUBJECT TO VAT

2.1.1. Scope of VAT application

VAT applies to transactions within the scope of taxes.

- **Transactions within the scope of VAT**

The scope of VAT covers value activities performed within a Member State by any natural or legal person who regularly or occasionally engages in industrial, commercial, non-commercial, agricultural, extractive or, craft activities, except for salaried activities.

Chart 16: Transactions falling within the scope of VAT

To fall within the scope of VAT, transactions within a Member State must:

- be part of an economic activity.
- be carried out for value by any natural or legal person regularly or occasionally involved.
- be carried out by a taxpayer acting as such.

NB: the draft directive currently being validated extends the scope of VAT, through the taxation of transactions, below:

1. Sales of second-hand goods;
2. E-commerce;
3. Inter-community transport of goods in the country of destination of the goods.

- **Transactions outside the scope of VAT**

When all the criteria listed above are not met, the transaction is placed outside the scope of VAT and not subject to tax.

Chart 17: Transactions outside the scope of VAT: Criteria

To determine whether a transaction is exempt from VAT, the main criterion is the absence of a direct link between the transaction and a financial value activity (contribution, specific remuneration, etc.).

For example, the following are not considered to be economic activities and are therefore outside the scope of VAT:

- insurance compensation received following a claim and constituting fair compensation for the loss endured.
- contractual or legal compensation for loss or damage.
- financial assistance received.
- refunds of actual outlays received from a third party on whose behalf expenses have been incurred. As far as VAT is concerned, it is settled doctrine that claims for refund of expenses incurred on behalf of others do not constitute a taxable transaction, unless they conceal a genuine service, even if invoiced at cost.
- capital grants (see below 11. Commercial grants).

2.12. What are the consequences of placing a transaction within or outside the scope of VAT?

- **Transaction placed in the scope of VAT**

When a transaction has the characteristics of economic activity and is not excluded from the scope of application or expressly exempted, it must be subject to VAT, regardless of whether it results in a gain or a loss, or whether it is carried out at cost, flat-rate, or actual price.

- **Transaction placed outside the scope of VAT**

Chart 18: Transaction outside the scope of VAT

When the transaction is placed outside the scope of VAT, the operator does not collect any VAT on the sales he generates.

Consequently, the operator cannot exercise the right to deduct the VAT he pays on his purchases of goods and services relating to this transaction.

²⁴ An association will be liable to VAT if it carries out a remunerated activity. This is not the case for an association that simply charges its members the same amount for the costs of its services.



2.2. TAXABLE ACTIVITIES

The scope of activities subject to VAT is set out in Article 3 of the VAT Directive, reproduced as follows :

*Directive C/DIR.1/05/09 harmonizing the legislation
of ECOWAS Member States regarding Value Added Tax (VAT)*

Article 3:

Transactions in the framework of an economic activity performed for value within a Member State by any natural or legal person who habitually or occasionally carries out an industrial, commercial, non-commercial, agricultural, extractive, or nonindustrial activity excluding activities of employed persons, shall be liable for value-added tax.

The following shall be particularly liable:

- a) Imports: Imports refer to crossing the customs control barrier of a Member State to release foreign goods.
- b) Delivery of goods: By delivery of goods is meant any transaction leading to the transfer of the ownership of the tangible property to a third party for value.
- c) Self-delivery of movable and immovable tangible goods by natural or legal persons for their needs, for the needs of their company, or free transfer to a third party.
- d) Construction works: By construction works is meant all works executed by the different trades taking part in the construction, maintenance, and repair of buildings and construction works; public works, boiler work, buildings, and metallic construction, demolition works, works accessory or preliminary to construction works, including externally funded public contracts.
- e) Processing transactions of agricultural or fishing products and all other transactions, even carried out by farmers, and fishers which, owing to their magnitude, are like those carried out by manufacturers or traders, whether these transactions constitute an extension of the agricultural or fishery activity.
- f) Provision of services means all other transactions besides those listed above, carried out between two legally distinct persons, and comprising compensation in cash or kind.
- g) By self-service is meant services carried out by taxable persons, either for their companies or for other uses in the normal framework of their activity.
- h) Sales of second-hand goods by professionals.
- i) Transfers of active elements not included in the list of goods exempted in each Member State.
- j) Lease, by estate professionals, of undeveloped land and bare premises.
- k) Commercial subsidies of any kind, granted to taxable persons due to their taxable activity.
- l) Remission of debts and abandonment of claims.
- m) Refining, distribution, and release for consumption of petroleum products, excluding the retail resale of the products.
- n) Refunds of expenses incurred by a supplier on behalf of his client other than the disbursements indicated in the article.
- o) In general, any profit-making activity other than wage earnings or any transaction is not expressly excluded from the scope of application by this Supplementary Act.

NB: In addition to the list of taxable transactions covered by the ECOWAS Directive, the following transactions are assimilated to a supply of goods under the WAEMU Directive (Directive no. 02/98/CM/WAEMU of December 22, 1998, amended in 2009).

Article 8:

Supply of goods means the transfer of power to dispose of goods as owner.

The following are assimilated to a supply of goods:

- the supply of water, electricity, gas, and telecommunications,
- installment sale;
- the transfer of goods assigned under a commission contract or for the purchase of goods.

2.21. Opérations relevant d'une activité économique et effectuées à titre onéreux, à l'intérieur d'un État membre

In the Member States of the European Community, VAT is levied on economic activities carried out for value within a Member State by any natural or legal person who regularly or occasionally engages independently in activities of an industrial, commercial, non-commercial, agricultural, extractive, or craft nature, except for salaried activities.

For greater clarity, the following provisions explain the concepts:

- transactions falling within the scope of an economic activity;
- transactions carried out for value.

• What is a "transaction falling within the scope of an economic activity"?

In practical terms, economic activity corresponds to the material criterion used to determine whether a transaction is liable to VAT.

By "economic activity," we mean any activity carried out in a Member State as a producer, trader, or service provide, by any natural or legal person who regularly or occasionally engages in activities of an industrial, commercial, non-commercial, agricultural, extractive or craft nature, except for salaried activities.

NB: Under the VAT Directive, salaried employment is the only activity not subject to VAT. Any person who performs work in a subordinate position, for a fixed or indefinite period, without assuming any economic risk and receiving remuneration performs a salaried activity.

Chart 19: Activity carried out by a non-VAT liable

A one-off transaction carried out by a non-professional does not confer taxable status.

This means that the non-taxable person pays VAT but does not have the right to deduct it. Example: a one-time importer of a vehicle for personal use.

NB: This is a purely factual matter that must be assessed case-by-case.

• What is a transaction carried out for value?

A "transaction for value" is any transaction involving the provision of payment by the purchaser of a good or the recipient of a service. The compensation may be profit-making or non-profitmaking.

However, a profit-making transaction requires the existence of a direct link between the goods delivered or the service provided, on the one hand, and the compensation received, on the other.

Where a taxable person acting as such provides a gain to a third party, and there is a link between the value received by the taxable person and the gain received by the third party, the transaction is considered to fall within the scope of VAT, subject to two conditions:

- The link between the value received and the gain must be direct;
- The gain must be identifiable.

As a result, deliveries of goods and services are subject to VAT²⁵ even if they are made "at cost" or at a loss.

2.22. Transactions/activities automatically subject to VAT: Definition, understanding, interpretation.

Article 3 of the VAT Directive covers transactions that must be subject to VAT.

Each of these transactions is defined, analyzed, and interpreted as follows:

1. Imports

"Import" means crossing the customs border of a Member State.

The customs border symbolizes the limits of the Member State's customs territory, i.e., the Member State's continental zone, territorial waters, continental shelf, and economic zone.

The company carrying out the import, i.e., purchasing goods from abroad, is called the importer.

In most member states, imports are controlled by the Customs Service as part of the customs clearance procedure. Customs also collect taxes and duties on imported goods.

NB: The release for consumption of "goods initially placed under a suspensive procedure" is treated as an import for tax purposes.

Crossing the border or releasing for consumption goods initially placed under a suspensive procedure²⁶ is considered a taxable act, whether ownership is transferred, and whether the import transaction is carried out for value or free of charge.

2. Les livraisons de biens

A "delivery of goods" is any transaction that transfers ownership of tangible assets to a third party for value.

NB: *The WAEMU VAT Directive 2/98* includes the following as deliveries of goods²⁷

- the supply of water, electricity, and gas;
- telecommunications transactions;
- installment sales;
- the transfer of goods under a commission²⁸ contract.

> *Transfer of ownership*

Unless otherwise agreed between the parties, the transfer of ownership takes place as soon as the buyer receives the goods sol²⁹.

The parties may freely agree to postpone the transfer of ownership until full payment of the price. In this case, the reservation of title clause will only be effective between the parties if the purchaser has been made aware of it by its mention in the sales contract, order form,

²⁵ The suspensive regime is a system in which a person subject to VAT is authorized to receive, unencumbered by this tax, some of the products and services necessary for its transaction or the purpose of which is to defer payment of the tax to a later stage. normally due.

²⁶ (WAEMU Directive No. 02/98 of 22/12/1998 amended in 2009)

or delivery note, and at the latest on the day of delivery. Subject to its validity, the retention of the title clause will only be enforceable against third parties if it has been duly published in the Trade and Personal Property Credit Register, in accordance with the provisions applicable to commercial law in the Member States³⁰.

Thus, the most common transaction that establishes the transfer of tangible property is the sale.

> *The transfer must be for value.*

A transfer for value is one in which each party is obliged to carry out a transaction for the other.

A transfer for value implies that the value of the goods or services performed by one of the parties is settled in money (or in exchange) by one or the other parties. (See above).

> *Supply of tangible individual property*

Legally, tangible individual property is distinguished from intangible individual property.

- *Examples of tangible individual property:* furniture, a house, and a car.
- *Examples of intangible individual property:* receivables, patents, bonds issued by companies, customers, lease rights.

Chart 20: Delivery involves tangible individual property

The delivery must be for tangible property.

Tangible goods refer to goods having a material existence. These are goods that can be physically touched.

On the other hand, transactions involving the transfer of ownership of intangible movable property (attribution of rights, patents, trademarks, etc.) are considered services

> *Transactions treated as deliveries of goods.*

NB : According to the WAEMU Directive, electricity, gas, heat, cold and similar goods, as well as telecommunications, are treated as tangible movable property.

Consequently, these transactions are deliveries of goods falling within the scope of VAT.

Chart 21: VAT on telecommunications transactions

Telecommunications transactions are taxable as deliveries of goods.

Though the WAEMU Directive clearly qualifies telecommunications transactions as deliveries of movable goods, practice in some WAEMU Member States is different: these countries qualify or treat telecommunications transactions as deliveries of services.

27 A commission agent, in matters of sale or purchase, is a person who undertakes to sell or purchase goods in his own name, but on behalf of the principal, in return for a commission (OHADA Uniform Act on General Commercial Law).

28 For example: Article 275 of the Uniform Act on General Commercial Law of OHADA

29 For example: Article 283 of the Uniform Act on General Commercial Law of OHADA

30 Some countries restrict the definition of real estate work to construction and structural work involving real estate. The works carried out by the various trades ancillary to real estate are considered as services.

3. Self-deliveries

NB : The **WAEMU Directive** (Directive No. 02/98/CM/WAEMU of December 22, 1998, amended in 2009) defines self-delivery as follows:

Directive No. 02/98/CM WAEMU of December 22, 1998, amended in 2009

Article 10 paragraph 1:

Any withdrawal of a business asset for purposes other than those of the business is treated as a delivery for value when the asset or its component parts give entitlement to full or partial deduction of VAT at the time of acquisition.

The following are treated as deliveries to oneself subject to VAT:

- deliveries of movable and immovable tangible property made by natural or legal persons, for their needs, for those of their operations, or to be transferred free of charge for third parties.
- if all or part of the VAT charged on the goods delivered or their component parts was deducted at the time of acquisition.

NB: Are also assimilated to self-delivery, withdrawals made by traders subject to their stocks:

- for their own needs.
- or for third parties, free of charge.

When a transaction is qualified as self-delivery, the basis for VAT is the cost price or acquisition price of the goods.

In application of this rule, for example, the withdrawal of vehicles registered in a company's name and used for business purposes constitutes a transaction liable to VAT, regardless of their purpose (rental or business needs) and/or their characteristics (passenger or commercial vehicle).

See "2.3. Annex to the VAT Practical Guide for ECOWAS": Taxation regime for a supply and service to oneself (TRSSO)

Chart 21: Exception

VAT is not charged on self-deliveries made by a producer of raw materials, semi-finished products and products consumed for their first use and used exclusively for taxable production that is effectively taxed or exempt, while retaining the right to deduct.

Exceptionally, purchases of low-value gifts or samples for the company's exclusive use are not considered self-supplied.

A low-value gift is a gift of a value (amount) to be set by each Member State.

A sample is a small quantity of goods intended to give an idea of the product available on the market. They must be given free of charge not to customers, but to intermediaries responsible for displaying them to potential customers, in packaging different from that of the products marketed, which makes them unsuitable for sale.

4. Real estate works

Real estate work includes:

- all work carried out by the various trades involved in the construction, maintenance, and repair of buildings and real estate: (earthworks, foundations, land reclamation and leveling, wells and excavations preliminary to the construction of real estate works, land equipment work, water, gas and electricity supply, sewer construction and connection to the network, internal roads, and access roads ; masonry, reinforced concrete, carpentry, roofing; joinery; basic floor and wall coverings; tiling, paving, rendering, plastering, painting and preliminary work; various fences, gates, doors; signs incorporated into building facades; advertising hoardings painted directly onto walls, fences, etc.);
- public works: (roads, railroads, bridges and all engineering structures, runways, stadiums; ports, canals, quays, dikes, water supply, sewerage, drainage, irrigation, piping; landscaping of parks and gardens, etc.)³¹;
- boiler works, buildings, and metal construction: storage or traffic structures (tanks, cisterns, silos, hoppers, gasometers, water towers, penstocks, pipelines, sewers, chimneys, etc. , hangars, pylons, engineering structures, metal frames for mine headframes, large-scale lifting equipment, etc.);
- demolition work;
- work ancillary to or preliminary to real-estate projects, including externally financed public contracts.

5. Agricultural or fishery product processing transactions

These transactions include those carried out by foresters, planters, and breeders, as well as those carried out by the cooperatives or unions of cooperatives of these various professionals.

These transactions must be of such importance that they are treated in the same way as those carried out by industrialists or traders.

The transaction must not be an extension of farming, fishing, forestry, or livestock-raising activities.

6. Service delivery

The "Services" comprise all transactions other than those listed above, carried out between two legally distinct persons, and involving compensation in cash or in kind.

The term " delivery of services " covers all transactions that do not constitute a delivery of goods.

For example, transactions other than a delivery of goods are treated as service deliveries for VAT purposes, including:

- transfers or concessions of intangible individual property;
- rentals of movable or immovable property;
- transport and ancillary services;
- sales for consumption on the premises;
- commission transactions;
- brokerage transactions;
- studies, research, and expertise;
- debt write-offs or subsidies granted for commercial reasons, i.e., when the amounts paid as debt write-offs or subsidies in fact, constitute the compensation for any transaction

³¹ Some countries restrict the definition of real estate work to construction and structural work involving real estate. The works carried out by the various trades ancillary to real estate are considered as services.

carried out for the gain of the payer, or when they complete the price of a taxable transaction;

- in general, all transactions relating to the leasing of industry or a contract of enterprise by which a person undertakes to perform, for a specific remuneration or in exchange for another service, any work whatsoever or to carry out activities that give rise to the collection of various profits.

NB :The delivery of movable property may be qualified as a service if the services provided in connection with the delivery are of such a predominant nature that they constitute an end in themselves for the customer, given the importance of the additional services for the customer (e.g., reprographics).

Transactions relating to bonds, securities and other financial services that are not covered by the specific tax on financial transactions are taxable transactions for VAT purposes.

Chart 22: Electronic service delivery

Services provided electronically for value, in particular those listed below, are services subject to VAT:

- services provided through the Internet or an electronic network, the nature of which makes the supply largely automated, accompanied by minimal human intervention, and impossible to provide in the absence of information technology (e.g.: supply and hosting of computer sites, remote maintenance of programs and equipment; supply of services in the field of information technology):
Supply and hosting of computer sites, remote maintenance of programs and equipment; Supply of software and updating thereof; Supply of images, texts and information, and provision of databases; Supply of music, films and games, including games of chance or gambling, and of public, cultural, artistic, sporting, scientific or entertainment broadcasts or events; Supply of distance learning services; Supply of digital services in general, etc.);
- telecommunications services (foreign networking services);
- radio and television broadcasting services.

See “3.2. Appendices to the VAT Practical Guide”: Study and definition of electronic services.

7. Providing services to oneself

NB : The WAEMU Directive (Directive No. 02/98/CM/WAEMU of December 22, 1998, amended in 2009) defines the provision of services to oneself as follows:

Directive No. 02/98/CM WAEMU of December 22, 1998, amended in 2009

Article 10 paragraph 2:

The use of company property for purposes other than those of the business, when such property entitled the taxpayer to full or partial deduction of VAT at the time of acquisition, and the provision of services by a taxable person for purposes other than those of the business, are treated as deliveries of services for value

The provision of services to oneself subject to VAT means:

- services resulting from the use of a company asset for needs other than those of the business, when this asset, at the time of acquisition, was subject to full or partial deduction of VAT,
- services performed by the company for purposes other than those for which it was established.

The provision of services to oneself are subject to VAT only:

- if the services are provided for purposes other than those of the company, and for the private needs of its managers, staff, or third parties,
- and/or if all or part of the VAT charged on the goods or components used to provide these services was deducted at the time of acquisition.

Chart 23: Self-service provision

Therefore, taxable persons are not required to pay VAT on self-supplied services for business purposes³².

Taxation is required for services provided free of charge to third parties, and more generally for purposes other than those of the business.

The following are considered as needs other than those of the business, and therefore subject to VAT under the heading of self-delivery of services:

- services for the personal gain of the head of the company, directors, members of their families or third parties.
- services relating to movable or immovable property not used in the business.
- services constituting gifts or expenses that are not related to the company's purpose.

NB: Services provided to staff as gains in kind, which are taxable as wages for income tax purposes, are considered as having been provided for business purposes. They are therefore not subject to VAT.

However, if the services provided to staff are not included in the income taxable base for salaries (on behalf of the employees receiving the services), they must be treated as self-provision of services subject to VAT.

8. Sales of second-hand goods made by professionals³³

Second-hand goods are tangible individual property that can be reused, either as is or after repair.

NB: To qualify as “second-hand goods,” the goods must have been used previously and be likely to be re-used

See “2.5.- Annex to the VAT Practical Guide”: *VAT on second-hand goods: practical case.*

Second-hand goods may have undergone repair; however, this must only lead to a simple restoration.

³² Examples of self-services: Use by the company manager of a utility vehicle for private travel; Use for the personal needs of the person in charge of a company of rental of passenger vehicles, of a vehicle assigned to the rental.

³³ The professional referred to here is the “second-hand goods dealer.”

Second-hand goods do not include used goods that have undergone a transformation (modification of the essential characteristics of the original object) or a genuine renovation (when the value of the elements used for the restoration exceeds that of the used good plus the cost of the transaction).

9. Transfers of assets not included in the list of exempt assets in each Member State

Assets are made up of two parts: fixed assets and current assets:

- fixed assets are those that are permanently assigned to transactions,
- current assets are those which are not intended to remain permanently in the company.

Fixed assets include:

- tangible assets (building, land, and other tangible assets),
- intangible assets (patent, brand, and other intangible assets),
- financial assets (stocks, shares).

Current assets consist of the following main items:

- inventory,
- receivables (trade receivables, tax receivables, or others),
- cash (stocks and shares, bank, cash),
- prepaid expenses.

Asset disposals are not part of the company's ordinary activities but generate exceptional income. They are subject to VAT.

NB : *There are, however, several important exceptions to this principle (see Sheet 9: VAT ADJUSTMENT).*

10. Rentals of empty land and bare premises by real estate professionals

Real estate professionals are subject to VAT, except rentals for residential use.

Thus, even rentals of empty land and bare premises are subject to VAT, provided the transaction is carried out by a real estate professional.

NB: In some Member States, the rental of real estate for professional use, even by non-professionals (private individuals), constitutes a provision of services subject to VAT.

11. Commercial subsidies

A subsidy is a financial incentive granted to a natural or legal person. This financial incentive takes the form of an actual donation.

The following in particular, are treated as commercial subsidies.

- a) subsidies which represent the counterpart of an individualized and precise service provided to the paying party or which complete the price of a taxable transaction carried out for the latter, in the case of aid between companies.
- b) subsidies which are compensation for a service provided, or which supplement the price of a taxable transaction, or which are intended to offset the deficiency in a company's or service's operating revenue (balancing subsidy), in the case of public subsidies.

Subsidies of a commercial nature, whatever their nature, are subject to VAT.

Subsidies that serve as compensation for a service provided or as a price supplement, known as operating subsidies and/or balancing subsidies, are therefore subject to VAT.

A subsidy, including one paid by a public authority, is subject to VAT if it constitutes the counterpart of a taxable transaction or supplements the price.

NB: However, equipment subsidies (investment subsidies) or operating subsidies intended exclusively to cover a portion of operating costs, which are neither the counterpart of a taxable transaction nor a price supplement, are not subject to VAT.

12. Debt relief and debt write-off

> *Debt relief*

La remise de dette est un acte par lequel un créancier décide d'effacer, en tout ou partie, la créance qui lui est due par un débiteur.

En principe, la remise de dette doit faire l'objet d'un document écrit attestant de l'extinction partielle ou totale entre le créancier et le débiteur.

NB : Dès que l'extinction de la dette est constatée, même en l'absence d'écrit, il faudra réclamer la TVA.

> *Debt waiver*

Tax doctrine defines a debt waiver as " a company's renunciation of the rights conferred on it by the existence of a debt ".

NB: Waiver of debt requires equivalent accounting by the creditor and debtor companies.

Thus, prior to the waiver, a receivable for a given amount must be recorded on the one hand and a debt for the same amount on the other.

Similarly, after the waiver, the loss recorded by the creditor must be equivalent to the profit recorded by the debtor.

A distinction is made between write-offs of commercial receivables and write-offs of financial receivables:

- Write-offs of commercial receivables arise from commercial relations between two companies. They are required to maintain sales outlets or to preserve sources of supply;
- Financial waivers are exclusive of any commercial relationship. The reasons for the waiver are strictly financial.

13. Oil product refining, distribution, and release for consumption, excluding retail of these products

Oil refining is an industrial process that transforms crude oil into various finished products, such as gasoline, heavy fuel oil or naphtha; non-energy products, such as lubricants, bitumen, and naphtha used in petrochemicals.

Once refined, crude oil yields finished petroleum products, which are distributed through distribution networks for consumption.

Transactions involving the refining of crude oil, the release of finished products for consumption in the Member State and the distribution of these products through marketers' networks are subject to VAT³⁴.

NB: However, retail sales of these products are not taxable.

³⁴ In some countries, VAT on petroleum products is paid only once by marketers throughout the distribution chain, when the products are released for consumption in the territory of these States.

14. Refund of expenses other than disbursements incurred by a supplier on behalf of its customer

Refund of expenses refers to the costs incurred by the supplier of goods and services in delivering the goods or service to its customer, and which must be reimbursed by the customer, through the system of re-invoicing of expenses. Examples: travel or transport costs incurred by the supplier, hotel, and accommodation expenses, etc.

In this case, the company bears the cost and charges it back to the customer, with or without a margin, or even on a flat-rate basis.

Refunds of expenses are subject to VAT, whether the invoice includes a margin, and regardless of whether the invoices for the original expenses were subject to VAT.

Disbursements, on the other hand, are costs incurred by the supplier of goods or services on behalf of his customer, the payment of which is normally the responsibility of the latter (customs duties paid by the forwarder on behalf of his customer, act registration fees advanced by the notary, formalities to be re-invoiced, etc.).

NB: Re-invoicing of expenses and disbursements should not be confused. Whether or not transactions are subject to VAT depends on their classification. Disbursements re-invoiced at cost by a supplier to its customer are not subject to VAT.

15. Any profit-making activity other than wage-earning, or any transactions not expressly excluded from the scope of VAT

In general, a profit-making activity is one that is carried out with the aim of making a profit.

Chart 24: Notion of profit-making activity

A profit-making activity is one that competes with a private sector activity and is carried out in the same way as a commercial enterprise. The competitive criterion is thus met when the services provided compete in the same geographical attraction zone with those offered to the same public by commercial enterprises engaged in an identical activity.

For tax purposes, a profit-making activity is one:

- in which the management is profit-making.
- or in which, although the management is not for profit, the activity is carried out in competition with a company in the profit-making sector.
- or when the management reveals the existence of privileged relations with the same company, or the conduct of an activity for the sole benefit of the latter (indirect profit-seeking).



SHEET 3

TRANSACTIONS EXEMPT FROM VAT

SHEET 3

OPÉRATIONS EXONÉRÉES DE LA TVA

A transaction is said to be "VAT-exempt" when, although within the scope of application, it is not subject to VAT.

Chart 25: Exemption and payment of VAT

Exemption means that the taxable person does not collect VAT on exempt transactions. However, the taxable person remains liable to pay VAT on purchases of goods and services.

In other words, the exemption does not release the taxable person from the obligation to pay the VAT invoiced to him by his suppliers.

NB : Exemption may also be linked to the customer's status, especially in the case of exemption for diplomatic relations. In this case, we refer to the customer as an exempt person. In such cases, being exempt from VAT means not paying all or part of the VAT.

VAT exemptions are dealt with in articles 8 to 11 below of the VAT Directive, reproduced as follows:

Directive C/DIR.2/12/17 amending Directive C/DIR.1/05/09 harmonizing the legislation of ECOWAS Member States regarding Value Added Tax (VAT)

Article 8 :

The following are exempt from Value Added Tax:

- 1) Examinations, consultations, care, hospitalization, medical and biological analyses, and supplies of prostheses made by health establishments.
- 2) Unprocessed and essential foodstuffs as referred to in Annex 1.A of this Directive, medicines and pharmaceutical products, medical devices and their inputs as referred to in Annex 1.B of this Directive. Unprocessed products are defined as products which only undergo preparation or preservation processes such as chilling, freezing, salting, drying, smoking, dismembering, or polishing.
- 3) Inputs of agriculture, livestock and fishing products used by producers as referred to in Annex 2.
- 4) Services provided in the framework of school or university education by public and private institutions in the normal framework of the activity of education, regularly authorized by the competent supervisory authority of each State.
- 5) Trenches of so-called social water and electricity consumption for the gain of households, to be determined by each State.
- 6) Deliveries, conversions, repairs, maintenance, charters, and rentals of vessels intended for fishing, industrial or commercial activities carried out on the high seas, deliveries, rentals, repairs, and maintenance of objects incorporated therein or used for their transaction, deliveries of goods intended for their victualling, as well as services provided for the direct needs of these vessels and their cargoes.

- 7) The supply, leasing, repair, and maintenance of aircraft used by airlines engaged primarily in commercial international traffic, the supply, leasing, repair, and maintenance of objects incorporated therein or used in their transaction, the supply of goods intended for their re-fueling, and the provision of services for the direct needs of these aircraft and their cargo.
- 8) Deliveries, at their face value, of postal stamps for posting, revenue stamps and other similar values.
- 9) Direct exports of products or goods and services associated with exports. For any export, be it direct deliveries by the exporter or deliveries carried out through a commission agent or an authorized agent like an export commission agent. The exemption shall be subject to justification of the reality of the export.
- 10) The following transactions, once they are submitted to specific taxation exclusive of turnover tax:
 - a) Financial and banking transactions,
 - b) transfers of real estate and real property rights,
 - c) transfers of business assets subject to transfer duties or equivalent taxation.
 - d) insurance and reinsurance transactions, whatever the nature of the risks insured.
- 11) The amounts paid by the Member States' Treasury to the Central Bank tasked with the privilege of issue, as well as the products of the transactions of this Bank that generates the issue of bank notes.
- 12) Transactions of typesetting, printing, import and sale of newspapers and periodicals, except for publicity revenue.
- 13) Rent of unfurnished buildings for dwelling purposes.
- 14) Small fishing gear and agricultural machinery and equipment in accordance with the list in Annex 3 of this Directive.
- 15) Book sales and sales of textbooks, school supplies and teaching materials and equipment for schools and educational programs, a list of which is drawn up by the competent State authority.
- 16) Sales of original works of art and handicrafts by their authors.
- 17) Butane gas for domestic use.
- 18) Kerosene for domestic use.
- 19) Iodized salt.
- 20) Solar panels and their inputs as referred to in Annex 4 of this Directive.

The Draft Directive currently being validated introduces a new paradigm to Article 7 of the draft, leaving Member States free to tax hitherto exempt transactions.

Under Article 7 of the new draft, Member States wishing to do so may tax the exempt transactions set out in Articles 7 and onwards of the draft VAT Directive.

The words "are exempt" are replaced by "may be exempt."

*Directive C/DIR.1/05/09 harmonizing the legislation
of ECOWAS Member States regarding Value Added Tax (VAT)*

Article 9:

Besides the goods or services above, the Member States shall not grant other VAT exemptions or exonerations.

No exoneration or exemption shall be granted by the Member States in the framework of incentive measures for the establishment of companies, or for investments, in the framework of measures or provisions aimed at special sectors, or under special agreements.

Article 10:

1. As regards the mining, petroleum and forestry sectors, the provisions of Article 8 above shall not impede the application, by the Member States, of specific arrangements suspending or deferring taxation to a later period.
2. The gain of these arrangements must be limited to investment goods necessary for the activity, at the exploration, prospecting, or research phase.

Article 11:

1. Notwithstanding the provisions of Article 8, Member States may grant special arrangements in the framework of international relations, subject to reciprocity and quotas fixed by the competent authorities, to goods and services for official use of foreign diplomatic missions and international organizations, for use by diplomats and similar staff whose list shall be forwarded to the Tax authority by the Head of Mission in conformity with the Headquarters Agreement.
2. Member States shall include the provisions for special arrangements thus accorded in their tax legislations under common law. Member States shall lay down the procedures necessary for the administration and control of these exemptions.

Before presenting the various VAT-exempt transactions set out in the VAT Directive (ii), it is worth recalling the basic principles governing VAT exemptions (i).



3.1. BASIC PRINCIPLES GOVERNING VAT EXEMPTIONS

As a reminder of the basic principles governing VAT exemptions, it is advisable to:

- examine the reasons for the exemptions and their justifications;
- consider the consequences of VAT exemptions;
- clarify the principle of VAT exemption for imports of goods that are themselves exempt from VAT within the country; and finally;
- identify the additional principles laid down by the VAT Directive.

1. What are the reasons for the exemptions ?

Exemptions are special provisions designed to make certain transactions free of VAT which, without such provisions, would normally be taxable. They are justified by economic, social, health, or cultural reasons.

These exemptions may also be based on technical tax reasons. The aim here is to avoid the superimposition of taxes that have the same character as taxes on expenditure³⁵.

2. What are the consequences of the VAT exemption

> *Principle: Loss of the right to deduct for exempt transactions*

Chart 26: The effect of the exemption is the loss of the right to deduct

The exemption entails the loss of the right to deduct the VAT that has been charged on the components of the transaction price.

> *Exceptions: Exemptions³⁶ with preservation of the right to deduct VAT*

As an exception to the principle of loss of the right to deduct VAT, tax paid on goods, works or services acquired exclusively for the normal needs of a business and assigned to a transaction exempted under the export and assimilated transactions rules is eligible for deduction.

Except for the exemptions described below (Cf. 3.22), taxable persons are not entitled to any deduction for purchases of goods and services allocated to a transaction that is either outside the scope of VAT or exempt³⁷.

Chart 27: Suspension of VAT on imported goods placed under suspensive customs procedures

Imports of goods placed under customs suspensive procedures are exempt from VAT, until they are released for consumption in the customs meaning of the term.

35 It is to avoid the superimposition of taxes that financial, real estate or insurance transactions, for example, subject to another tax are exempt from VAT.

36 Some Member States of the Community use the term "exemption from VAT" which translates into the taxation of the transaction at the zero rate with retention of the right to deduct.

37 **NB:** Transactions exempted in respect of exports and similar transactions give rise to the right to deduction. The exemption for exports constitutes a discrepancy in language, exports are rather subject to taxation at the zero rate.

3. Principles regarding VAT exemption laid down by the VAT Directive

The VAT Directive has issued a certain number of specific principles in terms of VAT exemption which relate to:

- the prohibition for Member States to grant exemptions other than those set out in Article 8 of the 2017 Directive.
- the responsibility for a Member State to institute systems for the suspension or deferral of VAT taxation for the mining, oil, and forestry sectors.
- the possibility for the Member States to grant special regimes within the framework of international relations under certain conditions.

a) Limitation of exemptions to goods and services referred to in Article 8 of the 2017 Directive



The VAT directive (article 9) states that: "apart from the goods and services referred to in article 8, member states shall not grant other exemptions or reliefs from vat."

Chart 28: Exclusion of all exemptions not listed in the Directive

Articles 8 and 9 of the VAT Directive state that Member States shall not grant exemptions other than those included in the common list.

b) Option for member states to introduce VAT suspension or deferral regimes for the mining, oil, and forestry sectors



The provisions of article 8 of the vat directive do not prevent the application by member states of specific regimes which suspend or defer taxation at a later period, but only for the mining, oil and forestry sectors.

Under the VAT Directive, Member States have the sovereign right to suspend or defer payment of VAT for a later date in the mining, oil, and forestry sectors.

The system of suspension or deferral of VAT taxation consists in authorizing certain taxable persons to acquire goods and services without immediate payment of the VAT due. The effect is to defer payment of the tax to a later date

Chart 29: Framework for the possibility of suspension and/or deferral of taxation

The gain of the suspension or deferral (postponement) of taxation to a later date must, however, be limited to capital goods strictly necessary for the activity, in the exploration, prospecting, or research phase, in the mining, petroleum, and forestry sectors.



3.2. TRANSACTIONS EXEMPT FROM VAT

Articles 8 and 11 of the VAT Directive deal with exemptions about:

- transactions carried out within the territory of the Member State.
- direct exports of goods and services and assimilated services to exports.
- transactions carried out in the context of international relations.

3.21. Exempt transactions carried out within the territory of the Member State

As a reminder, the distinctive feature of exempt transactions is that the exemption entails the loss of the right to deduct VAT charged on goods and services acquired in input and used to carry out the said transactions.

Transactions exempt from VAT are listed restrictively in the VAT Directive as follows:

1. Activities and medical care

Are exempt from VAT:

- Medical check-ups;
- Consultations;
- Care;
- Hospitalization;
- Transport of the injured and sick;
- Supplies of prostheses;
- and medical analysis and biology work carried out by hospitals, clinics, nursing homes and similar facilities duly licensed by the competent public authority.

NB: Hospitalization-related expenses include costs billed to patients as supplements to treatment, such as accommodation, food, drink, laundry, and all other services provided in private health facilities.

2. Unprocessed food products

VAT-exempt unprocessed foodstuffs and necessities are specifically listed in Annex 1 A of the VAT Directive.

See "I. Annex 1 to the VAT Practical Guide": Community list of VAT-exempt unprocessed foodstuffs and necessities.

NB: Unprocessed products are products that undergo only preparation or storage processes such as cold storage, frozen storage, salting, drying, smoking, cutting up, or polishing.

3. Drugs and pharmaceutical products, medical materials, and their deliveries.

Medicines and pharmaceutical products, medical equipment and their deliveries which are exempt from VAT are those listed in Annex 1. B of the Directive.

NB: In some countries, VAT is not charged on deliveries of medical gas (oxygen) to accredited healthcare facilities.

See "I. Annex to the VAT Practical Guide": Common list of medicines and pharmaceutical products, medical equipment, and their deliveries that are exempt from VAT and covered by Annex No. 1 of Directive N°C/DIR.2/12/17.

4. Inputs of agricultural, livestock and fishing products used by producers.

The inputs of agricultural, livestock, and fishing products used by producers exempt from VAT are those referred to in Annex 2 of the Directive.

See; "I Annex to the VAT Practical Guide:" Common list of agricultural, livestock and fishing products used by producers exempt from VAT and subject to Annex No. 2 of Directive No. C/DIR.2/12/17.

5. Accredited public or private institutions providing school, university, vocational, religious, and socio-educational services.

School, university, vocational, religious, and socio-educational services provided by public or private institutions in the normal pursuit of their teaching activities and duly authorized by the competent authority in each member state are exempt from VAT.

NB: For this exemption, the competent administrative authority of the Member State must first approve the educational institution.

Chart 30: Expanded definition of education activities

School and university education shall not be limited solely to instruction leading to examinations for qualifications or to training for occupational activities but shall include other activities in which instruction develops pupils' knowledge or aptitudes, provided such activities are not purely recreational.

Once approved, the exemption applies to services that are integral and unavoidable to the teaching activity, i.e., all transactions without which teaching would be impossible.

For example, the following services are exempt from VAT if they qualify as teaching-related and are considered integral and indispensable to the teaching activity:

- teaching services as such (face-to-face).
- distance learning services.
- provision of services or goods intricately linked to teaching: accommodation and food for boarding and semi-boarding students, school supplies (e.g., books, exercise books, textbooks, teaching aids, school uniforms, etc.).
- sales of manufactured goods and services provided by students in technical schools as far as these transactions form an integral part of teaching or are an essential extension of it.
- supply catering or entertainment services to third parties by students of an educational institution, as part of their training.

Conversely, VAT is not charged on secondary services which, in view of their nature and purpose, can be totally detached from teaching without affecting it, such as:

- transport of pupils or students, carried out by the institution itself or by a third party.
- studies, consultancy, and/or research work carried out by educational institutions for third parties, including the State or other universities.
- exploitation of intellectual property rights, sales of publications, provision (rental) of premises and/or teaching materials by educational institutions.
- upstream services provided to educational institutions by other service providers: rental of buildings, audiovisual equipment, provision of specialized personnel, etc.

6. Social categories: water and electricity consumption

The VAT exemption applies to the so-called social consumption categories of water and electricity for households, which are set by the competent authority in each country.

The exemption applies only to water and electricity deliveries to households whose consumption does not exceed the social bracket. Households whose consumption exceeds the social bracket pay VAT on their total consumption.

NB: It is up to each Member State to set the "social" brackets for water and electricity consumption

7. Postal stamps

VAT exemption applies to the delivery of postal stamps for mailing, revenue stamps, and other related items at nominal value.

8. Transactions subject to specific taxation

The following transactions are exempt from VAT, if they are subject to specific taxation exclusive of any other tax on turnover³⁸:

- financial and banking transactions;
- transfers of buildings, real estate rights;
- transfers of goodwill subject to transfer duties or equivalent taxation;
- insurance and reinsurance transactions regardless of the nature of the risks insured.

> *Financial and banking transactions*

Chart 31: Taxation of banking and financial transactions with a specific tax

Financial and banking transactions are, in general, subject to a specific tax which can take for example the name of Tax on financial activities (TAF) or Tax on banking transactions (TOB).

It is the search for the non-overlapping of taxes (VAT + specific tax) which justifies the exemption of these transactions from VAT.

NB: Some banking and financial transactions are subject to VAT if they are not specifically related to cash or securities trading. The following transactions performed by banking and financial institutions are therefore subject to VAT :

- Debt collection transactions;
- Credit management or credit guarantee management transactions;
- Safe-deposit box rentals;
- IT and telematics services;
- Equipment rentals;
- Transactions collected on various transactions (guarantees, placement of bonds, etc.) ;
- Equipment rental and leasing transactions;
- Financial, legal, and tax advice;
- Crypto currency transactions;

³⁸ VAT exemptions on these transactions are provided by all jurisdictions that practice modern VAT. This type of exemption is based on technical tax considerations. In this case, it is a question of avoiding a superposition of taxes having the same nature of tax on expenditure. These transactions are subject to a specific tax, moreover (tax on financial activities, tax on insurance, etc.).

- Transactions involving gold bars and ingots;
- Bank card issuance (for the issuer vis-à-vis the bank);
- Transactions involving collectible banknotes and coins;
- Transactions involving bonds, securities, and other financial services that do not fall within the scope of the tax on financial activities (or tax on banking transactions, depending on the country).

Chart 32: Electronic money

Whether a transaction (in this case, a financial transaction) is subject to VAT or a specific tax depends on its nature.

E-money can be considered an electronic substitute for coins and banknotes stored on an electronic medium such as a smart card or computer memory and is intended for making electronic payments of limited amounts.

Some jurisdictions define e-money as a monetary value representing a claim on the issuer, which is stored on an electronic medium, issued against remittance of funds of an amount not less in value than the monetary value issued, and accepted as a means of payment by entities other than the issuer.

According to this definition, using prepaid cards, tickets, and payment vouchers as e-money falls within the scope of banking and financial transactions and is therefore exempt from VAT.

However, when a transaction is to transfer money between two people, it is subject to specific taxation on financial activities.

Accordingly, bill payments, merchant payments, credit top-ups, cash withdrawals, and other transactions are still subject to VAT.

Transactions relating to Mobile banking, IRT Transfer, Collection, Code Transfer, etc., are money transfer transactions subject to a specific tax.

> *Insurance and reinsurance transactions*

Insurance and reinsurance transactions and related services provided by insurance brokers and intermediaries are exempt from VAT.

NB: VAT exemption applies to all services which, whatever their nature and form, contribute inseparably to the performance of these transactions, even if the intermediary does not carry out his activity under the conditions laid down by insurance regulations.

Chart 33: Best practices in taxing financial transactions

International practice is to include financial and banking activities, as well as insurance activities, within the scope of VAT, thus ensuring the neutrality of the VAT system.

Financial and banking transactions are clearly an integral part of economic activity and are most often analyzed as an "obligation to perform" under a contract concluded for value.

Taxation of banking and insurance transactions would enable banks and insurers to deduct input VAT.

NB: This provision is not covered by the ECOWAS VAT Directive

> *Transfers of buildings, real estate rights, transfers of goodwill subject to transfer duties or equivalent taxation*

Transfers of real estate and property rights are exempt from VAT, as are transfers of business assets subject to transfer duties or equivalent taxation.

The exemption is because they are subject to a specific form of taxation (to avoid overlapping taxes).

9. Amounts paid to the Central Bank

Payments made by the Treasury and authorized public authorities of Member States to the Central Bank in charge of issuing banknotes, as well as income generated by this bank for its banknote-issuing transactions, are exempt from VAT.

10. Newspapers and magazines

Writing, printing, importing, and sales of newspapers and magazines, excluding advertising revenues, are exempt from VAT.

Chart 34: Publication criteria

Whatever their name (newspaper, magazine, etc.), publications must meet all the following conditions to qualify for VAT exemption:

- they must be composed of texts relating to news and information of general interest for the dissemination of thought.
- they must not have more than half their surface area devoted to advertising, legal or classified announcements.
- they must not be assimilated to certain written documents such as: announcement sheets, leaflets, guides, flyers, catalogs, almanacs, quotations, timetables, programs, etc.

NB: Advertising and announcements in newspapers and magazines, made for third parties are subject to VAT, in all cases.

11. Rentals of unfurnished buildings for residential use.

Rentals of unfurnished buildings for residential use are exempt from VAT.

NB : Conversely, furnished rentals for residential use are subject to VAT.

Rentals of buildings for professional use are also subject to VAT.

12. Small fishing equipment and agricultural machinery and equipment

Are exempt from VAT small fishing equipment and agricultural machinery and equipment in accordance with the list of Annex 3 of the VAT Directive.

See "I. Annex to the VAT Practical Guide": Common list of small agricultural machinery, motors and equipment exempt from VAT of Annex 3 of Directive No. C/DIR.2/12/17.

13. Retail of books, textbooks, school supplies, educational materials, and equipments

VAT is waived on sales of books, textbooks, school supplies, and teaching materials and equipment intended for schools and educational programs approved by the relevant government authority.

NB: Exemption from VAT is subject to the condition that the schools and educational programs for which the books and sales of textbooks, school supplies, and teaching materials and equipment are intended appear on a register established by the Member State's competent government authority.

14. Works of art

Sales of original works of art and crafts, by their authors, are exempt from VAT.

NB: The fundamental criterion for determining the original work of art or artisanship is that these works must have been created by the hand of the artist or craftsman who markets them himself.

This excludes any mechanical process, sketches made for industrial purposes, manufactured articles adorned by hand, tattoos (the activity of a tattooist is considered a provision of services).

15. Butane gas

Butane gas for domestic use is exempt from VAT.

16. Kerosene for domestic use

Kerosene for domestic use is exempt from VAT.

Here, reference is made to oil used in kerosene lamps with a wick.

17. Iodized salt

Iodized salt is dietary salt enriched with iodine to reduce the risk of iodine deficiency. This element is essential to the production of thyroid hormones and its deficiency can lead to goiter formation, stunted growth, and various mental disorders.

18. Solar plates and panels

Solar plates and panels and their VAT-exempt deliveries are those listed in Annex 4 of the Directive.

See "I. Annex to the VAT Practical Guide": Common list of solar plates and panels as well as their deliveries exempt from VAT and listed in Annex 4 of Directive N°C/DIR.2/12/17.

3.22. Exports and export assimilated transactions

1. Direct exports of goods and services and assimilated export services

> *Direct export of goods*

Export is the process of transporting goods out of a country for sale abroad.

Direct exporting consists of ensuring the sale of one's products and services directly to one's customers, without going through an intermediary.

Exports are, in principle, exempt from VAT. However, to claim this exemption, the taxpayer must apply the following rules:

- shipments of goods must be mentioned in the accounting books;
- an export declaration must be signed;
- an export declaration must be lodged at the competent customs office;
- the export declaration must be endorsed by the competent customs office;
- une déclaration d'exportation doit être déposée au bureau des douanes compétent ;
- la déclaration d'exportation doit être visée par le bureau des douanes compétent.

> *Direct export of services*

World Trade Organization (WTO) specifies four ways to export services (four "modes" in its jargon):

- mode 1: crossing borders without moving from home (for example, buying something on the Internet, sending a letter abroad).
- mode 2: while moving (when spending money on vacation).
- mode 3: by a commercial presence abroad, or by investment (by opening a subsidiary in another country).
- mode 4: by sending people for a mission³⁹.

NB: From a tax point of view, export of service thus refers to a service provided by a person or a company of a country, to a person or a company of another country.

The rapidly decreasing cost of telecommunications, the worldwide expansion of the Internet, and the proliferation of high-speed Internet services mean that services can now be provided to customers far away from the service provider. For example, many services, such as insurance or medical diagnosis, no longer require the provider to be close to the customer⁴⁰.

> *Services directly related to exports.*

Services directly related to exports are those relating to:

- transit, boarding, transshipment, loading and unloading transactions carried out in port, airport, or transit areas, and relating to goods for export.
- transportation services for directly exported goods.
- mooring, towing and port and airport piloting transactions, as well as the transfer of the right to occupy and use the port or airport plan, the port or airport area, for the loading of goods for export.

NB: In practice, to determine the direct link or not of a service to an export transaction, it is advised to consider the entire process transaction by transaction.

2. Transactions carried out for/on boats intended for use on the open seas or international rivers.

This exemption is limited to transactions for/on boats intended for fishing, industrial or commercial activities on the open seas or international rivers.

The "open sea" is the part of the seas and oceans not subject to the jurisdiction of coastal States. The open seas are traditionally devoted to navigation and fishing and can be used by ships from any State. Both navigation and fishing are free⁴⁰.

"International rivers" refers to watercourses that separate or cross the territory of several States.

NB : Transactions relating to vessels operating on the open seas are treated as exports, which justifies the exemption from VAT.

³⁹ 04/01/2003 Economic Alternatives n° 123

⁴⁰ Services Exports: A New Path to Prosperity by Prakash Loungani, Chris Papageorgiou, and Ke Wang Posted on April 5, 2017, from the IMF Blog – MFI direct

⁴¹ <https://www.universalis.fr/encyclopedia/haute-mer-definition-juridique-et-reglementation>

The exemption concerns the following transactions carried out for (or on) boats intended for a fishing activity, an industrial or commercial activity carried out on the open seas or on international rivers:

- deliveries and services relating to the boats themselves;
- deliveries and services relating to objects incorporated in boats and fishing gear and nets;
- deliveries and services for the direct needs of ships and their cargo;
- deliveries and provision of services used for the transaction or provisioning of ships.

3. Transactions carried out with airlines.

The exemption concerns transactions carried out with air navigation companies involved in international traffic.

Airlines whose non-international activities are significantly less important than their international activities are airlines that operate international traffic... Accordingly, it is up to the national courts to assess the respective importance of the airline's international and non-international activities. In making this assessment, due consideration may be given to all factors indicating the relative importance of the type of traffic concerned, particularly sales, which are exempt from VAT.

NB: Are therefore not exempt from VAT, transactions relating to:

- aircraft used by companies that do not meet the conditions for international traffic;
- tourist or private aircraft;

Transactions carried out with international airlines exempt from VAT are:

- deliveries and services relating to the aircraft themselves;
- deliveries and services relating to objects incorporated into aircraft;
- deliveries and services for the direct needs of aircraft and their transaction;
- deliveries and provision of services used to refuel aircraft.

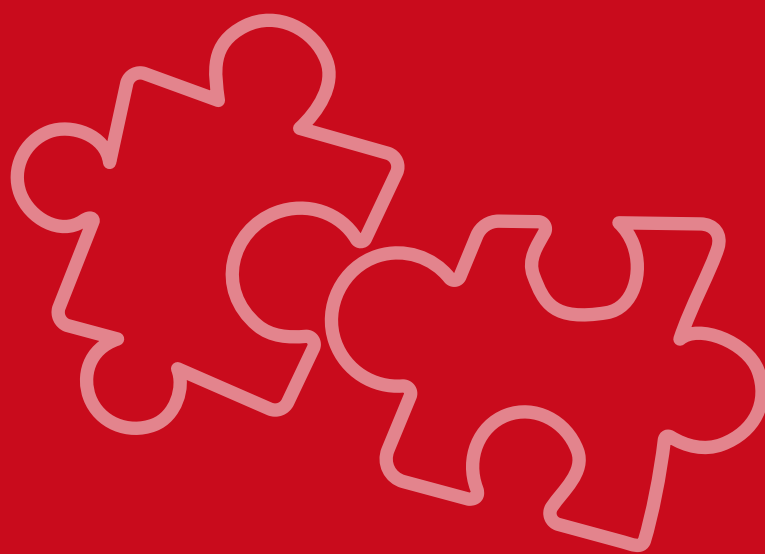
3.23. Exemptions within the framework of diplomatic relations

As an exception to the provisions of article 8 of the vat directive, member states may grant special arrangements in the context of international relations, subject to reciprocity and quotas set by the competent authorities, for goods and services intended for the official use of foreign diplomatic missions and international organizations, for the use of diplomatic agents and similar staff, a list of whom is sent to the tax authorities by the head of mission, and in accordance with headquarters agreements.

The VAT Directive authorizes Member States to incorporate VAT exemption rules into their systems for diplomatic and consular relations with other countries. Member States are therefore developing the methods needed to manage and control the exemptions granted to diplomatic and consular missions.

Chart 35: Vienna Convention on Diplomatic and Consular Relations

The provisions of the Vienna Convention of 18 April 1961 on diplomatic and consular relations exempt Embassies and Consulates from VAT on their purchases of goods and services. Invoices are then issued without VAT.



SHEET 4

TERRITORIALITY OF VAT

SHEET 4

TERRITORIALITY OF VAT

The territoriality rules of VAT make it possible to determine if a taxable transaction is subject to VAT in a Member State, considering its nature and the nature of its taxation.

Chart 36: Territoriality = Rules for determining the competent jurisdiction to claim VAT

The place where the transaction is carried out and the place where it is used are key factors in determining the jurisdiction where the VAT must be charged.

These rules are organized through the provisions of Articles 13 to 15 reproduced below from the VAT Directive:

Directive C/DIR.1/05/09 harmonizing the legislation of ECOWAS Member States regarding Value Added Tax (VAT)

Article 13:

All businesses transacted in a State not included on the list of exonerations defined in this supplementary act, shall be subject to VAT even if the residence of the natural person or registered place of the debtor business company is located outside the territorial limits of the State.

Article 14:

1. The place of taxation of goods delivery shall be deemed to be the locality where the goods were situated at the time of delivery.
2. The place of taxation for the provision of services shall be the locality of its execution.
3. A transaction shall be deemed to have been carried out in a Member State:
 - in respect of a sale, when it is carried out under the conditions for the delivery of the merchandise in that Member State;
 - when the service is rendered, the right transferred, or the object rented is used or utilized in that Member State.
4. In the case of the consignment or transport of the goods, the place of taxation shall be deemed to be the locality where the goods are found at the time of departure of the consignment or transport to the purchaser.
5. Nonetheless, when the place of shipment or transport of goods is in a State other than that of importation of the goods, the place of the delivery made by the importer shall be deemed to be in the country into which the goods are imported.
6. Where the goods are installed or assembled by the supplier or on his behalf, the place of delivery shall be deemed the place where the installation or assembly is made.
7. Regarding the provision of services, when this is used in a place other than its execution, the taxation shall be made at its place of use.

Article 15:

Exceptionally, and with regards to international transport, the transactions shall be deemed to have been carried out in the State of the place of domicile or normal residence if it relates to an individual transporter, or the locality of the head office if it relates to a company, even though the main transaction would be carried out outside that State.

Article 13 of the Draft Directive currently being validated provides relevant clarifications regarding territoriality for certain transactions:

- 1) The place of taxation for a supply of goods is deemed to be the place where the goods are located at the time of supply.
- 2) In case of dispatch or transport of the property, the place of taxation is deemed to be at the place where the property is located at the time of the departure of the dispatch or transport to the destination of the purchaser.
- 3) However, when the place of dispatch or transport of the goods is in a State other than that of importation of the goods, the place of supply made by the importer is deemed to be in the country of importation of the goods.

The provisions of the VAT Directive on territoriality:

- set out the principles governing VAT territoriality rules,
- and specify how the rules on VAT territoriality are to be applied, depending on whether the transaction concerns: selon qu'il s'agit d'une opération :
 - > delivery of goods;
 - > delivery of services;
 - > or international transport.



~~4.1. PRINCIPES GUIDANT LES REGLES DE TERRITORIALITE DE LA TVA~~

The application of VAT territoriality depends on two cumulative or alternative factors, as the case may be:

- the place where the transaction is deemed to take place,
- And whether the transaction falls within the scope of VAT.

NB: As a rule, all transactions carried out in a country not included in the list of exemptions are subject to VAT, even if the individual's domicile or the debtor company's head office is located outside that country's territorial limits.

A transaction subject to VAT is in fact subject to VAT in the Member State if, and only if, it falls within the territorial scope of that Member State.



4.2. TERMS OF APPLICATION OF THE VAT TERRITORIALITY RULES

The application of the VAT territoriality rules is defined in Articles 14 and 15 of the VAT Directive.

To determine where a transaction occurs, a distinction must be made between deliveries of tangible movable goods and deliveries of services

Chart 37: Destination principle

It is accepted that the principle of destination should be the basis for deciding on the place of delivery.

According to the destination principle, the place of delivery is the jurisdiction where the goods are located at the time of delivery, or the place where the service is performed or used.

Particular attention should be paid to the place of taxation of international transport transactions.

The Draft Directive being validated brings something new about the taxation of the transport of intra-Community goods.

Article 14.5 of the Draft Directive reads as follows:

Regarding intra-Community transport of goods, the transactions are deemed to be done in the destined State of the goods.

4.21. Territoriality of VAT for goods deliveries

The place of taxation of a delivery is deemed to be the place where the property is located at the time of delivery.

The place of delivery of goods is the place where the transaction is carried out, the effect of which is to transfer ownership of the tangible goods to third parties for value consideration⁴².

In practice, the territoriality of VAT on the supply of goods must be assessed differently depending on whether:

- the goods are delivered in the absence of dispatch or transport;
- the goods delivered have given rise to shipping or transport;
- The goods are delivered after assembly or installation by the supplier or on his behalf.

4.21.1. Biens livrés en l'absence d'expédition ou de transport

Transaction	Place of taxation	Terms
Delivery of goods	Member state	If the goods are in the Member State at the time of its delivery; And when the sale is made under the conditions of delivery of the goods in the Member State.

Where the delivery of goods does not involve dispatch or transport, it is taxable in the Member State if the goods are in that Member State when they are made available to the purchaser.

⁴² See Definition "Transfer for value": (Sheet 2 – 2.22)

A transaction is deemed to have taken place in the Member State when it is carried out under the conditions of delivery of the goods in that Member State.

Thus, the sale of goods in the territory of the Member State, even by a foreign company, is subject to VAT in that Member State.

4.21.2. Goods delivered with shipping or transport.

Opérations	Lieu d'imposition
Goods deliveries in case of shipment or transport of goods	At the place where the property is located at the time of departure of the shipment or transport to the destination of the purchaser
Goods delivered when the place of dispatch or transport of the goods is in a State other than that of importation of the goods	In the country of importation of the goods

Two cases are to be assessed, for goods subject to shipment or transport:

- Case 1: When the place of departure or transport is within the member state

In accordance with the principle that the place of delivery of goods is the place where the transaction transferring ownership of tangible goods to third parties for valuable consideration takes place, the place of transfer of goods is the place of departure of the goods shipped when this place of departure is in the Member State. The seller transfers ownership of the goods to the buyer at the place of shipment, i.e., the power to dispose of the goods in the same way as the owner.

- 2nd case: When the place of departure or transport is abroad

If the place of departure or transport is abroad, delivery is made by the importer. Consequently, this delivery is subject to VAT in the jurisdiction of the importing country when the goods are released for consumption.

4.21.3. Imported goods delivered after assembly or installation by the supplier or on his behalf: determination of the territoriality of VAT

When the goods are assembled or installed in the Member State before delivery, this transaction is taxable for VAT in the Member State on two counts: firstly, for importation by the supplier, and then for the delivery of the goods once assembled or installed to the end customer.

Goods delivery transactions	Place of taxation of VAT
Imported goods subject to assembly or installation in the Member State, before delivery	In the country of importation of the goods
Goods delivered after assembly or installation in the Member State	In the State of the purchaser of the property after assembly or installation

NB: Thus, a foreign company which imports equipment into the Member State where it assembles or installs on the purchaser's premises, must:

- (i) pay the VAT when importing the materials;
- (ii) invoice VAT to the company-purchaser in the Member State, upon delivery of the goods.

In this case, VAT is paid:

- on importation, by the foreign company;
- on delivery, by the company of the Member State to which the foreign company has delivered the goods after installation or assembly.

4.22. Territoriality of VAT for the provision of services

The VAT Directive lays down the principle of taxation of the provision of services at their place of performance.

However, if the place of use is different from the place of performance⁴³ of the service, then the service is taxable at the place of use and not at the place of performance. It follows that the place of use of a service prevails over the place of performance in determining the territoriality of VAT.

4.22.1. Principle: Taxation of the provision of services at its place of performance

Transaction	Place of taxation	Terms
Service provision	member state	When the service is performed in the Member State

The place of taxation of a service provision is the place of its execution, the place of performance of the service.

4.22.2. Exception: Taxation of the provision of services at the place of use if the place of performance differs from the place of use

When the provision of services is used in a place other than that of its execution, the taxation is carried out at the place of use or exploitation

Transaction	Place of taxation	Terms
Service supply	Member State	When the service is used in a place other than the place of performance.
		When the service is provided, the right transferred, or the object rented, is used, or exploited in that Member State.

NB: Under the rule that VAT on the supply of a service applies at the place where the service is used, if this is different from the place where it is performed:

- A service performed in the Member State but used abroad is not subject to VAT in that Member State;
- Conversely, a service used in the Member State but performed abroad is taxable in that Member State.

The Draft Directive currently being validated states the following in Article 14.

- A provision of services is considered to have been performed in a particular State when the service provided, the right transferred, or the object rented are used or exploited in that State.

⁴³ According to the destination principle, the tax is ultimately levied only on final consumption that takes place in the taxing jurisdiction. The principle is also generally accepted that all revenue accrues to the jurisdiction in which final consumption takes place, be considered under the destination principle. (Mechanisms for the effective collection of vat/gst where the supplier is not located in the taxing jurisdiction © OECD 2017 - page 13).

The draft directive, therefore, clarifies making a difference between tangible and intangible provision of services and specifying where they should be taxed.

More specifically:

1) Tangibly localizable services are taxable in the country where they are performed.

The following are materially localizable services:

- rentals of means of transport;
- services relating to immovable property;
- cultural, artistic, sporting, scientific, educational, and recreational services;
- accommodation and sales for consumption on the premises;
- work on and expert appraisals of tangible movable property;
- services provided by intermediaries acting in the name and on behalf of others.

2) Intangible services are taxable in the customer's country of establishment.

The following are considered intangible services:

- attributions and concessions of copyrights, trademarks, patents, licenses, and other similar rights;
- leases of tangible assets other than means of transport;
- advertising services;
- services provided by consultants, engineers, and engineering firms in all fields, including research and development organizations;
- services provided by chartered accountants, lawyers, and duly registered legal and tax advisors;
- services provided by other professionals;
- data processing and information supplies;
- banking, finance, insurance, and reinsurance, except safe-deposit box rental;
- provision of personnel,
- services provided by intermediaries acting in the name and on behalf of third parties in the supply of the above-mentioned services;
- telecommunications services;
- radio and television broadcasting services;
- **services provided by electronic means, in particular, downloading;**
- **access to electricity or natural gas transmission and distribution networks, routing through these networks, and all other directly related services.**

NB : However, in accordance with the principle of territoriality, commissions received by a company established in the Member State on sales made outside the territory of the Member State will not be subject to VAT in that Member State.

Chart 38: Territoriality of the provision of electronic telecommunications, radio, and television services

The provision of electronic, telecommunications, radio and television services are taxable at the place of establishment of the beneficiary of the services under the general principle of territoriality of the provision of services.

See "3.2. Annex to the VAT Practical Guide": Study and definition of electronic services.

Summary table of territoriality rules applicable to specific services

Transactions	Scope	Territoriality rule
Services relating to a building	<ul style="list-style-type: none"> - Hotel services - Services of real estate experts, engineering offices, architects, etc... 	Taxation in the State where the building is located at
Sales to be consumed on the spot	<ul style="list-style-type: none"> - Restaurants - Cafeteria, etc. 	Taxation in the State of the place of performance of the service
Cultural and scientific services	<ul style="list-style-type: none"> - Colloquium - Conferences - Summer schools, etc. 	Taxation in the State of the venue of the activity
Services of transparent intermediaries	<ul style="list-style-type: none"> - Action for the purchase or sale of goods or services in the name and on behalf of others 	Taxation in the State of the place of main transaction to which the service relates
Intangible services performed by a non-resident	<ul style="list-style-type: none"> - Transfers and concessions of patents, license rights, etc. - Rentals of tangible individual property - Consulting services, particularly in research and development - Data processing and supply of information - Provision of personnel, etc 	Service provider established outside the Member State and customer in the Member State = taxation in the Member State if service used in the Member State
Electronic Services	<ul style="list-style-type: none"> - Supply and hosting of computer sites - Provision of databases - Supply of texts, information, cultural and scientific events, etc. 	<p>Case 1: Service provider established in the Member State and customer in the Member State = taxation in the Member State.</p> <p>Case 2: Service provider established outside the Member State and customer in the Member State = taxation in the Member State.</p>

4.23. International transport: determining the territoriality of VAT

For international transport transactions, as an exception to the principle of taxation at the place of execution or use of the service, even if a major part of the transaction takes place outside this State, the transactions are deemed to have been carried out (and therefore VAT is due):

- in the State of domicile or habitual residence, in the case of individual transport operators;
- at the place of registered office, in the case of a legal entity (company).

Transaction	Taxpayer	Place of taxation of VAT
International transport, even though the greater part of the transaction would be carried out outside the State.	Individual transport agent	At the domicile or habitual residence
	Legal transport entity (company)	At the location of the company's registered office or an office from which the service is provided

NB: Here, the criterion for determining territoriality is the place of the operator's registered office or domicile, depending on whether the operator is a legal entity or a natural person.

Even if most of the transaction is carried out abroad, the international transport transaction is taxable for VAT in the jurisdiction where the travel agency (the company) has its registered office, i.e., in the Member State where the travel agency is registered.

Conversely, the service is not taxable in a Member State where the travel agent or tour operator does not have a place of business or an establishment in that Member State from which the service is provided

the fact that the *de novo* synthesis of the protein is not inhibited by the presence of the mature protein (Gray 1990).

It is not clear whether the presence of the mature protein in the cytosol is due to a specific mechanism of transport or to a general mechanism of protein translocation. The fact that the mature protein is not transported into the nucleus, where it is synthesized, suggests that the mechanism of transport is specific. However, the fact that the mature protein is transported into the nucleus in the presence of cycloheximide suggests that the mechanism of transport is general.

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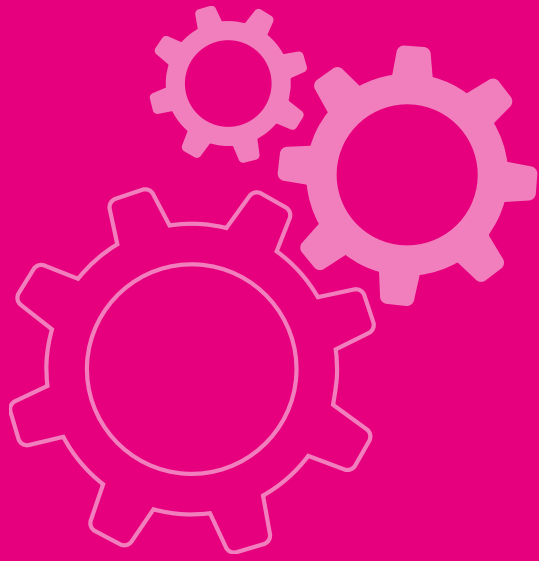
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SHEET 5

VAT TAXATION BASE

SHEET 5

VAT TAXATION BASE

The taxable base for VAT is everything that constitutes the consideration obtained by the supplier of the goods or the service provider of his customer.

Defining the VAT taxable amount, or "VAT base" as it is known, means answering the following question: on what amount should the VAT rate be applied?

The amount on which VAT is calculated is referred to as the taxable amount, defined by the provisions of articles 24 to 26, 28, and 29 of the VAT Directive, reproduced as follows:

Directive C/DIR.1/05/09 harmonizing the laws of ECOWAS Member States in Value Added Tax (VAT)

Article 24:

The taxable base in respect of transactions liable to VAT carried out on the national territory of a Member State shall be based on the turnover which, besides the principal price of the goods or service, shall comprise:

- ancillary costs such as bank commissions, packaging, transport, and insurance demanded by the supplier from the purchaser or subscriber;
- amounts of customs duties, exercise duties or any other taxes applicable to products or services, with them. exception of the Value Added Tax itself; and
- in general, all amounts and assets received or to be received by the supplier or service provider in exchange for the delivery or the service

Article 25:

The taxable base of VAT shall be constituted regarding:

- delivery of goods in any amount, assets and/or by all gains of goods or services received or to be received in exchange for the delivery;
- second-hand goods by the difference between the sale price and value of acquisition of the goods;
- provision of services, in any amount, and advantages received and, if necessary, by the value of the consumer goods for the execution of the services;
- trade, by the value of the products received in payment for the goods delivered, increased by the amount of the balance received;
- construction works and public works by the number of contracts, costs or invoices, advances, or part payments;
- self-delivery by:
 - > the tax-free purchase price of the goods purchased or used as is;
 - > the cost price of goods extracted, manufactured, or processed.
- Imports, by the customs value of the merchandise, increased by import duties and taxes collected at the border, excluding the Value Added Tax itself.

Furthermore:

- amounts collected by the taxable person as deposit for the delivery of unidentifiable recoverable and re-useable packages shall be included in the VAT taxable base;
- amounts received as deposit for the delivery of identifiable, recoverable, and re-useable packages shall be excluded from the VAT taxable base;
- When these packages are not returned, after the normal deadline in the profession, the Value Added Tax shall be due on the price of transfer.

Article 26:

Are included in the VAT taxable base:

- the ancillary costs in the delivery of goods and services invoiced to clients;
- taxes, duties, and levies, including excise duties, with the exclusion of VAT;
- the various additional costs paid by the purchasers of the goods or the client.

Article 27:

Regarding State contracts financed by public budgets, external loans, or aid, the VAT base considers the amount of the contracts, all taxes included, excluding VAT.

The provisions of the paragraph above also apply to contracts concerning public institutions of an industrial, commercial, scientific, technical, and administrative nature, semi-public companies, communities, and bodies governed by public law, whether they have legal and financial autonomy.

Article 28:

Each Member State will lay down the procedures for liability and the specific arrangements for collecting VAT for these contracts.

The VAT Directive deals with:

- the general case of the taxable base concerning the transactions of deliveries and services;
- Cases of the taxable base regarding:
 - > Second-hand goods;
 - > Exchanges;
 - > Building and public works;
 - > Self-delivery;
 - > Imports;
 - > And the markets of the State and public institution

Type of transactions	VAT base consists of:
Delivery of goods	All amounts, values and/or gains of goods and services received or to be received in return for the provision or performance of the service.
Provision of services	
Second-hand goods	The difference between the sale price and the acquisition value of the property

Type of transactions	VAT base consists of:
Exchanges	The value of the products received in payment for the goods delivered, increased by the amount of the balance collected
Building works and public works	The amount of the contracts, briefs, invoices, advances, or installments
Self-deliveries	The purchase price excluding taxes of goods purchased or used as is
	The cost price of the goods extracted, manufactured, or transformed
Imports	The customs value of the goods plus the duties and taxes collected on entry, excluding the VAT itself
Consignments and packaging	The amounts received by the taxable person as consignment upon supply of non-identifiable recoverable and reusable packaging are included in the taxable base for VAT.
	The transfer price, when these packaging have not been returned, at the end of the deadlines in use in the profession.
State contracts financed by public budgets, external loans, or aid	The amount of the contracts inclusive of all taxes, excluding VAT.
Contracts for industrial, commercial, scientific, technical, and administrative public institutions, semi-public companies, local authorities, and public-sector bodies with or without legal personality and financial autonomy.	



5.1. DELIVERIES AND PROVISION OF SERVICES: VAT TAXABLE BASE

According to the general rule laid down in Article 24 of the VAT Directive, the taxable amount is the total price, including all charges, taxes, and levies, of the product sold or service rendered, excluding VAT itself.

The taxable amount for VAT transactions carried out on the national territory of a Member State is the turnover, which therefore includes:

- ancillary costs such as commission, packaging, transport, and insurance fees charged by the supplier to the buyer or lessee;
- customs duties, excise duties or any other taxes applicable to the products or services, except VAT itself;
- in general, all amounts or values received or to be received by the supplier or service provider in return for the delivery or service.

The tax base therefore includes all payments in cash or in kind made to the customer in return for the goods sold or services rendered, excluding the VAT portion of the price.

In any case, the tax base is determined without considering the timing of the payment of the compensation; it makes no difference whether these payments are made before, at the time of, or after the contract's conclusion or the transaction's performance.

In the case of sales of goods, for example, the tax base is the price agreed between the parties, regardless of whether this price is broken down into payments on account, the main price, and the balance. Similarly, for the provision of services, the tax base includes all amounts constituting payment for the service rendered (advance payments, principal remuneration, balance).

However, some elements of the price are expressly excluded from or added to the tax base.

Therefore, it is necessary to answer the following questions:

- What are the elements of the price that must be included in the taxable base?
- and what elements of the price should be excluded from the taxable base?

Particular attention is reserved for the case of goods delivered with consignments and/or packaging.

5.11. Quels sont les éléments du prix à inclure dans la base d'imposition ?

Are included in the VAT taxable base:

- ancillary costs to deliveries of goods and services invoiced to customers;
- taxes and duties, including excise duties, but excluding VAT;
- additional charges paid for several reasons by the purchaser of the goods or the customer.

- Ancillary costs to the delivery of goods and services invoiced to customers.

Ancillary costs associated with the delivery of goods and services invoiced to customers are included in the tax base, even if they are invoiced separately.

For accounting purposes, ancillary costs are defined as costs incurred in connection, supervision, and relocation of installations, the use, maintenance, repair, and reinforcement of electricity meters, normal administrative costs, the cost of issuing invoices, transport, insurance, commission, brokerage, etc., incurred by the company during commercial transactions.

- Taxes and duties, including excise duties, excluding VAT;

The following taxes and duties are included in the VAT taxable base:

- Customs duties;
- indirect taxes, such as excise duties, excluding VAT;
- parafiscal taxes;
- royalties.

Chart 39: Taxable base and customs duties

Customs duties, excise duties, port, or airport taxes are included in the VAT taxable base.

- **Additional prices are paid in many ways by the purchaser of the goods or the customer.**

Additional prices paid by the purchaser of goods and services also form part of the VAT tax base.

Additional prices are those elements added to the basic price and may result from agreements between the parties.

NB: Damages attached to the main price are not included in the taxable amount.

Chart 40: Rules to remember

For example, and in application of the above principles, the following rules should be retained:

- **For business property rentals;**

VAT is collected on the amount of the rent, exclusive of tax. The lessor is responsible for collecting the VAT from the lessee and transferring it to the indirect tax collector.

The basis of assessment for VAT is the amount agreed between the parties.

NB: Should this not be the case; the lessor will have to reconstitute the VAT on the amount collected for value purpose.

- **Amounts paid to security companies.**

The basis of assessment for VAT is the total amount representing remuneration for the service provided.

- **Services provided by a non-resident foreign supplier.**

VAT is calculated based on actual sales. The tax base is, therefore, equal to the actual value of the remuneration for services received or to be received by the supplier in return for the services rendered before any taxation of the said amount to income tax in the Member State.

- **Remuneration paid to labor hire companies.**

The VAT base comprises all elements contributing to determining the cost price of the services, i.e., all the amounts received as remuneration for the service rendered, including the amounts supposed to reimburse the wages and social security contributions of temporary staff.

This means that the VAT taxable amount must include all the elements that contribute to determining the cost of the services, i.e., all the amounts received as remuneration for the service rendered, including the amounts supposed to reimburse the temporary staff's wage and social security costs.

Also included in the VAT tax base of the labor hire company (particularly for foreign companies) is the tax differential (accommodation, gains in kind granted to the seconded worker and charged to the hiring company). The tax differential is calculated on a factual basis, as it is analyzed as a price supplement.

In this case: Tax base = Remuneration + Tax differential

- **For commissions**

The taxable amount for VAT purposes for commission agents is the total amount of the transaction, i.e., the price paid by the third party, including the commission. Commission agents are regarded for tax purposes as mere "buyer-resellers." This means the commission agent and the principal are liable for VAT on commissioned transactions.

Prices, amounts, and values are established without deduction of any kind and include all costs and taxes, including excise duties (or specific taxes), where applicable.

- **For other transactions**

Additional prices for credit, whatever their origin, and compensation for adjustments, are treated in the same way as the main transaction. They are included in the VAT tax base.

5.12. Which elements of the price are excluded from the taxable base?

The following are excluded from the VAT taxable base:

- VAT itself,
- cash discounts, special allowances, discounts and rebates, and other price reductions granted, provided that the exact amount is passed on to the customer and that they appear on the initial invoice or amending invoice;
- disbursements invoiced to the customer for the exact amount;
- receipts which are not the counterpart of a business transaction.

- ***The VAT itself***

The taxable base must not include the VAT itself (the VAT applies on a basis exclusive of VAT).

- ***Actual transportation costs billed separately.***

NB: Intermediaries do not have to charge VAT on amounts reimbursed to them by their principals if these reimbursements correspond to expenses incurred in the name and on behalf of their principals, have been accurately accounted for and recorded in transit accounts, and are justified in their nature or exact amount to the tax authorities.

- ***Rebates, discounts, and reductions granted to customers.***

These include discounts, reductions, and deductions that appear on the invoice and do not constitute payment for any services rendered by the debtor.

Chart 41: Taxable base and price reductions

Excluded from the VAT tax base are price reductions that gain the purchaser in their exact amount, and which do not constitute the consideration for any service whatsoever.

When a reduction in price (in the form of a discount, reduction, rebate, or equivalent) is granted after the invoice has been sent, the supplier must issue a corrective invoice, send the amount of the reduction to the customer, or send him a credit note, which will be deductible from taxable sales when the invoice is settled.

The regularization is carried out as follows:

- **The form:** rebates, discounts and/or reductions must appear on the invoice.
However, if rebates, discounts and/or reductions are granted after the invoice has been sent, the supplier must issue a corrective invoice or credit note and send it to the customer.
- **In substance:** rebates, discounts and/or reductions must not constitute payment for a service.

Adjustments are made as follows:

- *At the company granting the discount (the Supplier)*

Rebates, discounts, reductions and/or cash discounts are deducted from the supplier's pre-tax sales at the time of settlement.

The company must then settle with its customers the amount of the discount, including all taxes, and send the amount of the discount to the customer, or send him a credit note which will be deductible from sales at the time of settlement.

Recovery will be made by deducting from taxable sales the amount, exclusive of tax, paid back to customers.

NB: There is no time limit for this adjustment procedure.

- *At the company receiving the discount (the Customer)*

It must cancel the tax deductions relating to its purchases, up to the amount of VAT on the rebate obtained.

This adjustment is made on condition that the sales were subject to VAT by the supplier at the time of the initial transaction.

• Receipts that are not considered for transaction In general, we aim here, in particular:

- indemnities which are real damages, i.e., which merely sanction the non-performance of an obligation or the injury of any interest whatsoever;
- compensation paid by an insurance company.

> Treatment of goods on consignment or delivered with packaging

Non-recoverable packaging (non-returnable packaging) is not returned to the supplier. It is considered to have been sold with the main product. Their value therefore increases the VAT base.

On the other hand, consignments of packaging which must be returned are not taxable transactions.

If the consigned packaging is not returned, the consignment becomes taxable (sale of packaging).

Similarly, if the consignment price is higher than the return price, the difference is taxable.

Tableau récapitulatif concernant les emballages

Type of packaging	Taxation/non-taxation
Non-returnable packaging	Taxed
Consignment/return	Non-taxation but VAT invoicing is possible in the case below
Consignment at a higher price than return	The difference is taxed
Non-return of returnable packaging	Transaction imposed



5.2. EXCEPTIONAL CASES: VAT TAXABLE BASE

The exceptional cases of the VAT taxable base concern:

- second-hand goods;
- exchanges;
- building and public works;
- self-delivery;
- imports;
- and the markets of the State and public establishments.

5.21. Second-hand goods taxable base

The VAT taxable base for second-hand goods is the difference between the sale price and the purchase price demanded by the supplier.

See "2.5.- Annex to the VAT Practical Guide": VAT on second-hand goods: practical case.

NB: For second-hand goods

• Starting price/free price

- If the parties have concluded a sales contract stipulating a "starting price", the transport costs are borne by the dealer in second-hand goods. Thus, they should not be included in the VAT base, i.e., the purchase price.
- If, however, the price is stipulated "free", the supplier bears the transport costs. They then constitute an element of the purchase price and are to be included in the VAT taxable base.

• Charges on the price

Finance and commission costs when buying second-hand goods and refurbishment are not added to the purchase price. Therefore, they do not enter the taxable base.

• Margin taxation

The margin tax regime is not applicable if the resold good gave rise to the recovery of VAT when the taxable dealer acquired it.

5.22. Exchange taxable base

The "exchange" of goods is analyzed in a double sale, each of the parties having successively the position of seller and that of buyer. In case there is a difference in value between the goods exchanged, the amount paid in compensation for this difference is called a "balance."

The VAT taxable base for exchanges is made up of the value of the products received in payment for the goods delivered, increased by the amount of the balance collected.

5.23. Taxable base for real estate and public works

The taxable amount for VAT on real estate and public works is the amount of the contract, bill, or invoice. This amount also includes any amount paid for any reason whatsoever more than the price fixed in the work contract.

5.24. Taxable base for deliveries and services to oneself (DSOS)

The VAT taxable base for self-delivery is the value of the delivery, determined by comparison with the normal selling price of similar goods, services or works.

NB: For deliveries to oneself, the base consists of:

- either by the market value of the goods on the day of supply to oneself;
- or by the cost price.

In any case, the value to be retained (based on VAT calculation) must not, under any circumstances, be lower than the cost price of the goods that the company has delivered to itself.

For example, for vehicle dealers, the VAT base for removing a "display" vehicle from their stock, registered in the company's name and allocated to the sellers during their business, is the cost price of the vehicle removed.

NB: For the provision of services to oneself, the VAT taxable base consists of:

- or, by the expenses incurred for their execution, by the cost price of the service;
- or by the market price of a similar service.

5.25. Import taxable base.

The taxable amount of VAT paid on importation is the Customs value of the goods plus duties and taxes of all kinds assessed by the Customs Administration on behalf of the State budget, excluding VAT itself⁴⁴.

Chart 42: What you need to know:

Community levies (AU, ECOWAS and WAEMU) paid on the importation of goods are excluded from the taxable base, in the same way as the VAT itself.

Basis = [(Customs value + Import duties and taxes)] – (Community levies) – (VAT itself)

The following are therefore not included in the import VAT base:

- the VAT itself;
- Community levies (AU, ECOWAS, WAEMU).

⁴⁴ Calculation formulas:

1. Customs duties = (actual value of the object + shipping costs + insurance) x customs duty rate;
2. VAT = (actual value of the item + shipping costs + insurance + customs duties) x VAT percentage.

5.26. Taxable base of State contracts financed from public budgets, external loans or aid, and public establishments

The taxable base is made up of the amount of the contracts, all taxes included excluding VAT, regarding:

- State public procurement, financed from public budgets, loans or external aid;
- Contracts for industrial, commercial, scientific, technical, and administrative public institutions, semi-public companies, local authorities, and public-sector bodies with or without legal status and financial autonomy.



The vat directive leaves each member state the prerogative to set the procedures for liability and the specific methods for collecting vat on public contracts.





SHEET 6

APPLICABLE VAT RATES

SHEET 6

APPLICABLE VAT RATES

In accordance with the provisions of Article 30 of the VAT Directive, Member States are authorized to apply a maximum of three (3) VAT rates:

- a normal rate (between 5% and 20%);
- a reduced rate;
- a zero rate (0%) for exports

*Directive C/DIR.1/05/09 harmonizing the legislation
of ECOWAS Member States about Value Added Tax (VAT)*

Article 30:

Member State is free to fix the VAT rate applicable to taxable transactions within a bracket ranging between 5 and 20%.

However, Member States could establish a reduced rate whose scope and rate shall be determined by the Council of Ministers.

The VAT rate shall also be applicable to merchandise and services produced locally and taxable goods imported with the exclusion of the export of goods or equivalent, which are transactions submitted to zero tax.

The zero tax shall apply solely to exports whose declarations have been approved by the Customs services and to the taxable activities, but not subject to effective payment of VAT.

The draft VAT directive currently being validated provides in its article 30 the following:

Art.30.

- 1) Each Member State is free to fix a common VAT rate applicable to taxable transactions. However, the **applicable rate would not be lower than 10% of the taxable base.**
- 2) However, Member States have the option of setting a single reduced rate, **a minimum of 5% of the taxable base.** Only one reduced rate can be set by each Member State, which can only be applied to a national list of ten (10) goods and services exhaustively listed. In the latter case, Member States must inform the Commission of the list of national goods and services subject to the reduced rate.
- 3) **Consecration of the principle of a single rate for goods and services:** The VAT rates apply both to locally produced goods and services and to taxable imported goods, excluding exports of goods or the like, including the provision of services related to the transit of goods which are transactions subject to the zero rates (0%).
- 4) **The zero rate (0%) applies only to exports that have been the subject of a declaration stamped on exit by the customs services as well as to the provision of services related to the transit of goods.**



6.1. NORMAL RATE: between 5% and 20%: this provision should be repealed (according to the draft VAT Directive currently being validated and will be replaced by a provision which provides for a single minimum rate of taxation of 10%)



The directive leaves each member state the right to set a normal rate within a range of 5% and 20%.

The rates are applicable to:

- locally produced goods and services;
- taxable imported goods.

NB : *Most of the States of the Community have set a standard VAT rate of 18%, except for two States which have set a different standard rate: Niger has set a standard VAT rate of 19%, and Mauritania has a standard VAT rate of 16%.*

Chart 43: Application of the single tax rate

The general rule is the application of a single rate. The single rate has the advantage of simplifying the administration of VAT.



6.2. REDUCED RATE



Member states have the option of setting a reduced rate, the scope and rate of which will be determined by the council of ministers.

The VAT Directive leaves the Member States the option to set a reduced rate without limiting the goods and services concerned.

NB: Good practice suggests the adoption of an exhaustive list of goods and services which may be subject to the reduced rate.



6.3. ZERO RATE (0%)

It follows from the VAT Directive that exports of goods or similar are transactions subject to the zero rate (0% rate)⁴⁵.

The 0% rate applies only to exports that have been the subject of a declaration referred to on exit by the customs services and to taxable activities, but not subject to actual payment of VAT.

NB: While exempt transactions do not allow, in principle, any recovery of VAT, those "taxed" at the zero rate (0%) give right to recovery of input VAT, under the conditions of common law⁴⁶.

45 In international trade, the neutrality of the tax is obtained by applying the principle of destination. According to this principle, exports are not subject to VAT (application of the zero rate) and imports are taxed on the same basis and at the same rates as domestic production. This means that the total tax paid for a transaction is ultimately determined by the rules in force in the jurisdiction of consumption, and therefore all revenue accrues to the jurisdiction where delivery to the final consumer takes place. (OECD Consolidated Guidelines for the Application of VAT – 2013)

46 In case that an operator provides a service for a customer who is located abroad, the input VAT paid by the said operator in connection with these services (i.e., the input VAT paid on supplies received from a company in its jurisdiction) is no longer part of the system of split payment of a tax on final consumption as it would have been the case in an exclusively national context. This results from the fact that the jurisdiction from which the supply is made no longer has taxing rights relating to this supply by virtue of the destination principle. Consequently, any tax paid by the supplier in the jurisdiction from which the supply is made must in principle be reimbursed to this supplier. This result is generally obtained by applying the "zero rate" to the services in the jurisdiction from which the service is made. It is thus made "VAT-free" in the jurisdiction of the supplier and allows this supplier to gain from the refund of the input VAT paid in this jurisdiction in connection with this supply. (OECD 2017 – Page 18)



FICHE 7

FAIT GÉNÉRATEUR
ET EXIGIBILITÉ DE LA TVA

SHEET 7

GENERATING EVENTS AND ABILITY TO PAY OF VAT



7.1. GENERATING EVENT FOR VAT

The generating event for VAT is dealt with in Articles 18 and 19 of the VAT Directive reproduced below.

*Directive C/DIR.1/05/09 harmonizing the legislation
of ECOWAS Member States regarding Value Added Tax (VAT)*

Article 18:

The taxable event of VAT is defined as the situation or event through which the legal conditions enabling tax liability are carried out.

It is constituted by:

- a) delivery of goods and merchandise regarding sales, trade, and commission work;
- b) execution of services and works, or tranches of services and works, or the handing over of works regarding the provision of services and construction works;
- c) collection of the price for the other taxable transactions;
- d) introduction of goods on the customs territory of a Member State for home consumption;
- e) the instrument of transfer or of property transfer, for construction activities carried out by developers;
- f) the instrument of transfer, enjoyment or, in default, the act of transfer, the enjoyment, for rentals of undeveloped land or bare premises made by estate agents

Article 19:

1. Exceptionally, the taxable event shall be constituted by:
 - the first use or the first commissioning, regarding deliveries or services to oneself;
 - debits for building contractors who expressly opt for this regime.
2. For transactions other than imports, the payment of advances or deposits shall constitute the taxable event of VAT;
3. The assessment of the taxable event may not be made after total or partial invoicing.

The VAT Directive:

- defines the notion of "generating event";
- and specifies the events that give rise to the VAT generating event.

7.11. Definition of the “generating event” for VAT

The generating event is defined as the situation, act, or event by which the legal conditions allowing the payment of VAT are fulfilled.

In other words, the generating event is the situation, act, or event that allows VAT claim for the State.

The Draft Directive clarifies Article 17:

The taxable event for VAT is defined as the situation, act, or event by which the legal conditions allowing the tax to be payable are met. It is constituted by:

- a) the delivery of goods and merchandise in the case of sales, trade, and contract work;
- b) the performance of services and work, or parts of services and work, or the completion of the work, in the case of services and real estate;
- c) receipt of payment for other taxable transactions;
- d) the introduction of goods into the customs territory of a Member State for release for consumption;
- e) the transfer of ownership for real estate transactions carried out by property developers;
- f) the transfer act, the possession or, in the absence of a mutation act, the first day of use, for the rental of undeveloped land or unfurnished premises by real estate professionals.

7.12. What are the constituent events of the generating event for VAT?

The events constituting the generating event for VAT are, depending on the nature of the transaction, specified below:

Nature of the transaction	Events constituting the VAT generating event
- Sales - Trades - Custom work	Delivery of goods and merchandise
- Services - Real estate works	The execution of services and works or sections of services and works or the delivery of the work
- Other taxable transactions	Collection of the price
- Import (release for consumption)	The introduction of goods and merchandise into the customs territory of a Member State
- Real estate transactions carried out by real estate developers	The change or transfer of ownership
- Rentals of bare land or unfurnished premises carried out by real estate professionals	The act of transfer, of possession, or, in the absence of an act of transfer, the entry into possession
- Deliveries or services to oneself	The first use or the first commissioning
- Building contractors who have expressly opted for the debit regime	Debits



Basic principles:
the acknowledgment of the generating event cannot be followed by installments or advances for all transactions.

Chart 44: Generating event = invoicing

In practice, apart from transactions for which the generating event is placed for collection, the generating event is determined by invoicing.

Thus, the Treasury claim arises as soon as the invoice is issued, even when the debtor does not pay the invoice.

NB: The sale of a good being deemed perfect as soon as the parties to the contract have agreed on the thing and the price, the VAT is due upon supply of the goods, even if it is stipulated to be payable on a term or installment basis⁴⁷.

The draft Directive clarifies Article 18:

- 1) As an exception, the generating event consists of:
 - the first use or the first commissioning regarding delivery or services to oneself;
 - the debits for building contractors who expressly opt for this regime.
- 2) For transactions other than imports, the payment of advances or installments constitutes the taxable event for VAT.
- 3) The taxable event statement cannot be followed by the total or partial invoicing.



7.2. LIABILITY FOR VAT CHARGE

The liability for VAT is governed by Articles 20 to 23 of the VAT Directive reproduced as follows:

Directive C/DIR.1/05/09 harmonizing the legislation of ECOWAS Member States regarding Value Added Tax (VAT)

Article 20:

Liability of Value-added Tax shall be constituted by the right of each Member State's recovery services to demand tax payment from the taxpayer at a given date.

The Value Added Tax shall be liable within the month following the taxable event under conditions laid down by each Member State.

Article 21:

Liability shall arise in respect of sales, and delivery of goods including self-delivery, during the realization of the taxable event or during:

- the collection of the price, deposits, or advances regarding the provision of services and construction works, transactions incidental to the residential environment and development of industrial areas, as well as tranches of services and works, including

⁴⁷ Guide to VAT "Revue Fiduciaries Group" September 2019: 1214 The installment sale is a forward sale by which the seller reserves ownership of the property until full payment of the sale price.

for suppliers of the State, public authorities endowed with an annexed budget, public establishments and enterprises and local public communities, during the payment of the price, deposits, and advances;

- Transfers of immovable property, at the date of transfer or of property transfer.

Nonetheless, as regards leasing contracts made in the framework of the residential environment by developers and transfers of the enjoyment of undeveloped lands and bare premises made by estate developers, liability shall arise on the date of each maturity.

Imports of goods and merchandise on the territory of a Member State, at the time of restoration of the declaration of the release for consumption of the goods;

Consumer credit or finance-lease transactions are carried out by financial establishments when interest and rent are due.

Article 22:

Service providers and public works and building contractors may be authorized to pay Value Added Tax according to the debits:

- in case of discount of a negotiable instrument, VAT shall be liable on due date;
- in case of collection of down-payments before the debit note, the tax shall remain liable during collection.

Article 23:

All VAT invoices must be repaid.

However, as regards transactions in respect of which invoicing is made after delivery, Member States may waive the provisions of Articles 21 and 22 above, subject to the liability of the tax:

- a) not later than the time of collection of the transaction price;
 - b) not later than the time of establishment of the invoice or substitute document;
 - c) in case of non-delivery or late delivery of the invoice or substitute document, within a determined period beginning from the date of the taxable event.
-

The VAT Directive:

- first defines the notion of "liability" for VAT;
- before setting the due date for VAT;
- and finally determines the events that make the tax payable.

7.21. Definition of VAT liability

VAT liability is the right of each Member State's tax collection authorities to demand payment from the taxpayer on a given date.

In other words, it is the moment at which VAT must be paid, or at the very least, the date from which the State has the right to demand payment of its claim.

NB: Ability to pay determines the date on which the number of taxable transactions must be paid.

7.22. What is the VAT due date?

VAT is payable in the month following the generating event, in accordance with the conditions defined by each Member State.

Chart 45: Due date for VAT set by each Member State

Each State freely sets the due date in the month following that of the generating event.

However, in most Member States, the due date is set no later than the 15th of the month following that in which the transaction is carried out.

7.23. What are the events that make VAT payable?

- Principles

In principle, VAT is payable as follows for the following different transactions:

Transactions	VAT is payable
<ul style="list-style-type: none"> - Sales - Deliveries of goods, including self-deliveries 	When the generating event occurs
<ul style="list-style-type: none"> - Services - Real estate, social housing, industrial zone development projects, services, and work packages, including for suppliers to the State, public administrations with annexed budgets, public institutions and companies, and local authorities. 	When collecting the price, accounts, or advances
Changes in property ownership	On the date of change or transfer of ownership
<ul style="list-style-type: none"> - Lease purchases by property promoters in the social housing sector - Transfers of use of bare land and unfurnished premises by real estate professionals 	On the date of each due date for values or payments received.
Imports of goods and merchandise into the territory of a Member State	At the time of registration of the declaration of release for consumption of the goods
Consumer credit or leasing transactions carried out by financial institutions	When interest or rent are due
<ul style="list-style-type: none"> - Service providers, - Public works and building contractors. - Authorized to pay VAT based on debits. 	On the scheduled maturity date for this commercial paper, in case of a commercial paper discount
	During the collection, in case of collection of installments before the debit note

NB : Any vat invoice must be paid.

- *Liability for VAT in cases where invoicing takes place after the delivery and in the event of a decision by the Member State to derogate from liability principles*

Member states may derogate from the above principles, in the case of transactions for which invoicing takes place after the delivery of the goods or the performance of the services.

The due date for VAT is determined differently for transactions for which invoicing takes place after the delivery of the goods or the performance of the services and in case the Member State derogates from the principles governing the due date for VAT

Transaction	VAT is payable
- Transactions for which invoicing take place after delivery, and in case of a decision by the Member State to derogate from the above principles	At the latest, at the time of receipt of the transaction amount
	At the latest, when the invoice or document in lieu thereof is drawn up
	Within a specified period from the date of the generating event, in case of non-delivery or late delivery of the invoice or the document in lieu thereof.

- Principles of payment of VAT on debits

Under the VAT Directive, service providers and contractors in the public and real estate sectors may be optionally authorized to pay VAT on debits.

Authorization to pay VAT on debits means that VAT becomes payable as soon as the customer's account is debited without waiting for collection.

In this case, VAT becomes due when the invoice is issued.

The advantage of this option is the simplicity of VAT accounting treatment. Indeed, this option means that VAT is payable by the supplier and deductible by the customer simultaneously, i.e., on invoicing/receipt of the invoice.

However, the debit option, which requires VAT to be collected and paid immediately on invoicing, can create cash flow pressures for the supplier, who must pay VAT even though the customer has not paid the invoice.

Companies opting for debit invoicing must apply for it to the tax authorities. Companies authorized to use debit invoicing must indicate the following on their invoices: "payment of VAT on debits".

Chart 46: What is the option of VAT on debits?

For services, VAT is payable when the price of the service is received. Under these conditions, VAT taxation and payment do not necessarily coincide when the invoice is issued.

By opting for VAT on debits, VAT becomes payable as soon as the customer or cash account is debited, without waiting for value. This option guarantees cash flow to the Treasury.

However, it is detrimental to companies, since they will have to pay VAT to the Treasury as soon as the invoice is entered into the accounts, independently of any collection.



SHEET 8

DEDUCTIONS REGIME

SHEET 8

DEDUCTIONS REGIME

The VAT regime is based on a fundamental principle according to which, > VAT which / has been charged on the price components of a taxable transaction / is deducted from VAT payable on that transaction.

NB : Deducting tax consists, according to the periodicity established, for the taxable person, in:

- recover VAT paid to suppliers or to customs (in the case of imports)/from VAT collected from customers⁴⁸.

Indeed, Taxable persons are authorized to deduct:

- VAT relating to their transactions subject to tax and taxed (VAT collected)
- VAT borne paid to customs or appearing on regular purchase invoices (deductible VAT borne).

$$\text{VAT due} = \text{VAT collected} - \text{deductible VAT borne}$$

At each stage in the production or marketing of a product, the taxpayer has the right to deduct the VAT paid to suppliers from the VAT invoiced to customers, which is deducted from the cost price.

NB: The deduction system enables the price of a good or service to bear VAT only once, at the final consumption stage. This neutralizes the impact of VAT, regardless of the number of intermediaries involved in the production or distribution chain⁴⁹.

However, there are general deductibility conditions that must be met to exercise the right to deduct VAT.

NB: There are cases in which deductibility is excluded and others in which taxable persons have a limited right to deduct. Thus, in the final analysis, the situations of exclusion or limitation mean that the neutrality of the tax is not absolute (ii).

There are also cases where, contrary to the principle, the taxpayer is authorized to deduct VAT even though he does not collect it. These are situations in which taxpayers have the right to deduct VAT on export and similar transactions or on some transactions which are exempt or outside the territorial scope of VAT, but which confer the right to deduct (iii).

Finally, the VAT Directive deals with the case of partially taxable persons who carry out taxable transactions alongside non-taxable transactions and whose right to deduct is limited (iv).

⁴⁸ Application of Generally Accepted Tax Policy Principles to VAT: The Ottawa Taxation Framework Conditions Neutrality is one of the generally accepted tax policy principles in the field of consumption taxes adopted by ministers of countries around the world in 1987 and which are applicable to VAT in both domestic and international trade.

·Neutrality: Taxation should aim to ensure neutrality between different forms of trade, between companies in similar situations and engaged in similar transactions, between domestic and foreign companies, and between international and domestic trade.

⁴⁹ See Introduction



8.1. GENERAL TERMS AND CONDITIONS FOR VAT DEDUCTION

The general conditions of deductibility of VAT are specified in Articles 31 - 32 and 37 of the VAT Directive, reproduced as follows:

*Directive C/DIR.1/05/09 harmonizing the legislation
of ECOWAS Member States regarding Value Added Tax (VAT)*

Article 31:

VAT that has saddled investments, purchases, services, or charges of all kinds supported by the enterprise for the needs of its transaction, shall be deductible, except the exclusions approved by this Supplementary Act.

Article 32:

The right to a deduction shall arise when the tax is liable from the provider of the goods and services.

For imports, the right to a deduction shall arise during release for consumption.

To exercise the right to deduction, the taxable person must have in his possession:

- either the invoices delivered by his provider himself liable to tax or indicating his registration number; these conditions are however not required in the case of foreign suppliers;
- or a declaration on release for consumption on which he is designated as the actual consignee.

Article 37:

1. Member States shall lay down the conditions and procedures in accordance with which a taxable person may be authorized to affect a deduction he has not made in conformity with the previous measures.
2. At any rate, the right to deduction may be exercised only at the end of the twelfth month following the one during which the VAT became liable.

Chart 47: Application of the attribution rule

The right to deduction in the Community is governed by the rule of attribution under which three (03) situations may arise:

Situation	Deductibility of VAT
1. The goods or services are used to exclusively carry out transactions within the scope of VAT	VAT is deductible under the conditions of common law
2. The goods and services are used exclusively to carry out transactions outside the scope of VAT and do not give the right to deduct	VAT is not deductible.
3. The goods or services are allocated simultaneously to transactions in the scope and outside the scope of the VAT	VAT is deductible on a pro rata basis.

The VAT Directive specifies the rules relating to:

- the general conditions of deductibility of VAT;
- when the right to deduct arises;
- and the time limit for exercising the right to deduct.

8.11. General conditions of VAT deductibility

To exercise the right of deduction, the following formal conditions must be met:

Type of transactions	Formal requirements for claiming VAT deductibility
Transactions carried out inside the Member State	The taxpayer must have invoices issued by his supplier, who must be liable for VAT and mention his registration number. NB: However, these conditions are not required for foreign suppliers.
Imports	The taxpayer must be in possession of declarations of release for consumption on which he is designated as the real recipient of the goods.

Chart 48: Mention of the supplier's tax identifier

The mention of the supplier's tax identification number ensures that the latter is subject to VAT.

NB: The right to deduct is not granted for transactions carried out by persons who do not have the status of taxpayer.

The invoice must include the legal notices (Cf. 1.133).

The company must have a valid invoice.

NB: No deduction can be made based on an order form, estimate, or pro-forma invoice.



Article 37.1 of the vat directive specifies that member states lay down the terms and conditions according to which a taxpayer may be authorized to make a deduction which he had not made previously.

Chart 49: Conditions of tax deductibility

The main conditions for VAT deductibility are:

- the liability of the supplier to pay the tax;
- goods and services subject to VAT must be used for taxable or exempt transactions granting the right of deduction;
- the invoice must comply with the formal requirements laid down by the Member State;
- the expenses must be attributed to the needs of a transaction for value eligible for deduction;
- the transaction must be accounted for following the standards laid down by the Member State.

8.12. When the right to deduct VAT arises

The right to deduct arises when the VAT is payable by the supplier of the goods and services. For imports, the right to deduct VAT arises upon release for consumption.

However, in cases where the taxable person is both liable for and entitled to deduct the same tax, he may exercise his right to deduct during the month in which the VAT is due.

NB: This is the case when the tax is due:

- on import transactions;
- for deliveries (provision of services) to oneself.

8.13. Deadline for exercising the right to deduct.



It follows from article 37.2 of the vat directive that: “in any case, the right to deduct can only be exercised until the end of the twelfth month following that during which the vat became payable.”

The taxpayer has twelve (12) months to exercise the right to deduct input VAT on goods or components of goods or services. After this period, he loses the right to deduct the tax.

NB: It is customary in many countries to allow at least two (2) years to deduct VAT on a transaction.



8.2. TRANSACTIONS/ACTIVITIES GIVING RIGHT TO DEDUCTION

The transactions giving the right to deduct VAT in the Member States are specified as follows in Articles 33 and 34 of the VAT Directive.

Directive C/DIR.1/05/09 harmonizing the legislation of ECOWAS Member States regarding Value Added Tax (VAT)

Article 33:

1. Member States shall grant taxable persons, following procedures they define, the right to deduct VAT, invoiced by their suppliers or paid during import transactions, which has saddled the price of goods and services used for the needs of their taxable transactions.
2. Taxable persons shall be authorized to deduct the amount of tax chargeable on their transactions, the Value Added Tax invoiced or paid during the purchase or import of:
 - raw materials and similar goods used in making taxable products;
 - goods for re-sale in the framework of a taxable transaction;
 - services used in carrying out taxable transactions;
 - supplies of movable or immovable goods acquired for business needs; and
 - exported goods, products, or merchandise.
3. Also included in the deduction system are:
 - self-deliveries giving rise to the right of deduction;
 - VAT invoiced by leasing or finance-lease companies on goods giving rise to deduction;
 - VAT invoiced for services used in calculating the store price or relating to the maintenance or preservation of goods giving rise to deduction.
4. The procedures appearing in the above paragraphs shall have an indicative value. They may be reorganized by the Member States' legislations during the transitional period.

Directive C/DIR.2/12/17 amending Directive C/DIR.1/05/09 harmonizing the legislation of ECOWAS Member States regarding Value Added Tax (VAT)

Article 34:

Member States shall equally grant the right to VAT deduction to taxable persons who carry out the following transactions:

- exports of goods and transactions assimilated to exports;
- exports of services the supply of which would be taxable if it were carried out on the territory of the Member State;
- services relating to goods placed under a suspensive custom procedure;
- deliveries, rentals, repairs, and maintenance of aircraft used by air companies engaged in remunerated international traffic, deliveries, rentals, repairs, and maintenance of objects incorporated into them or used for their transaction, deliveries of goods intended for their refueling, as well as the services provided for the direct needs of these aircraft and their cargo;
- deliveries, rentals, repairs, maintenance, chartering and rentals of boats intended for fishing, industrial or commercial activity carried out on the high seas or on international rivers, deliveries, rentals, repairs, and maintenance of objects which incorporated into them or used for their transaction, the deliveries of goods intended for their provisioning, as well as the provision of services carried out for the direct needs of these vessels and their cargo.

The VAT Directive deals with:

- transactions falling within the scope of VAT, and giving right to deduct, and
- transactions outside the scope of VAT or exempt, but giving right to deduct input VAT

8.21. Transactions falling within the scope of VAT and giving right to deduct

Article 33.1 of the directive states that member states shall grant taxable persons the right to deduct the amount of vat invoiced by their suppliers or paid at the time of purchase or importation, which has been charged on the price of goods and services used for the purposes of their taxable transactions, in accordance with the procedures defined by each member state.

It is therefore up to each Member State to define the procedures for exercising the right to deduct VAT.

However, it is clear from Article 33, paragraph 4 of the VAT Directive that these arrangements may be subject to modification during the transitional period. It would therefore appear that, as a minimum, Member States must comply with the provisions of the VAT Directive but are encouraged to do more and better.

Article 33.4 of the directive states that "the arrangements described in the directive are indicative".

vat deduction arrangements may therefore be adjusted by member states' legislation during the transitional period.

Chart 50: More favorable deduction rights

Member States may grant more favorable VAT deduction rights to taxable persons than the indicative ones provided for by the VAT Directive

The procedures for exercising the right to deduct as resulting from the VAT Directive are specified in the table below for each type of transaction:

Nature of transaction	Modalities of VAT deductibility
Purchase or import of raw and similar materials used in the composition of taxable products	VAT charged on the purchase or importation of goods and/or services
Purchasing or importing goods for resale in a taxable transaction	
Acquisition of services entering the performance of taxable transactions;	
Purchase or import of movable or immovable property supplies acquired for operating purposes	
VAT on the purchase or importation of goods, exported products or merchandise	
Self-delivery eligible for deduction	
Rental or leasing companies	VAT invoiced on goods eligible for deduction
Services included in the cost price delivered to store or relating to the maintenance or conservation of goods granting the right to deduction	VAT on services

Details on some cases of deductible VAT:

- *VAT on imported goods*

The right to deduct VAT can only be exercised if the deductible VAT has been paid on importation by the taxpayer or on his behalf, and he is in possession of customs documents designating him as the actual recipient of the goods.

- *VAT on the purchase or importation of supply of movable or immovable property acquired for operating purposes.*

The movable or immovable property giving right to deduction, must be:

- either raw material;
- or investment goods: by investment goods, the law means movable equipment recorded in the accounts in a fixed asset account and used exclusively for transactional needs.
- Either property or real estate works for general expenses and exclusively used for the transaction's needs as well as office supplies including water and electricity

- *VAT charged by Rental or leasing companies on goods eligible for deduction.*

The deductible VAT is that relating to the rents invoiced by the lessor.

- *VAT on services included in the cost price delivered in store or relating to the maintenance or conservation of goods giving right to deduction*

Services eligible for deduction are those that form part of the cost price, relate to the maintenance or conservation of goods eligible for the deduction, or have led to it under the same conditions as the goods to which they relate.

8.22. Transactions outside the territorial scope of VAT or exempt, and eligible to the right of deduction

Article 34 of the VAT Directive (amended in 2017) expressly refers to the following transactions whose place of taxation is outside the territorial scope of VAT, or which are exempt from VAT, but which nevertheless qualify for deduction of input VAT:

- Exports of goods and transactions assimilated to exports
- Exports of services the delivery of which would be taxable if it were carried out on the territory of the Member State
- Provision of services related to goods placed under a suspensive customs procedure
- Deliveries, leases, repairs, and maintenance of aircraft used by airlines operating international revenue flights, deliveries, leases, repairs, and maintenance of objects incorporated therein or used in their transaction, deliveries of goods intended for their refueling, and services provided for the direct needs of these aircraft and their cargoes.
- Deliveries, leasing, repairs, maintenance, chartering, and leasing of vessels intended for fishing, industrial or commercial activities on the open sea or international rivers, deliveries, leasing, repairs, and maintenance of objects incorporated in or used for the transaction of such vessels, deliveries of goods intended for the provisioning of such vessels, and services provided for the direct needs of such vessels and their cargoes.
- International transport to foreign destinations.

8.22.1. Exports of goods and transactions assimilated to exports

Export is the process of taking goods out of the country for sale abroad (see III.2.2: definitions).

8.22.2. Exports of services whose delivery would be taxable if carried out on the territory of the member state.

The right to deduct is therefore only granted for service exports to the extent that they would be subject to VAT if their place of taxation were within the territory of the Member State.

The right to deduct is therefore not granted for exports of services where the said services are not taxable within the Member State, but also where exports of services are carried out by persons who are not taxable persons in the Member State.

8.22.3. Provision of services related to goods placed under a suspensive custom procedure

These are:

- provision of services relating to goods originating in the Member State and delivered under a suspensive customs procedure (temporary admission, drawback, warehousing, preliminary export, temporary export, transit, etc.);
- services relating to imported goods placed under a suspensive custom procedure.

8.22.4. Transactions carried out with airline companies

The deduction is limited to transactions with airlines operating on international flights (see III.2.6: Definitions).

NB: The deduction provided for in Article 34 of the VAT Directive (amended in 2017) does not apply to transactions involving:

- aircraft used by airlines that do not meet the conditions for international traffic;
- tourist or private aircraft.

Transactions carried out with international airlines exempt from VAT eligible to the right to deduct are:

- deliveries and services relating to the aircraft themselves;
- deliveries and services relating to objects incorporated into aircraft;
- deliveries and services for the direct needs of aircraft and their transaction;
- deliveries and provision of services used to refuel aircraft.

8.22.5. Transactions carried out for/on vessels intended to operate on the open sea or on international rivers

The deduction is limited to transactions carried out for/on vessels engaged in fishing, industrial or commercial activities on the open sea or international rivers (see III.2.5 - definitions).

NB: Transactions relating to vessels operating on open seas or international rivers are treated as exports entitled to deductions, which justifies the deductibility of input VAT.

The deduction applies to the following transactions carried out for (or on) vessels used for fishing, industrial or commercial activities on open seas or international rivers:

- deliveries and services relating to the boats themselves;
- deliveries and services relating to objects incorporated in boats and fishing gear and nets;
- deliveries and services for the direct needs of ships and their cargo;
- deliveries and provision of services used for the transaction or provisioning of ships.

8.22.6 International transport

NB: VAT charged on the cost of international transport of goods to foreign destinations is deductible.

Based on this provision, it should be noted that the mailing of packages and letters to foreign destinations does indeed fall within the scope of goods subject to international transport, and therefore the input VAT charged on these transactions is deductible



8.3. GOODS AND SERVICES WHOSE VAT IS EXCLUDED FROM DEDUCTION

Article 38 of the VAT Directive excludes VAT on certain goods and services from deduction.

Directive C/DIR.1/05/09 harmonizing the legislation of ECOWAS Member States regarding Value Added Tax (VAT)

Article 38:

1. The following shall be excluded from the right to deduction, including when the goods or services concerned are used for carrying out transactions leading to the right to deduction:
 - expenses on receptions, accommodation, restaurant, shows or those of luxurious nature;
 - acquisitions of vehicles for tourism or multipurpose use, except for those done by professional hirers or finance lease companies;
 - provision of services relating to the excluded goods;
 - vehicle fuel expenses.
2. Vehicles and engines, irrespective of their type, 3. designed or developed for the transportation of persons or for multi-purpose use that constitute fixed assets, shall not equally give rise to deduction. The same shall apply to spare parts and accessories to these elements.
3. Nonetheless, the exclusion referred to in subparagraph 2 above shall not concern:
 - motor vehicles which, besides the driver's seat, have more than eight (08) seats used by companies for the exclusive transportation of their staff;
 - fixed assets of vehicle rental companies;
 - fixed assets of public transport companies;
 - transport expenditures of tourism professionals for their clients;
 - pool of vehicles of distributors, test vehicles or demonstration vehicles.
4. Member States shall have the power to defer the deduction exercise or exclude from the right to deduction of goods and services not referred to in this article.

Chart 51: Deduction Exclusions: Considerations

Exclusions are based on several considerations.

1. The right to deduct is not granted where it does not comply with VAT operating principles. This applies to goods and services used for private purposes or non-taxable activities.
2. VAT charged on services, spare parts, and supplies used to repair goods for which VAT is excluded from the right to deduct is not deductible. This exclusion reflects the theory that "the ancillary follows the principal" since, in this case, the tax treatment applied to the principal is extended to the ancillary elements.
3. VAT on passenger cars is not deductible because these vehicles do not constitute the main operating tool of companies subject to this tax. This exclusion is explained by the fact that, to gain from VAT deduction, an asset must be used for business purposes. In this case, however, passenger vehicles can be used for both private and business purposes.
4. To prevent any abuse, tax deduction is ruled out for reception, accommodation, restaurant, entertainment, or sumptuary expenses.

Based on the above principles, the goods and services referred to in Article 38 of the Directive, the VAT charged on the following goods and services are as follows:

Goods and services whose VAT is excluded from deduction
Reception, accommodation, restaurant, entertainment, or sumptuary expenses
Purchases of passenger or mixed-use vehicles, except for those made by professional lessors or lessors.
Services relating to excluded goods
Vehicle fuel costs
Vehicles and equipment of any kind, designed or adapted for the transport of persons or for mixed use, constituting a capital asset.
Spare parts and accessories for vehicles and equipment of any kind, designed or adapted for the transport of persons or for mixed uses constituting a fixed asset.

A few details on the specific case of passenger or mixed-use vehicles

Vehicles excluded from deduction under the VAT Directive are motor vehicles designed or fitted out primarily to carry people and which have a maximum of nine (09) seats, including the driver's seat.

A mixed car is a vehicle designed and built for the transport of both people and goods, and which may have a maximum of 8 seats, excluding the driver's seat, for the paid transport of people.

NB: On the other hand, the right to deduct VAT is retained for:

- road vehicles with more than eight (8) seats in addition to the driver's seat, used by companies for the exclusive transport of their personnel;
- fixed assets of vehicle rental companies;
- fixed assets of passenger transport companies;
- transportation expenses incurred by tourism professionals on behalf of their customers;
- vehicle dealer inventories and test or demonstration vehicles.

In addition, taxpayers are entitled to deduct VAT on purchases of passenger cars or mixed-use vehicles made by professional lessors or financial lessors.



Article 38.4 of the vat directive states that "member states shall have the right to defer the exercise of the right of deduction or to exclude from the right of deduction goods and services not covered by this article"

NB : This rule in the VAT Directive means that Member States are free to limit the right to deduct transactions other than those covered by the Directive.



8.4. LIMITATION OF THE RIGHT TO DEDUCT: PARTIAL TAXABLE PERSONS

The rules relating to partially taxable persons are dealt with in Article 39 of the VAT Directive reproduced below.

Directive C/DIR.1/05/09 harmonizing the legislation of ECOWAS Member States regarding Value Added Tax (VAT)

Article 39:

Taxable persons who use goods and services to carry out both transactions giving the right to deduction, and transactions not giving the right to deduction, shall be bound to respect a pro rata of deduction during the determination of the deductible tax, be they fixed assets or goods other than fixed assets as well as services.

The pro rata shall be the ratio expressed in percentage between:

- the total annually determined amount of the turnover, excluding VAT of the transactions giving rise to deduction, charged to the numerator; and
- The total annually determined amount of the turnover, excluding VAT of the transactions indicated on the numerator and on all transactions not giving rise to deduction, charged to the denominator.

The deduction shall be admitted only for the part of VAT proportional to the amount relating to transactions giving rise to deduction.

The pro rata defined in sub-paragraph 2 above shall be provisionally determined in relation to revenue and products realized the previous year or, for new taxable persons, revenue, and provisional products of the current year.

The fixing of the final pro rata, which shall be determined by each Member State, for each year during the following year, shall lead to the regularization of the deductions made following the pro rata applied provisionally.

The downward and upward variations between the provisional pro rata and final pro rata shall be subject to additional VAT or additional deduction.

The provisions of the VAT Directive first set out the principle of partial taxation (i), then determine how the deductible proportion is to be calculated (ii), before specifying how the deductible proportion is to be applied (ii).

8.41. Principe

Taxable persons who use goods and services to carry out both transactions eligible for deduction and transactions not eligible for deduction are required to comply with a deductible proportion when determining the deductible tax, whether for fixed assets or goods other than fixed assets and services.

The rule of partial liability: Deduction of VAT according to a pro rata

The goods or services are used simultaneously for transactions both within and outside the scope of VAT.	VAT is deductible on a pro rata basis.
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Taxpayers who do not exclusively carry out transactions eligible for VAT deduction are liable for VAT on only part of their business activity.

NB: These taxpayers, who carry out both taxable and non-taxable transactions, are known as "partial taxpayers".

When calculating VAT, partial taxpayers are subject to specific rules which limit VAT deduction to a fraction of the VAT collected on their goods and services.

They are authorized to deduct VAT, but only in proportion to the amount relating to transactions eligible for deduction⁵⁰. They therefore do not have to deduct⁵⁰ all input VAT, but only a fraction of this VAT.

The fraction of deductible VAT is equal to the amount of VAT affected by a general deduction percentage called “PRO RATA deduction.”

8.42. Determining the pro rata deduction

The deduction proportion is provided by applying a ratio between a Numerator and a Denominator determined as follows:

Proportion of deduction =	total annual amount of turnover (excluding VAT) relating to transactions eligible for deduction	x100
	Total annual turnover (excluding VAT)	

See “2.7 - Annex to the VAT Practical Guide”: *Partial Taxable persons – Practical case*

8.43. Application of the pro rata deduction

For the application of the PRO RATA deduction, a distinction must be made between two situations:

8.43.1. Application of a provisional pro rata

- *Company subject to VAT, already in transaction.*

The active taxpayer applies a provisional pro rata determined based on the previous year's transactions (N-1).

During N, he applies the definitive pro rata determined in N-1.

- *Company newly subject to VAT*

New taxpayers, i.e., those who acquire tax status during the fiscal year, determine a provisional pro rata based on projected income and revenue for the current year.

A new taxable person is defined as:

- an existing business which, following a change in legislation, becomes subject to VAT,
- a company that becomes subject to VAT by option,
- a newly created business.

> **new business**

The new company must establish a provisional pro rata rate, based on its operating forecasts for the year in question.

This provisional pro rata rate is used to determine deductible VAT up to the end of the year following the year in which the company was set up.

> **Company which becomes liable for VAT during the fiscal year**

A company that becomes liable to VAT during the year, either by obligation or by option, is entitled to an initial credit for deductible tax on the date it becomes liable.

⁵⁰ French Council of State, Casino de Salins-les-Bains, February 8, 2019, n°410807

In its decision of February 8, 2019, the French Council of State affirms the principle of the exclusive use of the flat-rate tax coefficient (ex-pro rata) to determine the deductible VAT charged on mixed expenses, i.e., those that contribute to both transactions eligible for deduction and transactions not eligible for deduction. It thus rules out the use of any other method based on criteria linked to the actual use of the expenditure, and in the specific case, a surface area-based method.

The credit consists of two elements:

- inventories: the new taxpayer may deduct the VAT charged on goods, raw materials, packaging, and products eligible for deduction that he holds in stock on the date on which he becomes liable,
- New fixed assets: the taxpayer may deduct VAT on new depreciable assets not yet used at the date of tax liability.

8.43.2. Application of the final pro rata, by regularization

At the end of the year (N), the partially taxable person carries out the following transactions:

- a) it determines the final pro rata based on the report below:

Total annual amount of turnover (excluding VAT) relating to transactions eligible to the right to deduct	x 100
Total annual turnover (excluding VAT)	

- b) he adjusts all deductions made by applying the (new) definitive pro rata rate to all transactions carried out during fiscal year N.
- c) he then makes corrective VAT declarations (considering the definitive pro rata rate), which he files within the deadline set by the Member State.
- d) depending on the new pro rata rate, he will have to regularize the VAT:
- e) by paying additional VAT,
- i. if the definitive pro rata rate has fallen below the provisional pro rata rate; or;
 - ii. by making an additional deduction if the final pro rata rate has varied upwards in relation to the provisional pro rata rate.

See "2.7 - Annex to the VAT Practical Guide": Partial Taxable persons - Practical case



SHEET 9

ADJUSTMENT OF VAT

SHEET 9

ADJUSTMENT OF VAT

Generally, VAT deductions regularly made by a taxpayer are definitive. In some cases, however, VAT deductions may be called into question.

NB: The revision of an initial VAT deduction is known as "VAT adjustment."

VAT adjustment involves either the repayment of the VAT initially deducted (in full or in part), or the recognition of an additional deduction

VAT already deducted may be called into question by specific circumstances. In this case:

- if the adjustment results in a surplus deduction, the VAT (initially deducted in excess) must be repaid on the next return;
- if the adjustment results in less VAT being deducted, the taxable person has an additional deduction which can be claimed on future tax returns.

The cases and rules for VAT adjustment are set out in the articles of the VAT Directive reproduced below.

Directive C/DIR.1/05/09 harmonizing the legislation of ECOWAS Member States regarding Value Added Tax (VAT)

Article 40:

Where goods that have undergone a deduction, under fixed assets, are no longer part of the fixed assets of the company or cease being used for carrying out a transaction leading to deduction before the end of the fifth year following that of acquisition, the taxable person shall be liable to a fraction of the tax previously deducted. The fraction shall be equal to the amount of the deduction, less a fifth per annum or fraction of a year since acquisition.

In the case of transfer, if the goods constitute a fixed asset for the purchaser, the latter may deduct the Value Added Tax corresponding to the amount paid by the seller as regularization, on condition that he himself is liable to VAT.

The deduction shall be subjected to the seller's delivery to the beneficiary of an attestation indicating the amount of deductible tax.

Article 41-1:

The value added tax paid during sales or services that are subsequently cancelled, annulled, or remain unpaid, may be recovered by charging it to the tax due for future transactions;

In the case of cancelled or annulled transactions, the recovery of the tax paid shall be subject to the establishment and dispatch to the client of a new invoice replacing the initial one;

In the case of unpaid transactions when the claim is actually and definitively irrecoverable, the rectification of the invoice shall consist in the dispatch of a duplicate of the initial invoice with surcharged regulatory indications titled: "unpaid invoice in the sum of ... price excluding VAT, for the amount of ... VAT, which may be subject to deduction".

The provisions of the VAT Directive state:

- the cases which lead to the adjustment of the VAT initially deducted or paid,
- and the methods of adjustment of the VAT.



9.1. CASES OF VAT ADJUSTMENT

The situations that may lead to the adjustment of the VAT initially deducted or paid are specified in the table below:

Situations that may lead to the regularization of VAT
- Definitive deduction period for partial taxpayers
- Fixed assets no longer forming part of the company's fixed assets
- Total or partial transfer of assets for value or free of charge
- Cessation of activities
- Destruction of goods acquired or produced
- Unjustified shortages, losses or thefts of goods purchased or produced
- Abandonment of VAT status
- Assignment of goods eligible for deduction to a purpose not eligible for deduction
- Cancelled or unpaid sales
- Unpaid acquisitions
- Cancelled acquisitions (rebates, cancellations)
- Inventory loss or shortage

9.11. Pro rata deduction, final for partially taxable persons

As a reminder, at the end of the year (N), the partially taxable person (Cf. 8.4: Definitions - Methods) must determine the definitive deductible proportion of VAT for the transactions of that year.

Once the definitive VAT deduction rate is determined, the taxable person must then proceed to adjust the VAT on all transactions for year N, by applying this new deduction rate to calculate the VAT deductible.

9.12. Fixed asset withdrawn from the company or no longer used to carry out a transaction eligible for deduction⁵¹

When a fixed asset no longer forms part of the company's fixed assets or ceases to be used for a transaction eligible for deduction, before the end of the five (5) year period from the date of acquisition, the VAT that was deducted on acquisition or importation of the asset must be adjusted.

NB: The initial deduction must be adjusted if a depreciable asset giving entitlement to deduction is not kept for 5 years.

See "2.8 - Annex to the VAT Practical Guide": Regularization of VAT following the removal of an asset, within 5 years - practical case.

Chart 52: Sale of property: adjustment

If the sale involves a fully depreciated asset, no adjustment is required. Although such a transaction is considered a sale, it is not subject to VAT.

On the other hand, if the sale involves an asset that is not fully depreciated, VAT must be adjusted.

⁵¹ Practical case: adjustment of exit from fixed assets within 5 years – Sheet 13-7

9.1.3. Sales or services terminated, canceled, unpaid.

VAT paid on sales or services that are subsequently terminated, cancelled, or remain unpaid must be adjusted by both the supplier and the customer.



9.2. METHODS OF VAT ADJUSTMENT

Chart 53: Methods of adjustment

The regularization takes place based on a declaration separate from that of the current transactions of the Taxable person⁵².

9.21. Pro rata deduction, final for partially taxable persons

At the end of the year, the partially taxable person must adjust the VAT by filing amending declarations applying the definitive pro rata rate.

NB: The taxable person must submit amending declarations for each period with the new VAT pro rata deduction rate.

9.22. Fixed asset withdrawn from the company or no longer used to carry out a transaction eligible for deduction⁵³

Situation	Regularization methods
The asset, having been subject to a deduction, no longer forms part of the company's fixed assets or ceases to be used to carry out a transaction eligible for deduction before the end of the fifth (5th) year following that of its acquisition.	adjustment of VAT previously deducted. VAT deducted – 1/5th per year or fraction of years since the acquisition of the property

NB: There is no need to adjust VAT if the asset ceases to be used for good in duly established cases of force majeure, or if the lessee exercises his option to purchase the asset at the end of the lease term.

When the event that justifies the adjustment of the VAT (disposal of the asset, cessation of activity, abandonment of taxpayer status, etc.) occurs before the end of five (5) years from the date of acquisition or importation, the taxpayer is required to repay an amount equal to the VAT initially deducted, less one-fifth (1/5th) per calendar year elapsed since the start of the adjustment period.

In this case, and if the asset is a fixed asset for the purchaser, the latter may deduct the VAT corresponding to the amount repaid by the seller in respect of the adjustment.

NB: The calculation is made on a calendar-year basis, and not from "date to date".

⁵² The relevant experiences argue for the presentation in annex of the balance sheet of a global statement of counting indicating the taxable bases, the deductions, the VAT credits, in order to allow the registered taxpayer to check himself if there are possible adjustments. .

⁵³ Practical case: regularization of exit from fixed assets within 5 years – Sheet 13-7

The starting point is the calendar year in which the asset was acquired, imported, purchased, used for the first time, or transferred between business sectors.

The transferor or vendor issues the purchaser with a certificate which, in this case, plays a role like that of an invoice, stating the amount of VAT that the purchaser is entitled to deduct. The certificate must also include:

- identification (name or company name, address) of the seller,
- identification (name or company name, address) of the purchaser,
- a brief description of the goods, and if applicable, their identification number,
- the date of acquisition of the assets by the transferor,
- the date of the transfer or contribution,
- the amount of VAT repaid.

If the fixed asset acquired is not subject to VAT deduction for the taxable vendor, because the latter did not use the asset for an activity subject to VAT, the right to deduct can also be transferred to the purchaser over the remaining period, within the 5-year adjustment period.

NB: The new right to deduct generates a new 5-year adjustment period for the purchaser.

Chart 54: Transfer of property: regularization

The transferor must, where applicable, issue the new purchaser with a document certifying the correctness of the amount of VAT repaid, to enable him to exercise his right to deduct.

The tax initially invoiced can only be recovered if the taxpayer amends the initial invoice.

When the Taxable person changes the use of a good from an activity not giving rise to the right of deduction to an activity giving rise to the right to deduct, he may charge the tax resulting on the VAT return following the month of the change of attribution.

9.23. Sales or services terminated, canceled, unpaid

Taxpayers are required to repay previous deductions if the goods have disappeared before being used for the purpose for which they were purchased. This is the case in the event of theft, destruction, or loss of the goods.

NB: Payment is not required in cases of duly established force majeure.

In the same way, the taxable person is entitled to an additional deduction in respect of VAT paid but no longer used for the purpose for which it was paid.

VAT deducted on goods or services used in a transaction not subject to VAT must be adjusted. This applies to goods and services used:

- for the entrepreneur's own needs (personal withdrawals),
- to carry out exempt transactions (not eligible for deduction).

When a sale, work or service transaction is definitively unpaid, VAT is adjusted by the difference between:

- the VAT relating to the amount of the sale (product), work (work) or service (service),
- and the VAT (deducted upstream) charged on the purchase of the product, the components of the work or the acquisition of the service.

For cancelled or terminated transactions, recovery of the VAT paid is subject to the issue of a new invoice replacing the initial invoice. The new invoice must be sent to the customer. To be valid as an invoice correction, replacement invoices must bear the exact reference of the initial invoice and the express mention of its cancellation. It must also include all the information referred to in 9.22 above.

NB: It is however accepted that the relief measures provided for low-value invoices also apply to rectifying invoices.

9.24. Unpaid transactions

For unpaid transactions, when the debt is genuinely and definitively irrecoverable, the customer must be sent a corrected invoice.

NB: Invoice rectification consists of sending a duplicate of the original invoice, with the statutory details superimposed on the words: "Invoice unpaid for the sum of excluding VAT and for the sum of corresponding VAT which may be deducted".

Chart 55: Conditions for recovering the tax: rectification of the initial invoice

The following comments are in line with international practice.

The tax initially invoiced can only be recovered if the taxpayer amends the initial invoice.

This modification consists of:

- *either by sending a new invoice cancelling and replacing the previous one;*
- *by sending a credit note.*

The amended invoice or credit note must make explicit reference to the original invoice (number, date, express mention of its cancellation, etc.), and must include all the information required by law (Revue Fiduciaries no. 291 et s.)

NB: Overcharged invoices (or rectifying invoices) can only be issued by a company able to demonstrate that its claim is genuinely and definitively uncollectible, and when the company has exercised all the remedies provided for by law.

On receipt of the duplicate or corrected invoice, the debtor must repay the VAT initially deducted.

Chart 56: Deadline for charging and/or requesting refund of the VAT credit

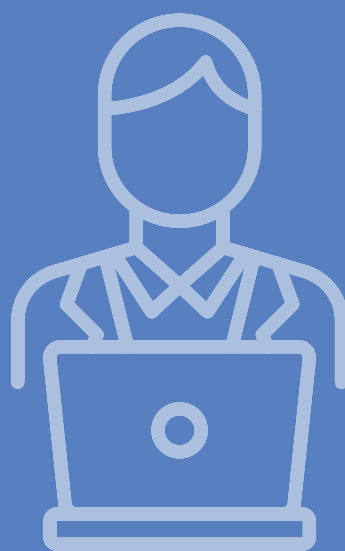
The ECOWAS regulation does not specify the period during which VAT refund claims must be submitted.

International practice requires that claims for deduction or refund be submitted no later than December 31 of the second (2nd) year following the year in which the event generating the right to deduction or refund occurred.

9.25. Corrective invoice issued following an error on the initial invoice

As a rule, taxpayers are entitled to deduct all, or part of the deductible VAT correctly shown on an amended invoice issued by their suppliers following the discovery of an error.

This deductibility of VAT is subject to the fact that the corrected invoice must correctly state the corrected tax, with an indication, where applicable, of the VAT initially invoiced.



SHEET 10

VAT RECOVERY

SHEET 10

VAT RECOVERY

VAT recovery is the transaction whereby the authorized agent collects the tax and pays it into the public coffers on behalf of the Member State.

VAT recovery procedures are governed by the provisions of articles 48 to 54 of the VAT Directive, reproduced below.

*Directive C/DIR.1/05/09 harmonizing the legislation
of ECOWAS Member States regarding Value Added Tax (VAT)*

Article 48:

The settlement and recovery of VAT paid on imports shall be carried out by the Customs departments and competent authority in each Member State.

Article 49:

The tax authority shall be responsible for the collection of the amount of domestic VAT which shall be paid directly and spontaneously by the taxpayer at the time the declaration is deposited at the cashier's desk of the Tax receiver or, in default, the Head of Accounts on whom the registered place of business depends, his principal establishment or the officer accredited by him.

Article 50:

1. The tax liable shall be paid spontaneously according to the periodicity in force in each Member State.
2. Taxpayers shall be bound to give a monthly tax return to tax revenue or the relevant department, in conformity with the model prescribed by the tax authority.
3. The tax return on the transactions of the previous month must be accompanied by means of payment. It shall be executed even if no business was made during the month in question and shall, in that case, bear the heading "NIL".
4. Exporters shall be required to append to their monthly tax returns the customs references of the exports made on repatriation of funds on the export sales whose refund is requested.

Article 51:

The declaration for a given period must be deposited within the deadline for the deposit of the tax return prescribed by the General Tax Code of each Member State, accompanied by the means of payment authorized by each Member State.

Article 52:

The tax collector or, if necessary, the relevant public accountant, shall have the full and total capacity to act in VAT recovery. In that regard, they shall be responsible for the collection of the taxes within their remit.

They shall be required to show proof of their total accomplishment.

A printed notice, designed by the Authority and addressed to taxpayers, of issue for the collection of unpaid amounts at the date of liability shall be established.

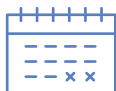
The issue for collection notice shall be signed and become enforceable under the authority and responsibility of the Collector, by agents designated by the Tax Authority. A taxpayer who does not regularize his situation shall be prosecuted in keeping with the procedures in force in each Member State

Article 53:

The Tax Collector shall be assisted in VAT collection by duly authorized agents.

Article 54:

The provisions on bonds, guarantees and tax claims in Member States shall apply to VAT.



10.1. COLLECTION OF VAT ON IMPORTS

Import VAT is collected when goods are released for consumption and is settled and collected by the customs authorities or by the competent administration of each member state⁵⁴.

NB: VAT on imports must be paid to the customs authorities when the goods enter the country (customs clearance).

Goods of foreign origin are thus subject to the same tax burden as goods of domestic origin.

See "3.4 - Annex to the VAT Practical Guide": Accounting VAT procedure (deferred payment of VAT).



10.2. COLLECTION OF DOMESTIC VAT

10.21. Domestic VAT recovery method

The Member State's tax authorities are responsible for collecting domestic VAT, i.e., VAT on transactions carried out on national territory.

The amount of VAT due is paid to the cashier of the Member State's agent, or by default to the head of the accounting post responsible for the taxpayer's head office, principal place of business or accredited official (if the taxpayer is a non-resident).

The Draft Directive currently being validated provides a new way of managing VAT which already exists in several national legislations:

Art.55.- Member States may have State enterprises, public administrations, and institutions with an autonomous budget or decentralized local authorities, and private enterprises deduct at source the amount of VAT invoiced to them according to the terms and conditions that will be defined in the VAT Practical Guide.

It is understood that the choice is left to each Member State to implement this provision according to its available capacities and resources and its application is also optional and non-binding.

Cf. "3.3 - Annex to the VAT Practical Guide": Electronic receipts as a means of collection and broadening the tax base.

⁵⁴ In the context of B2B exchanges, some jurisdictions defer collection of tax on imports until the importer's next VAT declaration (2017 – Page 18)

10.22. Competence of VAT collection

The tax collector, or where applicable the competent public accountant, is fully empowered to act in matters of VAT recovery.

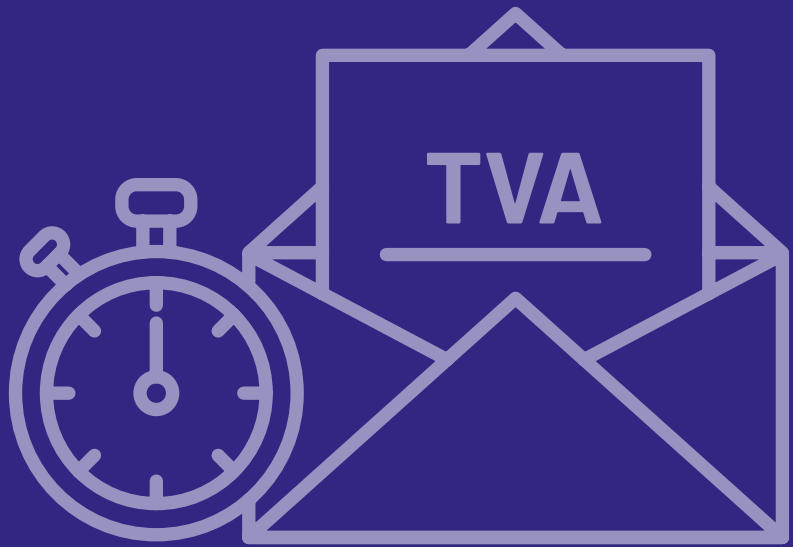
In this capacity, he is responsible for collecting the taxes for which he is responsible. He must provide proof that the tax has been paid in full.

A notice of collection of unpaid amounts on the due date is drawn up on a form set by the Administration and sent to the taxpayer. The collection notice is signed and made enforceable, under the authority and responsibility of the Receiver, by agents designated by the tax authorities. Taxpayers who fail to adjust their situation are prosecuted in accordance with the procedures in force in each Member State.

The tax collector is assisted in VAT collection by duly authorized agents.

10.23. Collection guarantees

The provisions on securities, guarantees and legal proceedings in force in the Member States are applicable to VAT



SHEET 11

REFUND VAT CREDIT

SHEET 11

REFUND VAT CREDIT

Reminder: The company must apply the VAT rate to the pre-tax value of its sales. The amount thus obtained constitutes the VAT that the company must collect from its customers on behalf of the State. This VAT is called output VAT.

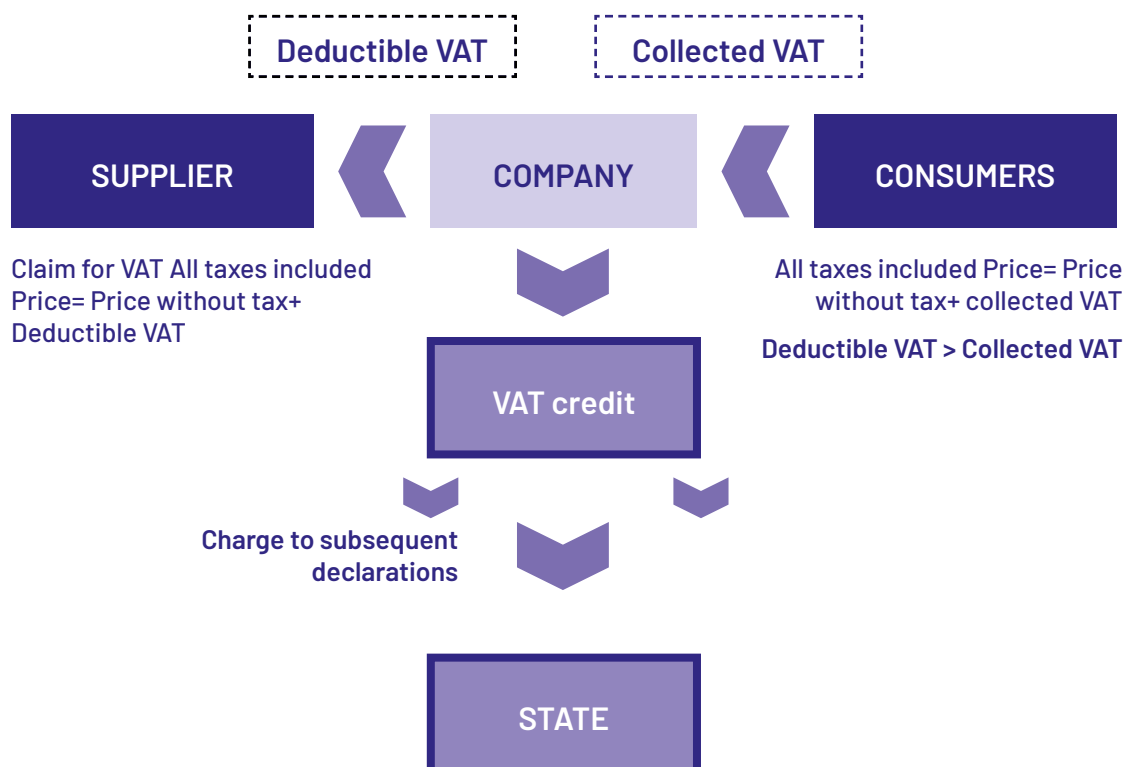
Conversely, most expenses incurred by the same company (purchases of raw materials, operating costs, investments, etc.) are subject to VAT, which the company must pay its suppliers on behalf of the State. This VAT is called paid VAT.

The company is entitled, where applicable, to claim back the VAT it has paid on the VAT it has collected. This paid VAT is known as deductible VAT.

When the amount of VAT collected is greater than the amount of deductible VAT, the company must pay the difference to the State. This paid VAT is called VAT due.

On the other hand, when the VAT paid (or VAT born) is higher than the VAT collected, the company has a VAT credit vis-à-vis the State.

The company is then entitled to offset the VAT credit against VAT due for future periods. In some circumstances, if the amount of the VAT credit exceeds the amount of VAT due, the VAT credit may be claimed back.



The rules and procedures for refunding the VAT credit are governed by the provisions of Articles 55 to 60 of the VAT Directive, reproduced below.

*Directive C/DIR.1/05/09 harmonizing the legislation
of ECOWAS Member States regarding Value Added Tax (VAT)*

Article 55:

1. When the amount of deductible tax for a month is higher than that of the liable tax, the excess shall constitute a tax credit charged to the liable tax for the next period.
2. The tax credit may not be refunded to the tax person outside cases provided for in this Supplementary Act.

Article 56-1:

1. The following may equally gain from refund of their VAT credits on request:
 - taxable persons who make deliveries of goods other than those resulting from resale as is, after a half-year;
 - taxable persons who carry out, for more than half their annual turnover, both transactions on goods and services leading to the right to deduction and transactions not leading to the right to deduction, after two months.
2. The same facility shall be accorded taxable persons who acquire investment goods leading to the right to a deduction for a value higher than USD 80,000, inclusive of all taxes, during the two months in question.
3. Accredited taxable persons according to the provisions of the investment code of each Member State may, on request, obtain a refund of Value Added Tax credits they have after a period of declaration as stipulated in Article 58.

Article 57:

Member States shall have the power of subjecting the refund to the assessment of a minimal amount of credit they determine.

This amount must however not exceed USD 2,000.

Article 58:

1. Member States shall be required to determine rules applicable to VAT refund. They lay down the practical procedures for the presentation and appraisal of requests, those linked to the transactions of necessary prior controls, as well as those relating to the execution of the refunds.
2. Nonetheless:
 - the periods of appraisal shall be limited to three months regarding the requests made after a six-month period, and to two months regarding requests made after a two-month period;
 - the execution of refund shall be made within one month of the decision.

Article 59:

Member states shall have the power to maintain or grant the taxable persons more favorable conditions for the refund of credits than those defined by Articles 56 to 58 above.

Article 60:

VAT credit whose refund is requested may not give rise to charging to the declaration of the next month. The credit shall be automatically cancelled, especially.

The provisions of the VAT Directive specify the list of taxable persons who may gain from the VAT credit refund (i) before determining the procedures for refunding the VAT credit (ii).

Draft Directive: Art.57- 1) Must gain from the right to refund of VAT:

a) Exporters.

The notion of exporter is freely defined by each Member State. Refund is conditional on the effectiveness of the repatriation of export earnings;

b) Taxable persons in a structural VAT credit situation due to the application of a reduced rate of VAT or VAT deductions at source on their sales of goods or services;

c) diplomatic missions and similar bodies, within the framework of the agreements from which they gain.

However, it is worth recalling some of the main principles governing VAT credit refunds (i).

NB: When the amount of deductible VAT shown on a return exceeds the amount of input VAT, the excess constitutes a VAT credit.

The VAT credit can be offset against the tax due for the following period.

However, it may happen that the taxpayer has not been able to collect enough VAT to offset the credit against subsequent periods. To avoid the risk of losing this credit, and to ensure VAT neutrality, the taxpayer must obtain a refund or reimbursement of this credit.

VAT refunds consist of requesting reimbursement of the deductible VAT credit that the company has not been able to offset against VAT due.

Chart 57: Reimbursable VAT ceiling

The following comments are in line with international practice.

In the case of exports, the refund is capped at the theoretical VAT credit calculated on exports for the period in question. This ceiling is also known as fictitious VAT or theoretical VAT.

To calculate the refundable credit ceiling, the theoretical VAT for previous periods which could not be used as a basis for a tax refund is added to the theoretical VAT for the period for which the refund application is made.

The VAT credit for which a refund has been requested and for which a decision has not yet been issued cannot be offset or deducted.

Chart 58: Resetting counters to zero

From the date of the refund request, the taxpayer loses the possibility of carrying forward the amount of the credit for subsequent tax returns. In effect, the request for restitution renders the existing credit null and void.

NB: The account must be reset to 0 from the date of submission of the request for restitution of the credit.



9.1. TAXABLE PERSONS ELIGIBLE FOR REFUND OF THE VAT CREDIT



The VAT directive establishes the principle that credit cannot be reimbursed to the taxable person, except in the cases provided for in the directive, while allowing member states to maintain or grant taxable persons more favorable credit reimbursement conditions than those defined in the vat directive.

The provisions on VAT refund conditions laid down in the VAT Directive therefore constitute a minimum condition, with Member States retaining the option of granting taxable persons more favorable conditions.

Taxable persons eligible for refund of the VAT credit
Exporters
Industrial companies with capital expenditure fixed by each member state
Companies going out of business
Taxable persons delivering goods other than for resale in the same condition as received.
Taxable persons who generate more than half of their annual sales from both goods and services are eligible for deduction and goods and services not eligible for deduction.
Taxable persons who acquire capital goods qualifying for deduction at a value of over USD 80,000 (incl. all taxes)
Taxable persons approved under the investment code

Draft Directive: Art.57.- 1) Must gain from the right to VAT refund:

- 2) In any of these cases, VAT cannot be refunded:
 - a) for purchase-resale activities, excluding the cases provided for in 1) b) of this article; (b) service exporters.
- 3) Member States may grant the right to VAT refund to activities or persons not provided for in 1) above.

In this case, the Member States shall forward to the Commission the updated list of activities or transactions gaining from the right to refund, not provided for in this Article.

• Exporters

The VAT Directive specifies that exporters are entitled to reimbursement of the VAT credit, without setting a time limit.

The refund of VAT to exporters is based on the "principle of border compensation", which consists of subjecting the exported product only to taxation of the country of destination, to avoid double taxation.

This principle is achieved by combining an exemption on sale with the refund of taxes levied on the price components of the exported product.

VAT credit refunds are justified by the fact that (in principle) the exported product is taxed at zero rate, but the exporter gains from the right to deduct the tax charged on the components of the exported product.

In this way, input VAT that cannot be offset against non-existent gross VAT (exempt on export) constitutes a VAT credit which, if not refunded, would be a definitive charge. This explains why input VAT is refunded in this case.

- *Industrial*

Industrial companies that have invested are eligible for VAT credit refunds. The VAT Directive does not set a time limit for applying for reimbursement of this VAT credit.

It is up to each Member State to determine the amount of the investment that must be made before the industrial company can claim a refund of its VAT credit.

NB: The notion of industrialism is defined by the national law of each member state.

- *Companies in a state of cessation of activity*

Businesses that have ceased transactions are entitled to request repayment of any remaining VAT credit, without any time limit.

For these companies, the refund must cover the entire credit, without limitation or constraint.

- *Taxable persons carrying out deliveries of goods other than resales in the state*

NB: Retailers who sell as-is are not eligible for VAT credit refunds.

According to article 4.5 of the VAT Directive, there are two types of traders: traders who buy goods to resell as is, and traders who resell goods after reconditioning.

Taxable persons making supplies of goods and who are not entitled to reimbursement of the VAT credit correspond to traders who purchase goods for resale in the same condition as received, without reconditioning.

NB: In general, it is considered that if an as-is reseller is in a VAT credit situation, it is because he has not yet destocked (i.e., he still has in stock part of the goods subject to input VAT). It will collect the VAT on the day it sells the goods, so its credit is only fictitious.

- *Partially taxable persons (with a deduction pro rata greater than 50%)*

Partial taxpayers who generate more than half of their annual sales from both tax-deductible and non-deductible transactions are eligible for VAT credit refunds.

Partial taxpayers are entitled to claim a refund at the end of the two-month period (2 months).

- *Taxable persons having acquired capital goods eligible to deduction for a value greater than USD 80,000 including tax*

The VAT Directive enshrines the generalization of VAT credit reimbursement for capital goods valued at over USD 80,000 including VAT.

A company making major investments may find itself in a VAT credit situation if the amount of VAT it has paid to the State on its investments exceeds the gross VAT collected from customers.

Most of the time, this credit situation is temporary and is quickly resolved. But if this is not the case, due to exceptionally large investments, the VAT advance made by the company is very detrimental to its cash flow. The VAT credit must be reimbursed if the credit situation extends beyond a certain period.

The taxable investor can request repayment of the VAT credit at the end of the two-month period (2 months) during which the credit is recorded.

NB : The amount to be refunded is limited to the VAT charged on the acquisition of the investment goods.

- *Taxpayers approved by the investment code*

Taxable persons approved in accordance with the provisions of the Member State's investment code may, at their request, obtain reimbursement of VAT credits available to them at the end of a declaration period set by the Member State.



11.2. METHODS OF REFUND OF THE VAT CREDIT

11.21. Possibility for each Member State to set a minimum VAT credit for refund

Member States have the option of making VAT credit refunds subject to the establishment of a minimum amount of VAT credit held by the taxable person.



In other words, each state can set a minimum amount above which the taxpayer can request the repayment of his credit.

However, the minimum amount of VAT credit for the refund claim must not exceed USD 2,000.

11.22. Submission of refund requests

Transaction	Period/deadline for filing the VAT credit refund request
Exporters, manufacturers, cessation of activity	At any time
Taxable persons who deliver goods other than those resulting from resale as is	At the end of a calendar semester
Taxable persons who make supplies of goods other than those resulting from resale in the same condition as received.	At the end of a six-month calendar period
Taxable persons who acquire capital goods are eligible for deduction with a value of over USD 80,000 including all taxes during the two-month period covered.	At the end of a six-month calendar period
Taxable persons approved according to the provisions of the investment code of each Member State	At the end of a reporting period set by the Member State

Chart 59: Reasons for VAT credit claim rejection

The main reasons for partial or total rejection of the VAT claimed are as follows:

1. Foreclosure

- Late submission of the claim: Persons eligible for a refund must submit their claim within a period (set by the Member State, not exceeding one year) following expiry of the month for which the refund is claimed, on penalty of foreclosure.
- Time limit on invoices: VAT on invoices issued prior to the year following the month for which reimbursement is requested no longer gives entitlement to reimbursement, and the amount of the tax must therefore not be deducted from the amount of tax collected on the settlement form.

2. Other reasons for rejection

- Invoice not presented;
- Irregular invoice (does not meet standards);
- Delivery note not accepted;
- Duplication;
- Absence of identification number;
- Invoice number: missing-overwritten-or added retrospectively (without certification);
- Invoice date: missing-overwritten-or added retrospectively;
- Invoice prior to company identification or option effective date;
- Beneficiary name: missing - overwritten - added subsequently (without certification);
- Invoice made out in the name of a third party;
- Absence of equipment designation;
- Imprecise destination of products or services (mixed use);
- Transactions recorded in an inappropriate account;
- Large quantities of building materials whose use is not justified by the company;
- Absence of payment references or incomplete payment references;
- Absence of bill of exchange acceptance date (debit system);
- Invoices not paid in full (partial rejection);
- In case of option: time limit not respected;
- Anticipated deductions (to be reintegrated in the next file);
- Credit note or rebate passed off as invoice (to be reintegrated twice);
- Unused credit or rebate to be reintegrated;
- Transactions excluded from the right of deduction and therefore from reimbursement.

11.23. Refund methods

The methods of refunding are left to the choice of each Member State.

Chart 60: Immediate refund to certain so-called corporate citizens

The following comments are consistent with international practice.

Some countries apply the principle of immediate reimbursement upon receipt of the VAT credit claim, in favor of "corporate citizens".

Other countries institute a system of refunding at least 50% of the VAT credit claimed as soon as the application is received. The application is then processed by the Administration.

Some other countries allocate a percentage of VAT to a special account in a national bank. This account is dedicated to the repayment of credits and is managed by the Tax Department. In this case, it is not necessary to go back to the Minister to issue tax-free certificates and/or refund cheques.

It is best practice to administer very short deadlines for VAT credit refunds. VAT credits are not budgetary expenditure and should therefore be reimbursed as quickly as possible. Best practice suggests a time limit of between 5 and 30 days, depending on the situation (classified as high, medium, or reduced risk). Implementing this procedure is a key factor in attracting investors.

It is also advisable to introduce online filing procedures for VAT credit claims. The dematerialization and digitization of procedures facilitates follow-up and ensures greater reliability in the processing of claims.





SHEET 12

CONTROL, RECOVERY,
LITIGATION, PRESCRIPTION RULES

SHEET 12

CONTROL, RECOVERY, LITIGATION, PRESCRIPTION RULES

*Directive C/DIR.1/05/09 harmonizing the legislation
of ECOWAS Member States regarding Value Added Tax (VAT)*

Article 61:

The tax provisions specific to each Member State in terms of control, procedure, recovery, litigation, and prescription are applicable to VAT



Each member state is responsible for its own control, recovery and litigation procedures, as well as statutes of limitation

It is up to each Member State to set its own rules for VAT control, procedure, adjustment, litigation, and limitation.

ANNEXES

ANNEXES

1. COMMON LISTS OF PRODUCTS EXEMPTED FROM VAT (Annexed to Directive C/DIR.2/12/17)

The common lists of VAT-exempt products annexed to Directive C/DIR.2/12/17 amending Directive C/DIR.1/05/09 on the harmonization of VAT legislation of ECOWAS member states have been revised to rationalize exemptions by deleting those that do not meet social equity criteria.

The annexes in question concern:

- Common list of VAT-exempt basic foodstuffs, medicines and pharmaceutical products, medical equipment, and their inputs;
- Common list of VAT-exempt inputs for agricultural, livestock and fishery products used by producers;
- Common list of VAT-exempt small-scale fishing equipment and agricultural machinery and equipment;
- Joint list of VAT-exempt solar panels and their inputs, subject of the annex.

The appendices are presented in a two-column table:

- The 1st column recalls the TEC number.
The ECOWAS TEC comprises a tariff and statistical nomenclature (i.e., the description of goods within the meaning of the tariff, together with their classification numbers or tariff codes) and a set of duties and taxes.
- The 2nd column gives the customs name of the product.

The draft Directive currently being validated proposes a new list of exemptions designed to rationalize and meet the objectives of domestic revenue mobilization, as part of the implementation of measures to support fiscal transition in West Africa.

The various existing lists have been merged into a single common list, which now forms an integral part of the Draft Directive, to facilitate reading and provide access to the exhaustive text of the regional VAT law.

Project: New common list of products exempted at Community level

Nomenclature Tarifaire Statistique (N.T.S)	Designation des marchandises	Designação das mercadorias	Commodity description
Chapitre 1	Animaux vivants	Animais vivos	Live animals
0407.11.00.00	De volailles de l'espèce Gallus domesticus	De aves da espécie Gallus domesticus	Of fowls of the species Gallus domesticus
0407.19.00.00	Autres	Outros	Other
0701.10.00.00	De semence (Pommes de terre, à l'état frais ou réfrigéré)	Batata-semence ()	Seed (Potatoes, fresh or chilled)
0702.00.00.00	Tomates, à l'état frais ou réfrigéré	Tomates, frescos ou refrigerados	Tomatoes, fresh or chilled
0703.10.00.00	Oignons et échalotes		
0709.60.00.00	Piments du genre Capsicum ou du genre Pimenta	Pimentos (pimentões) e pimentas do género Capsicum ou do género Pimenta	Fruits of the genus Capsicum or of the genus Pimenta
0713.10.10.00	De semence (Pois (Pisum sativum) :	Para sementeira	Seeds (Peas (Pisum sativum))
0713.31.10.00	'Haricots des espèces Vigna mungo (L.) Hepper ou Vigna radiata (L.) Wilczek : De semence	Para sementeira	Beans of the species Vigna mungo (L.) Hepper or Vigna radiata (L.) Wilczek: Seeds
0713.32.10.00	Haricots « petits rouges» (haricots Adzuki) (Phaseolus ou Vigna angularis) : De semence	Para sementeira	Small red (Adzuki) beans (Phaseolus or Vigna angularis): Seeds
0713.33.10.00	Haricots communs (Phaseolus vulgaris) : De semence	Para sementeira	Kidney beans, including white pea beans (Phaseolus vulgaris): Seeds
0713.34.10.00	Pois Bambara (Pois de terre) (Vigna subterranea ou Voandzeia subterranea) : De semence	Para sementeira	Bambara beans (Vigna subterranea or Voandzeia subterranea): Seeds
0713.35.10.00	'Dolique à œil noir (Pois du Brésil, Niébé) (Vigna unguiculata) : De semence	Para sementeira	Cow peas (Vigna unguiculata): Seeds
0713.35.90.00	Autres	Outros	Other
0714.10.00.00	Racines de manioc	Raízes de mandioca	Manioc (cassava)
0714.20.00.00	Patates douces	Batatas-doces	Sweet potatoes

Nomenclature Tarifaire Statistique (N.T.S)	Designation des marchandises	Designação das mercadorias	Commodity description
0714.30.00.00	Ignames (Dioscorea spp.)	Inhames (Dioscorea spp.)	Yams (Dioscorea spp.)
0714.90.00.00	Autres (souchet)	Outros (nozes de tigre)	Other(tiger nuts)
0904.21.00.00	Séchés, non broyés ni pulvérisés	Secos, não triturados nem em pó	Dried, neither crushed nor ground
1005.10.00.00	Maïs. De semence	Para sementeira (semeadura)	Maize (corn).Seed
1005.90.00.00	Autre (Maïs)	Outros (milho)	Maize (corn).Other
1006.10.10.00	Riz en paille (riz paddy) : semence	Para sementeira (semeadura)	Rice in the husk (paddy or rough):Seed
1006.10.90.00	Autres	Outros	Other
1007.10.00.00	Sorgho à grains. De semence	Para sementeira (semeadura)	Grain sorghum.Seed
1007.90.00.00	Autres	Outros	Other
1008.21.00.00	Millet : De semence	Para sementeira (semeadura)	Millet :Seed
1008.29.00.00	Autres	Outros	Other
1008.40.00.00	Fonio (Digitaria spp.)	Milhã (Digitaria spp.)	Fonio (Digitaria spp.)
1201.10.00.00	Fèves de soja, même concassées. De semence	Para sementeira (semeadura)	Soya beans, whether or not broken.Seed
1201.90.00.00	Autres	Outras	Other
1202.30.00.00	Arachides non grillées ni autrement cuites, même décortiquées ou concassées. De semence	Para sementeira (semeadura)	Ground-nuts, not roasted or otherwise cooked, whether or not shelled or broken. Seed
1202.42.90.00	-Autres	-Outros	-Other
1207.21.00.00	Graines de coton : De semence	Para sementeira (semeadura)	Cotton seeds :Seed
1207.40.00.00	Graines de sésame	Sementes de gergelim (sésamo)	Sesamum seeds
1207.99.10.00	Graines de karité	Sementes de karité	Shea nuts (karate nuts)
1209.99.00.00	Autres	Outros	Other
1515.90.19.00	Beurre de karité -Autres	Manteiga de Karite-Outros	Shea (karite) oil and its fractions:-Other
2801.20.00.00	Iode	Iodo	Iodine
2918.22.00.00	Acide o-acétylsalicylique, ses sels et ses esters	Ácido o-acetilsalicílico, seus sais e seus ésteres	O-Acetylsalicylic acid, its salts and esters
2930.40.00.00	Méthionine	Metionina	Methionine

Nomenclature Tarifaire Statistique (N.T.S)	Designation des marchandises	Designação das mercadorias	Commodity description
29.36	Provitamines et vitamines, naturelles ou reproduites par synthèse (y compris les concentrats naturels), ainsi que leurs dérivés utilisés principalement en tant que vitamines, mélangés ou non entre eux, même en solutions quelconques.	Provitaminas e vitaminas, naturais ou reproduzidas por síntese (incluindo os concentrados naturais), bem como os seus derivados utilizados principalmente como vitaminas, misturados ou não entre si, mesmo em quaisquer soluções.	Provitamins and vitamins, natural or reproduced by synthesis (including natural concentrates), derivatives thereof used primarily as vitamins, and intermixtures of the foregoing, whether or not in any solvent.
29.37	Hormones, prostaglandines, thromboxanes et leucotriènes, naturels ou reproduits par synthèse ; leurs dérivés et analogues structurels, y compris les polypeptides à chaîne modifiée, utilisés principalement comme hormones.	Hormonas, prostaglandinas, tromboxanos e leucotrienos, naturais ou reproduzidos por síntese ; seus derivados e análogos estruturais, incluindo os polipeptídeos de cadeia modificada, utilizados principalmente como hormonas.	Hormones, prostaglandins, thromboxanes and leukotrienes, natural or reproduced by synthesis; derivatives and structural analogues thereof, including chain modified polypeptides, used primarily as hormones.
2938.10.00.00	Rutoside (rutine) et ses dérivés	Rutósido (rutina) e seus derivados	Rutoside (rutin) and its derivatives
2939.11.00.00	'Concentrés de paille de pavot ; buprénorphine (DCI), codéine, dihydrocodéine (DCI), éthylmorphine, étorphine (DCI), héroïne, hydrocodone (DCI), hydromorphone (DCI), morphine, nicomorphine (DCI), oxycodone (DCI), oxymorphone (DCI), pholcodine (DCI), thébacone (DCI) et thébaïne ; sels de ces produits	Concentrados de palha de dormideira (papoula) ; buprenorfina (DCI), codeína, di-hidrocodeína (DCI), etilmorfina, etorfina (DCI), folcodina (DCI), heroína, hidrocodona (DCI), hidromorfona (DCI), morfina, nicomorfina (DCI), oxicodona (DCI), oximorfona (DCI), tebacona (DCI) e tebaína ; sais destes produtos	Concentrates of poppy straw; buprenorphine (INN), codeine, dihydrocodeine (INN), ethylmorphine, etorphine (INN), heroin, hydrocodone (INN), hydromorphone (INN), morphine, nicomorphine (INN), oxycodone (INN), oxymorphone (INN), pholcodine (INN), thebacon (INN) and thebaine; salts thereof
2939.19.00.00	Autres	Outros	Other
2939.20.00.00	'Alcaloïdes du quinquina et leurs dérivés ; sels de ces produits	Alcaloides da quina e seus derivados ; sais destes produtos	Alkaloids of cinchona and their derivatives; salts thereof
2939.30.00.00	Caféine et ses sels	Cafeína e seus sais	Caffeine and its salts
2939.41.00.00	Ephédrine et ses sels	Efedrina e seus sais	Ephedrine and its salts

Nomenclature Tarifaire Statistique (N.T.S)	Designation des marchandises	Designação das mercadorias	Commodity description
2939.42.00.00	Pseudoéphédrine (DCI) et ses sels	Pseudoefedrina (DCI) e seus sais	Pseudoephedrine (INN) and its salts
2939.49.00.00	Autres	Outros	Other
2939.51.00.00	Fénétylline (DCI) et ses sels	Fenetilina (DCI) e seus sais	Fenetylline (INN) and its salts
2939.59.00.00	Autres	Outros	Other
2939.61.00.00	Ergométrine (DCI) et ses sels	Ergometrina (DCI) e seus sais	Ergometrine (INN) and its salts
2939.62.00.00	Ergotamine (DCI) et ses sels	Ergotamina (DCI) e seus sais	Ergotamine (INN) and its salts
2939.63.00.00	Acide lysergique et ses sels	Ácido lisérgico e seus sais	Lysergic acid and its salts
2939.69.00.00	Autres	Outros	Other
2940.00.00.00	Sucres chimiquement purs, à l'exception du saccharose, du lactose, du maltose, du glucose et du fructose (lévulose) ; éthers, acétals et esters de sucres et leurs sels, autres que les produits des n°s 29.37, 29.38 et 29.39.	Açúcares quimicamente puros, exceto sacarose, lactose, maltose, glicose e fructose (levulose) ; éteres, acetais e ésteres de açúcares, e seus sais, exceto os produtos das posições 29.37, 29.38 ou 29.39.	Sugars, chemically pure, other than sucrose, lactose, maltose, glucose and fructose; sugar ethers, sugar acetals and sugar esters, and their salts, other than products of heading 29.37, 29.38 or 29.39.
29.41	Antibiotiques.	Antibióticos.	Antibiotics.
2942.00.00.00	Autres composés organiques.	Outros compostos orgânicos.	Other organic compounds.
Chap 30	Glandes et autres organes à usages opothérapeutiques, à l'état desséché, même pulvérisés ; extraits, à usages opothérapeutiques, de glandes ou d'autres organes ou de leurs sécrétions ; héparine et ses sels ; autres substances humaines ou animales préparées à des fins thérapeutiques ou prophylactiques non dénommées ni comprises ailleurs.	Glândulas e outros órgãos para usos opoterápicos, dessecados, mesmo em pó ; extratos de glândulas ou de outros órgãos ou das suas secreções, para usos opoterápicos ; heparina e seus sais ; outras substâncias humanas ou animais preparadas para fins terapêuticos ou profiláticos, não especificadas nem compreendidas noutras posições.	Glands and other organs for organo-therapeutic uses, dried, whether or not powdered; extracts of glands or other organs or of their secretions for organo-therapeutic uses; heparin and its salts; other human or animal substances prepared for therapeutic or prophylactic uses, not elsewhere specified or included.
3701.10.00.00	Pour rayons X	Para raios X	For X-ray
3702.10.00.00	Pour rayons X	Para raios X	For X-ray

Nomenclature Tarifaire Statistique (N.T.S)	Designation des marchandises	Designação das mercadorias	Commodity description
3821.00.00.00	Milieux de culture préparés pour le développement et l'entretien des micro-organismes (y compris les virus et les organismes similaires) ou des cellules végétales, humaines ou animales.	Meios de cultura preparados para o desenvolvimento e a manutenção de microrganismos (incluindo os vírus e os organismos similares) ou de células vegetais, humanas ou animais.	Prepared culture media for the development or maintenance of micro-organisms (including viruses and the like) or of plant, human or animal cells.
38.22	Réactifs de diagnostic ou de laboratoire sur tout support et réactifs de diagnostic ou de laboratoire préparés, même sur un support, même présentés sous forme de trousse, autres que ceux du n° 30.06 ; matériaux de référence certifiés.	Reagentes de diagnóstico ou de laboratório em qualquer suporte e reagentes de diagnóstico ou de laboratório preparados, mesmo num suporte, mesmo apresentados sob a forma de estojos, exceto os da posição 30.06 ; materiais de referência certificados.	Diagnostic or laboratory reagents on a backing, prepared diagnostic or laboratory reagents whether or not on a backing, whether or not put up in the form of kits, other than those of heading 30.06; certified reference materials.
4014.10.00.00	Préservatifs	Preservativos	Sheath contraceptives
4014.90.20.00	Poires à injections, poires compte-gouttes et articles similaires	-Peras para injeções, peras conta-gotas e semelhantes	Bulbs for syringes and medicine droppers and similar articles
4015.12.00.00	Des types utilisés pour la médecine, la chirurgie, l'art dentaire ou l'art vétérinaire	-Do tipo utilizado em medicina, cirurgia, odontologia ou veterinária	Of a kind used for medical, surgical, dental or veterinary purposes
6304.20.00.00	Moustiquaires pour lits mentionnées dans la Note 1 de sous-positions du présent Chapitre	Mosquiteiros para camas mencionados na Nota de subposição 1 do presente Capítulo	Bed nets specified in Subheading Note 1 to this Chapter
7015.10.00.00	Verres de lunetterie médicale	Vidros para lentes correctives	Glasses for corrective spectacles
7017.20.00.00	En autre verre d'un coefficient de dilatation linéaire n'excédant pas 5×10^{-6} par Kelvin entre 0 °C et 300 °C	De outro vidro com um coeficiente de dilatação linear não superior a 5×10^{-6} por Kelvin, entre 0 °C e 300 °C	Of other glass having a linear coefficient of expansion not exceeding 5×10^{-6} per Kelvin within a temperature range of 0 °C to 300 °C
8419.20.00.00	Stérilisateur médico-chirurgicaux ou de laboratoires	Esterilizadores médico-cirúrgicos ou de laboratório/	Medical, surgical or laboratory sterilisers

Nomenclature Tarifaire Statistique (N.T.S)	Designation des marchandises	Designação das mercadorias	Commodity description
87.13	Fauteuils roulants et autres véhicules pour invalides, même avec moteur ou autre mécanisme de propulsion.	Cadeiras de rodas e outros veículos para pessoas com incapacidade, mesmo com motor ou outro mecanismo de propulsão.	Carriages for disabled persons, whether or not motorised or otherwise mechanically propelled.
8714.20.00.00	De fauteuils roulants ou d'autres véhicules pour invalides	De cadeiras de rodas ou de outros veículos para inválidos	Of carriages for disabled persons
90.11	Microscopes optiques, y compris les microscopes pour la photomicrographie, la cinéphotomicrographie ou la microprojection.	Microscópios óticos, incluindo os microscópios para fotomicrografia, cinefotomicrografia ou microprojecção.	Compound optical microscopes, including those for photomicrography, cinephotomicrography or microproj]ection.
90.12	Microscopes autres qu'optiques ; diffractographes.	Microscópios, exceto óticos ; difractógrafos.	Microscopes other than optical microscopes; diffraction apparatus.
9019.20.00.00	Appareils d'ozonothérapie, d'oxygénothérapie, d'aérosolthérapie, appareils respiratoires de réanimation et autres appareils de thérapie respiratoire	Aparelhos de ozonoterapia, de oxigenoterapia, de aerossolterapia, aparelhos respiratórios de reanimação e outros aparelhos de terapia respiratória	Ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus
9020.00.00.00	Autres appareils respiratoires et masques à gaz, à l'exclusion des masques de protection dépourvus de mécanisme et d'élément filtrant amovible.	Outros aparelhos respiratórios e máscaras contra gases, exceto as máscaras de proteção desprovidas de mecanismo e de elemento filtrante amovível.	Other breathing appliances and gas masks, excluding protective masks having neither mechanical parts nor replaceable filters.

Nomenclature Tarifaire Statistique (N.T.S)	Designation des marchandises	Designação das mercadorias	Commodity description
90.21	Articles et appareils d'orthopédie, y compris les ceintures et bandages médico-chirurgicaux et les béquilles ; attelles, gouttières et autres articles et appareils pour fractures ; articles et appareils de prothèse ; appareils pour faciliter l'audition aux sourds et autres appareils à tenir à la main, à porter sur la personne ou à implanter dans l'organisme, afin de compenser une déficience ou une infirmité.	Artigos e aparelhos ortopédicos, incluindo as cintas e fundas médico-cirúrgicas e as muletas ; talas, goteiras e outros artigos e aparelhos para fraturas ; artigos e aparelhos de prótese ; aparelhos para facilitar a audição dos surdos e outros aparelhos para compensar uma deficiência ou uma incapacidade, destinados a serem transportados à mão ou sobre as pessoas ou a serem implantados no organismo.	Orthopaedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability.
90.22	Appareils à rayons X et appareils utilisant les radiations alpha, bêta ou , gamma ou d'autres radiations ionisantes, même à usage médical, chirurgical, dentaire ou vétérinaire, y compris les appareils de radiophotographie ou de radiothérapie, les tubes à rayons X et autres dispositifs générateurs de rayons X, les générateurs de tension, les pupitres de commande, les écrans, les tables, fauteuils et supports similaires d'examen ou de traitement.	Aparelhos de raios X e aparelhos que utilizem radiações alfa, beta, gama ou outras radiações ionizantes, mesmo para usos médicos, cirúrgicos, odontológicos ou veterinários, incluindo os aparelhos de radiografia ou de radioterapia, os tubos de raios X e outros dispositivos geradores de raios X, os geradores de tensão, as mesas de comando, as telas de visualização, as mesas, cadeiras e suportes semelhantes para exame ou tratamento.	Apparatus based on the use of X-rays or of alpha, beta, gamma or other ionising radiations, whether or not for medical, surgical, dental or veterinary uses, including radiography or radiotherapy apparatus, X-ray tubes and other X-ray generators, high tension generators, control panels and desks, screens, examination or treatment tables, chairs and the like.
5207.90.10.00	Fils pour la pêche	Fios para a pesca	Fishing yarn
5608.11.00.00	Filets confectionnés pour la pêche	Redes confeccionadas para a pesca	Made up fishing nets
5608.90.10.00	Filets confectionnés pour la pêche	Fios confeccionados para a pesca	Made up fishing nets
7020.00.10.00	Flotteurs pour filets de pêche	Boias para redes de pesca	Fishing floats for fishing nets

Nomenclature Tarifaire Statistique (N.T.S)	Designation des marchandises	Designação das mercadorias	Commodity description
7806.00.20.00	Lests pour filets de pêche	Lastro para redes de pesca	Lead weights for fishing nets
8424.41.00.00	Pulvérisateurs portables	Pulvérisateurs portables	Portable sprayers
8424.49.00.00	Autres	Outros	Other
8432.10.00.00	Charrues	Arados e charruas	Ploughs
8432.21.00.00	Herses à disques (pulvérisateurs)	Grades de discos	Disc harrows
8432.29.00.00	Autres	Outros	Other
8432.31.00.00	Semoirs, plantoirs et repiqueurs, sans labour	Semeadores, plantadores e transplantadores, de plantio direto	No-till direct seeders, planters and transplanters
8432.39.00.00	Autres	Outros	Other
8432.41.00.00	Epandeurs de fumier	Espalhadores de estrume	Manure spreaders
8432.42.00.00	Distributeurs d'engrais	Distribuidores de adubos (fertilizantes)	Fertiliser distributors
8433.20.00.00	Faucheuses, y compris les barres de coupe à monter sur tracteur	Ceifeiras, incluindo as barras de corte para montagem em tratores	Other mowers, including cutter bars for tractor mounting
8433.30.00.00	Autres machines et appareils de fenaison	Outras máquinas e aparelhos para colher e dispor o feno	Other haymaking machinery
8433.40.00.00	Presses à paille ou à fourrage, y compris les presses ramasseuses	Enfardadeiras de palha ou de forragem, incluindo as enfardadeiras-apanhadeiras	Straw or fodder balers, including pick-up balers
8433.51.00.00	Moissonneuses-batteuses	Ceifeiras-debulhadoras (colheitadeiras combinadas com debulhadoras)	Combine harvester-threshers
8433.53.00.00	Machines pour la récolte des racines ou tubercules	Máquinas para colheita de raízes ou tubérculos	Root or tuber harvesting machines
8433.59.00.00	Autres	Outros	Other
8433.60.00.00	Machines pour le nettoyage ou le triage des œufs, fruits ou autres produits agricoles	Máquinas para limpar ou selecionar ovos, fruta ou outros produtos agrícolas	Machines for cleaning, sorting or grading eggs, fruit or other agricultural produce
84.34	Machines à traire et machines et appareils de laiterie.	Máquinas de ordenhar e máquinas e aparelhos para a indústria de laticínios.	Milking machines and dairy machinery.

Nomenclature Tarifaire Statistique (N.T.S)	Designation des marchandises	Designação das mercadorias	Commodity description
84.36	Autres machines et appareils pour l'agriculture, l'horticulture, la sylviculture, l'aviculture ou l'apiculture, y compris les germoirs comportant des dispositifs mécaniques ou thermiques et les couveuses et éleveuses pour l'aviculture.	Outras máquinas e aparelhos para agricultura, horticultura, silvicultura, avicultura ou apicultura, incluindo os germinadores equipados com dispositivos mecânicos ou térmicos e as chocadeiras e criadeiras para avicultura.	Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders.
8541.42.00.00	Cellules photovoltaïques non assemblées en modules ni constituées en panneaux	Células fotovoltaicas não montadas em módulos nem em painéis	Photovoltaic cells not assembled in modules or made up into panels
8541.43.00.00	Cellules photovoltaïques assemblées en modules ou constituées en panneaux	Células fotovoltaicas montadas em módulos ou em painéis	Photovoltaic cells assembled in modules or made up into panels

2. CASE STUDIES ON SOME SENSITIVE VAT ISSUES

2.1. Example of a transaction subject to VAT: Practical case

1. A manufacturer sells a product to a wholesaler for 1,000,000 excluding VAT, plus 18% VAT, i.e., a total of 1,180,000. He invoices the wholesaler for 1,180,000 including all taxes. He pays the Administration the 180,000 representing the VAT, via his VAT declaration.
2. The wholesaler sells the goods to a retailer for 1,300,000 exclusive of VAT, plus 18% VAT, i.e., 234,000. He therefore invoices him for a total of 1,534,000 (i.e.: 1,300,000 + 234,000). The invoice includes VAT of 234,000. Under "VAT collected", the wholesaler indicates the VAT he has invoiced to the retailer, i.e., 234,000. In his VAT return, he deducts the 180,000 charged to him by the producer. He declares the 54,000 (234,000 - 180,000) under "VAT due" to the State. He pays the State 54,000 when he files his periodic return.
3. The Retailer sells the goods to a Consumer, for 1,500,000 exclusive of VAT, plus 18% VAT (i.e.: 1,500,000 x 18% = 270,000). He therefore invoices the Consumer: (1,500,000 (Price excl. VAT) + 270,000) = 1,770,000. The Consumer therefore pays the Retailer VAT of 270,000 on top of the price excluding VAT. Under "VAT collected", the Retailer indicates the VAT he has claimed from the Consumer, i.e., 270,000. In his VAT return, he deducts the 234,000 charged to him by the Wholesaler. He declares the 36,000 (i.e., 270,000 - 234,000) to the State under "VAT due". He pays the State 36,000 when he files his periodic return.
4. The government has collected the following VAT in instalments: 180,000 + 54,000 + 36,000 = 270,000.

VAT collected by the State	Amount
VAT paid by the Manufacturer	180,000
VAT paid by the Wholesaler	54,000
VAT paid by Retailer	36,000
Total	270,000

2.2. VAT on bank interest: Practical case

The provision of interest on term deposits and other bank accounts. The transaction consisting in a natural or legal person opening an account in the books of a bank, remunerated by interest, constitutes a business subject to VAT. In this case, it is up to the recipient of the interest to comply with the obligation to declare and pay VAT, in accordance with ordinary law. Unless otherwise stipulated in an agreement between the depositor and the bank, interest on term deposits or current accounts is deemed to include VAT. In this case, it is up to the bank, as the actual payer, to bear the VAT, which must be invoiced and declared by the depositor, the interest beneficiary, as the legal payer.

Otherwise, the beneficiary of the interest will have to reconstitute the amount of interest to bring out the corresponding VAT.

Example: Claiming VAT on bank interest (not paid by the bank)

(VAT at 18%, in our case)

Payment by the bank of 10,000,000 in interest on a term deposit.

The transaction is subject to withholding of income tax (IT), which is deducted from the transaction by the bank (IT at a rate of 10%, in our case).

On May 15, 2020, the bank transfers to the depositor's account the amount of:

$10.000.000 - (10.000.000 \times 10\%) = 9.000.000$

The depositor receives his bank statement on July 2, 2021.

- Solution

The depositor is required to reconstitute the VAT (at the rate of 18%) as follows:

Gross amount: $9.000.000 \times 10/90 = 10.000.000$

VAT (at 18%) = $10.000.000 \times 18\% = 1.800.000$

- The generating event is the receipt of the bank statement,
- The depositor should mention this transaction in his declaration for the month of August, corresponding to the month following that of the generating event.

2.3. Schema for taxation of deliveries and services to oneself

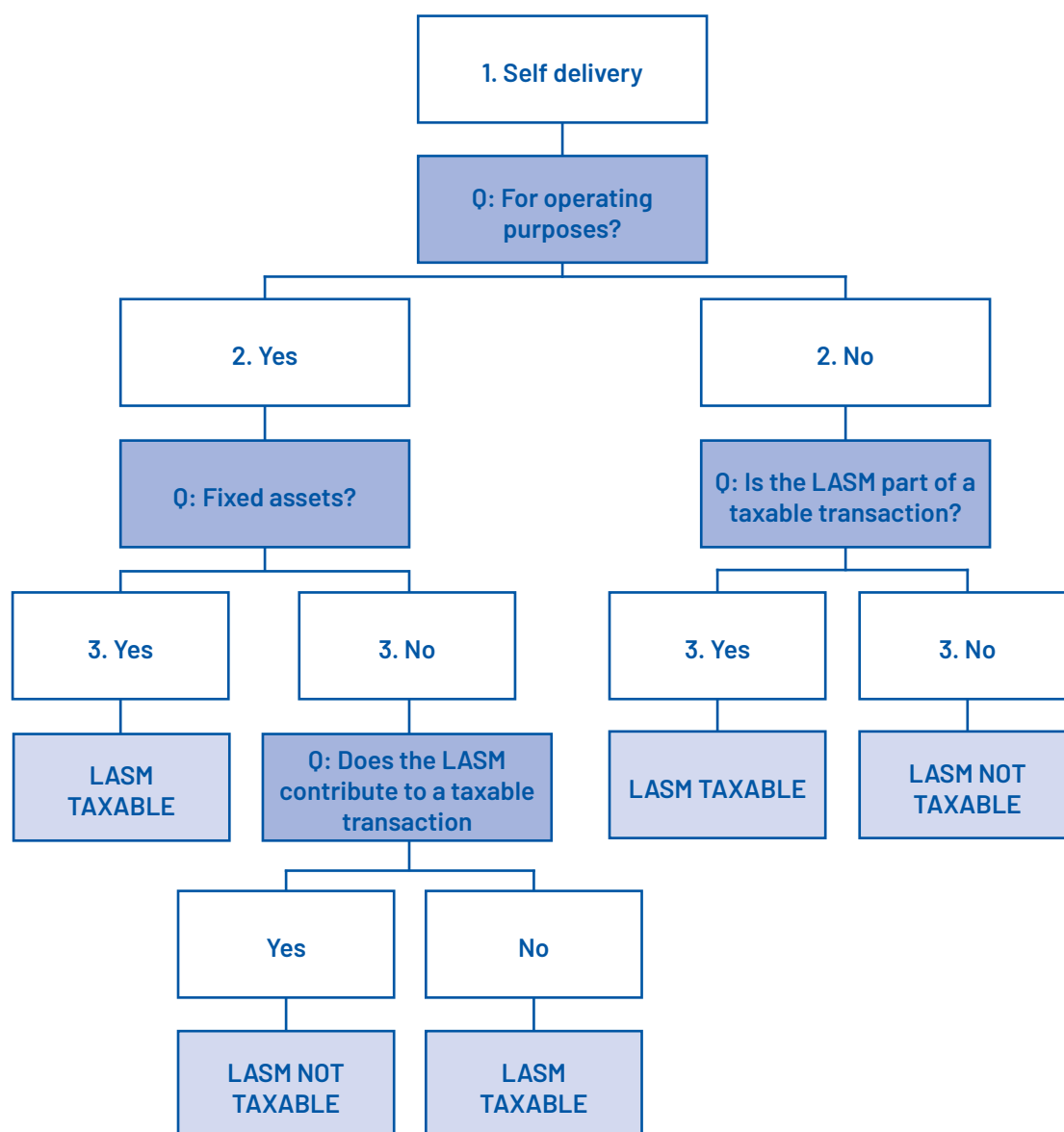
- **Definitions** – rules (Cf. II.2.22.3 and II.2.22.7)

The following are treated as deliveries to oneself subject to VAT:

- the delivery of movable and immovable tangible goods by natural or legal persons, for their own use or that of their business, or to be transferred free of charge to third parties,
- provided that the VAT on the goods delivered, or on their component parts, was fully or partially deducted at the time of acquisition.

The provision of services to oneself subject to VAT means:

- services resulting from the use of a company asset for needs other than those of the business, when this asset, at the time of acquisition, lead to full or partial deduction of VAT,
- services performed by the company for purposes other than those for which it was established.



2.4. Transactions carried out by a taxable person not resident in the Member State: case study

Definition – rules (Cf. I.1.13)

When not resident in the Member State, the foreign individual or legal entity carrying out a transaction subject to VAT in the Member State must have a representative resident in the Member State accredited by the tax authorities, who agrees to complete the formalities required of taxpayers and to pay VAT on behalf of the taxable person. The tax representative is jointly and severally liable with the taxable person for value of the tax.

Member States lay down the tax obligations of taxable persons not established on their territory, who carry out taxable transactions there.

If a representative has not been appointed, VAT and any related penalties must be paid by the customer on behalf of the person who does not have a permanent establishment in the country.

International practice

> Two mechanisms can be adopted here for the liquidation of VAT:

Reverse charge mechanism: the beneficiary of the transaction declares the corresponding tax under "output VAT" and "deductible VAT" on the same return (his own), provided that the general conditions for deductibility of the tax are met (RF no. 2816).

The VAT on account mechanism⁵⁵: The beneficiary declares the corresponding VAT in a declaration other than his own, by order and on behalf of the service provider/supplier residing abroad. VAT is then paid in the name and on behalf of this supplier.

The beneficiary then enters the corresponding VAT on his own tax return under "Deductible VAT".

NB: The Community must opt for one of the two systems, the first of which is in line with international best practice, as it ensures less administrative effort and provides the taxpayer with a constant cash flow.

- Appointment of a tax representative⁵⁶

To be accredited by the tax authorities, the tax representative must offer guarantees of solvency and credibility. In particular, he or she must have no history of fraudulent behavior.

NB: Representation cannot be presumed. It must be based on a formal act expressly designating the representative by the person he or she represents.

Note: Taxpayers residing abroad must indicate on their invoices the tax identification number of their representative (in the Member State) if they have one, or that of their customer.

NB: If the non-resident taxable person has not appointed a fiscal representative, the customer on whose behalf the services are rendered is responsible for paying the VAT and any penalties.

If the non-resident taxable person has not appointed a fiscal representative, the customer on whose behalf the services are rendered is responsible for paying the VAT and any penalties.

How VAT is calculated : The taxable amount for VAT purposes is the gross amount, exclusive of tax, of the amounts paid. The gross amount excluding VAT is the invoice amount after deduction of sales tax.

The VAT base is different from the income tax base.

VAT will be applied to the gross amount invoiced, whereas income tax will be applied to the gross amount invoiced - the discount.

VAT	Taxable base = Gross amount invoiced
Income tax:	Taxable base = Gross amount invoiced – discount

55 The VAT on account is paid, even if the beneficiary company has a VAT credit.

56 Jurisdictions often require foreign suppliers to appoint a tax representative who is resident or has an establishment in the jurisdiction to collect and pay VAT on their supplies. This was particularly prevalent in the past when such cross-border transactions were relatively few and each transaction was for quite large amounts (OECD 2017 – Page 33) For a business with low turnover in the taxing jurisdiction, the cost of maintaining a tax representative may be disproportionate to its income, particularly in cases where the tax representative transfers the risks of non-compliance to the foreign supplier by requiring them to post a guarantee. It can be difficult for suppliers to engage a representative who agrees to play this role when he or she is jointly and severally liable for the foreign supplier's VAT obligations. These undesirable consequences should be carefully considered when designing an identification-based collection regime.

Example :

A non-resident company provides a service in a Member State. The company sends an invoice for a technical assistance fee of 100,000,000 CFA francs excluding tax.

The company has not appointed a tax representative.

The VAT rate in the member state is 18%.

Income tax on sums paid to non-domiciled companies is 25% based on the amount before tax after deduction of 20%.

Income tax must be deducted at source.

Question:

How much VAT and income tax must be deducted for the member state?

Solutions:

1st case: if the non-resident service provider has charged VAT to its invoice.

Nature	Amount
Invoice amount (gross amount)	100,000,000
VAT (at the rate of 18%)	$(100,000,000 \times 18\%) = 18,000,000$
Amount including tax	$(100,000,000 + 18,000,000) = 118,000,000$
Income tax	
Income tax calculation basis	$(100,000,000 - 20\%) = 80,000,000$
Income tax (at the rate of 25%)	$(80,000,000 \times 25\%) = 20,000,000$
Amount to be withheld for the Member State	
VAT	18,000,000
Income tax	20,000,000

2nd case: if the non-resident service provider has drawn up a net invoice

NB: Very often, contracts include a clause obliging the recipient of the services to pay remuneration net of all taxes.

In this case, the debtor (the beneficiary resident in the Member State) assumes responsibility for the income tax payable by the non-resident service provider..

Nature	Amount
Net amount invoiced and paid	100,000,000
Net amount = Gross amount - IT	
Gross	$(100,000,000) \times 100 = 125,000,000$ $[100 - (80 \times 25\%)]$
VAT (at the rate of 18%)	$(125,000,000 \times 18\%) = 22,500,000$
Income tax	
Income tax calculation basis	$(125,000,000 - 20\%) = 100,000,000$
Income tax (at the rate of 25%)	$(100,000,000 \times 25\%) = 25,000,000$
Amount to be withheld for the Member State	
VAT	22,500,000
Income tax	25,000,000

57 NB: Special case of contracts negotiated without any taxation in the Member State. It very often happens that the contracts include a clause which obliges the person receiving the services to pay a remuneration net of all taxes and duties.

> Obligation of the company resident in the Member State

Depending on the system chosen, VAT will be paid through:

- Either from the mechanism of VAT reverse charge;
- Either from the mechanism of VAT for account.

Good practice to remember

1. Authorize invoices to be issued in accordance with the rules of the supplier's authority
2. Accept commercial documentation issued for purposes other than VAT (e.g., electronic receipts)
3. Accept invoices in the languages of the taxing authority's main trading partners
4. Accept that invoicing obligations be as simple as possible, for example, by allowing the customer to print the invoice himself.

2.5. TVA sur les biens d'occasion : Cas pratique

Définition (Cf. II.22.9 – V.5.21)

Draft Directive: Art.27 - As an exception to the provisions of the preceding articles, the tax base may be constituted by the margin for the following transactions:

1. Draft Directive: Art.27- As an exception to the provisions of the preceding articles, the tax base may be constituted by the margin for the following transactions:
2. Sales of second-hand goods carried out by professionals. Second-hand goods are defined as goods that have been used and are suitable for re-use in their current state or after repair.
3. Brokerage transactions carried out by travel agencies and tour operators.
4. In the above cases, the tax base is the difference between the selling price and the cost price.
5. Taxable persons who pay value-added tax on the margin may not deduct input value-added tax.
6. Member States shall notify the Commission of the updated list of transactions subject to VAT on the margin, other than those referred to above.

Second-hand goods are tangible individual property that can be reused, either as is or after repair. To qualify as second-hand, goods must have been used and be suitable for reuse. The goods may have been repaired, provided this only results in simple restoration.

Used goods that have undergone a transformation (modification of the essential characteristics of the initial object) or a genuine renovation (when the value of the elements used for the refurbishment is greater than that of the used good plus the cost of the transaction) do not qualify as second-hand.

Sales of second-hand goods by a "second-hand goods dealer"

Sales of second-hand goods by a "second-hand goods dealer" are subject to VAT, regardless of the age, nature, or date of acquisition of the goods sold.

The taxable amount is the difference between the selling price and the purchase price charged by the supplier.

If the parties have concluded a sales contract stipulating an "outward price", the used-goods trader bears transport costs. As such, they do not need to be included in the VAT base, i.e., the purchase price.

On the other hand, if the price is stipulated as "carriage paid", transport costs are payable by the supplier. In this case, they form part of the purchase price and must be included in the taxable amount.

NB: Financial and commission charges on the purchase of used goods and reconditioning costs are not added to the purchase price. They are therefore not included in the tax base.

Taxation on the margin limits the used-goods trader's right to deduct VAT. This is because the VAT charged on the purchase of the goods is not deductible. The only deductible VAT is that on the goods that have incurred the cost of the trader's intervention (repair costs, brokerage fees, commission, raw materials used in the repair, etc.).

The margin VAT system requires a separate calculation for each transaction (which excludes offsetting between profitable and loss-making transactions).

Sales of second-hand goods by a non-professional

Used goods can be sold by a user after use. If the user is a private individual or a person exempt from VAT (e.g., a doctor), the sale of used goods belonging to him is made exclusive of VAT, whatever the status of the purchaser (trader, person - taxable or not, another private individual).

Sale of used goods by a company subject to tax, but which does not meet the qualification of "dealer in second-hand goods. »

Ce qui est important à retenir

Taxable resellers may, if they wish, apply another system, which consists of calculating the tax base each month based on the difference between total purchases and total sales of second-hand goods during the month in question.

This system calls for the following clarification:

The purchase value of objects exported or exempted must be deducted from deductible purchases:

- when the showing of purchases for a month exceeds that of sales, the excess is added to the purchases of the following month;
- it will be necessary to carry out an annual adjustment to consider the variations recorded in the value of the stocks at the beginning and at the end of each year.

(i) If the value of the inventory has decreased, the difference representing the value of goods sold during the year is added to the following year's purchases and deducted from the number of sales taxable on the margin;

(ii) If this value has increased, the difference is deducted from the number of purchases for the following year used to calculate the margin.

NB: If the asset sold by a taxable company is a fixed asset and VAT was deducted on acquisition, and it is sold to another user before the end of the fifth (5th) year following the year of acquisition, the selling company is required to adjust the VAT initially deducted.

This adjustment consists of repaying a fraction of the tax deducted at the rate of one-fifth (1/5th) per year or fraction of a year since the acquisition of the asset.

Example:

A new machine was purchased on June 15, 2017, from another company.

Purchase price: 200,000,000 with 18% VAT rate.

The company decides to sell the machine in 2019 to another taxable company.

Solution:

- VAT initially deducted on purchase: $200,000,000 \times 18\% = 36,000,000$
- Number of years of use: three years (2017 - 2018 and 2019)
- Number of years (1/5) remaining: 2
- VAT to be repaid: $36,000,000 \times 2/5 = 14,400,000$

The purchaser of the machine is also a company subject to VAT on all its sales.

It will therefore be able to deduct the sum of 14,400,000, which will be transferred to it by the seller by means of a certificate of repayment, stating the amount of deductible tax repaid.

2.6. Partially liable for VAT: Practical case

Definition – modalities (Cf. V.III.4)

At year's end, the partial taxable person determines the definitive pro rata based on the above-mentioned report.

He must then adjust all the deductions made by applying the definitive pro rata to all the transactions concerned during fiscal year N.

Corrective declarations will be made accordingly.

Depending on the new pro rata, he will have to adjust:

- by paying additional VAT, if the definitive pro rata rate is lower than the provisional pro rata rate;
- by taking an additional deduction, if the definitive pro rata rate has risen in relation to the provisional pro rata rate.

Exercise:

The turnover of the "Ecowas" company for the 2019 fiscal year is as follows:

	excluding tax	VAT	tax included
Sales subject to VAT	100,000,000	18,000,000	118,000,000
Sales exempt from VAT with right of deduction	80,000,000	0	80,000,000
Sales exempt from VAT without right of deduction	50,000,000	0	50,000,000
Sales outside the scope of VAT	70,000,000	0	70,000,000

Question:

- 1) Calculate the Pro rata of the year 2019.
- 2) Should we proceed with adjustment in 2019 knowing that the initial pro rata rate in 2018 was 68%

Reminder: Pro rata = [(Total annual amount of turnover (excluding VAT) relating to transactions eligible for deduction) / (Total annual amount of turnover (excluding VAT))] x 100

Solution :

1) The pro rata calculation

Numerator:

<i>Sales subject to VAT</i>	<i>100,000,000</i>
<i>Sales exempt from VAT with retention of the right of deduction</i>	<i>80,000,000</i>
TOTAL	180,000,000

Denominator:

<i>Sales subject to VAT</i>	<i>100,000,000</i>
<i>Sales exempt from VAT with retention of the right of deduction</i>	<i>80,000,000</i>
<i>Sales exempt from VAT without retention of the right of deduction</i>	<i>50,000,000</i>
<i>Sales outside the scope of VAT</i>	<i>70,000,000</i>
TOTAL	300.000.000

So pro rata of the year 2019 =180,000,000/300,000,000 x 100 = 60%

2) Calculation of the pro rata variation:

The pro rata variation = 60% - 68% = - 8%

The variation being - 8%, therefore, it will be necessary to adjust the VAT by paying a supplement to correct the excess VAT deducted.

Example: Newly subject company

The company will be created on January 05, 2020.

Based on its operating forecasts, it has a provisional deduction percentage of 80%.

This 80% percentage will apply to all assets acquired or created by the company between January 05, 2020, and December 31, 2020.

At the beginning of 2021, the company must determine the actual percentage based on transactions carried out during the period.

If the actual percentage is 70%, the company must make an adjustment by repaying the excess VAT recovered.

If the actual percentage is 90%, the company must make an adjustment consisting of an additional deduction.

NB: Companies that become subject to VAT, either by obligation or by option, are entitled to an initial credit for deductible tax at the time they become taxable.

The initial credit is made up of two elements:

- inventories: the new taxpayer may deduct the VAT charged on goods, raw materials, packaging, and products eligible for deduction that he holds in inventory on the date on which he becomes liable, e,
- new fixed assets: the new taxpayer can deduct the VAT charged on new depreciable assets, which have not yet begun to be used on the date of liability.

2.7. Adjustment of VAT following disposal of a fixed asset within 5 years: case study

Definition – rules (Cf.IX.9.22)

Example:

In year N, a company purchased a lifting machine for use in its business and deducted 50,000,000 in VAT.

In N+3, the crane machine is resold.

The sale is not subject to VAT.

The amount of the adjustment is $50,000,000 \times 2/5 = 20,000,000$ and this sum must be repaid to the Treasury.

Principle

If the taxable person has deducted VAT on the acquisition of the fixed asset.

He resells the asset without making the sale subject to VAT.

In this case, he must repay part of the VAT deducted to the base, in as many 5ths as the years for which he no longer uses the asset.

Example 1:

A fixed asset tool for professional use was acquired in April 2018. It was sold in November 2020.

The deducted VAT is questioned.

PS: VAT initially deducted: beware of reversal!

A fixed equipment or tool has disappeared within 5 years of its acquisition.

To avoid having to repay a fraction of the VAT deducted on this equipment or tool, the company must be able to justify this disappearance by scrapping it, setting it on fire, filing a complaint for theft, etc... In this case, the write-off of the fixed asset, which is necessarily not subject to VAT, is excused...

Otherwise, the VAT will be repaid but not lost.

VAT repaid will not be lost if the sale is made to a company subject to VAT.

For the taxable person, adjustment of VAT means repayment to the Treasury of part of the VAT initially deducted.

Example 2:

Consider an asset acquired in August 2019, which at the time of acquisition resulted in a VAT deduction of 18,000,000 euros.

- *If this asset is sold on October 30, May 2020 after its acquisition, the taxpayer must repay the VAT calculated as follows:*
 - *VAT deducted in 2018: 18,000,000.*
 - *Period of conservation of the property: 3 years (2018-2019-2020)*
 - *Remaining period: 2 years (5 years – 3 years)*
 - *Tax (VAT) to be refunded: $18,000,000 \times 2/5 = 87,200,000$*
- *if this property is sold in July 2022 (or later):*
 - *No repayment. The 5-year adjustment period has expired.*

If he resells the property to a company that is itself subject to VAT, he can transfer the right to deduct the repeated tax to the purchaser, provided that the sale is not itself subject to VAT.

Provided that the asset also constitutes a fixed asset for the beneficiary of the sale, contribution, or transfer, the latter may deduct a fraction of the VAT initially charged on the asset in proportion to the ratio between the number of years remaining until the end of the accrual period for the seller or contributor, and the total number of years of the accrual period.

Formal procedures

For formal purposes, the transferor or vendor issues a certificate to the beneficiary. In this case, the certificate plays a similar role to that of an invoice, stating the amount of tax that the beneficiary is entitled to deduct.

The certificate must include:

- identification (name or company name, address) of the transferor (or contributor),
- identification (name or company name, address) of the purchaser (or transferee),
- a brief description of the assets and, if applicable, their identification number,
- the date of acquisition of the assets by the transferor or acquirer,
- the date of the transfer or contribution.
- The amount of VAT paid.

Another similar case...

If the fixed asset acquired was not subject to VAT deduction for the taxable vendor, because the latter did not use the asset for an activity subject to VAT, the right to deduct may also be transferred to the purchaser for the period remaining in the 5-year adjustment period.

Please note that the new right to deduct generates a new 5-year adjustment period for the purchaser.

Example 3:

The Seller acquired the property in April 2018 for 50,000,000 excluding VAT. This property is intended for a bare rental activity for residential use, therefore used for a VAT-exempt activity.

The Seller was therefore unable to deduct the VAT of 9,000,000 at the time of acquisition (the rate in force at the time was 18%).

Resale in 2020, to a taxable professional Buyer, is not subject to VAT.

If, however, the Purchaser intends to use the goods for an activity subject to VAT.

The Seller must provide the Buyer with the above-mentioned certificate. This will enable the professional to deduct the VAT then "passed on".

The Buyer will then be able to deduct VAT⁵⁶ $60\ 9,000,000 \times 2/5 = 3,600,000$. This amount then enters a new 5-year period of ownership of the goods".

⁵⁶ VAT borne by the Seller on the property (at acquisition): 9,000,000 Period of retention: 2 of the 5 years

3. PRESENTATIONS OF SOME MODERN INTERNATIONAL VAT PRACTICES

NB : Modern international VAT practices are presented below as examples of best practice from which ECOWAS could learn to modernize the Community VAT system.

However, the system's implementation in Member States presupposes a revision of the Community VAT Directive.

3.1. Digital transactions and cross-border transactions

The following developments are Extracts from a document published by ATAF:

“Digital Economy and Cross-Border Transactions: Value Added Tax (VAT) Policy and Administrative Considerations for African Countries

2020 www.ataf.org

Advancement in technology and the advent of the internet has given rise to business models that enable entities to conduct business across many areas without having any physical nexus in these areas.

The entities supply goods and services, including intangibles, to multiple countries and receive payments without having a physical presence in the countries. Businesses are now also able to offer goods and services without owning any inventory or cost intensive tangible assets e.g., online platforms. Some of the most well-known examples of these entities are Amazon, Facebook, Google, Alibaba, Jumia, Konga et cetera. The transactions of these entities are usually referred to as e-commerce and the totality of “e-commerce” and the peripheral industry is tagged as the “Digital Economy.”

While e-commerce represents an economic opportunity for the continent, it also presents challenges for Tax Administrations.

While e-commerce presents an economic opportunity for the continent, it also presents challenges for Tax Administrations. The Value-Added Tax (VAT) implications must be carefully appraised considering that the ability not to own inventory/assets or have physical nexus results in low or no visibility on ecommerce transactions by the Tax Administrations. Thus, VAT being a consumption tax charged on supply of goods and services will be highly affected by the dynamics of e-commerce.

The application of VAT territoriality depends on where the transaction took place.

The place of delivery is essential in deciding the authority where VAT is to be charged in cross-border transactions. It is accepted that the destination principle should be the basis for deciding the place of delivery. According to the destination principle, the place of delivery is the area where the recipient or consumer of the delivery is located.

In practice, implementation of the destination principle for the delivery of intangible goods is problematic, as the place of delivery may differ from the place of consumption. In addition, it is difficult for suppliers to identify the tax status of the recipient or the place of use to determine the competent tax authority.

Domestic entities are obliged to register for VAT, except where threshold rules apply. The challenge arises for foreign entities that make deliveries normally subject to VAT in a country without having any form of presence or connection there.

Most VAT laws do not require such entities to register as taxpayers. This may be due to the difficulties of enforcing compliance on an entity outside the tax authorities' area.

Recommendations

- *National (domestic) deliveries*

VAT collection mechanisms applicable to domestic deliveries should be applicable to local operators unless the tax administration finds it necessary to have a sector-specific mechanism.

- *B2B (transactions between businesses)*

The reverse charge mechanism is the preferred approach for collecting VAT on cross-border business-to-business transactions. It obliges the buyer to account for VAT on deliveries received from foreign entities. This obligation to account for VAT gives the tax authorities visibility and enforceability, as they can access the records of the entity (buyer) operating in their authority.

The reverse charge mechanism should also be applicable to cross-border deliveries to government ministries, departments, and agencies, and to recharges for shared services within a multinational company.

- *B2C (transactions between a business and a consumer)*

Because of the difficulties involved in monitoring and applying the reverse charge mechanism if it were to be applied to the vast consumer population, it is preferable for the foreign supplier to charge and remit VAT on cross-border supplies of intangible goods. In this regard, foreign entities making deliveries in the district will be required to register for a simplified VAT registration, filing and payment regime. Convenient payment channels should also be provided.

- *Digital payment channels should be made available to taxpayers.*

Tax authorities can work with existing digital payment platforms and card issuers to enable foreign suppliers to make payments via their digital systems. Collaboration with existing platforms will facilitate compliance, particularly as most operators in the digital economy use existing payment platforms. This will reduce the need for major changes to business processes.

Tax authorities should work with the relevant regulatory agency or agencies to remove any barriers to foreign currency payments that may exist. Indeed, foreign suppliers should be able to make payments in the currency of the transaction(s).

- *Refunds (tax refunds):*

It is not advisable to extend the tax exemption to foreign suppliers under the simplified registration and filing regime.

3.2. European Union: VAT and e-commerce

3.21. VAT on electronic services in the EU as of May 1, 2020

From January 1, 2019, electronically delivered services are taxable at the VAT rate in force in the Member State where the consumer is resident. This change in VAT rules for dematerialized services was introduced on January 1, 2015.

The service provider will have to declare and pay VAT in each member state.

To sum up, if you sell dematerialized software, you will have to charge VAT at the rate of the consumer's country of origin: if the consumer is English, you will have to apply English VAT, German VAT, etc.

To simplify VAT declarations and payments in each member country, a mini one-stop shop has been set up. This one-stop shop enables companies supplying dematerialized services to consumers established in other member states to declare and pay the VAT due on these services.

Registration on the mini one-stop shop is done on the professional space of the tax portal www.impots.gouv.fr.

Items to provide when registering:

- Individual VAT identification number;
- Company Name;
- Address;
- Website address;
- Contact Name;
- Contact phone;
- Banking information;
- Nature of the services provided.

List of services concerned

The mini one-stop shop concerns VAT on the provision of dematerialized services to non-taxable individuals.

List of telecommunications, radio and television broadcasting and electronic services covered.

The principle of taxation where consumption takes place applies exclusively to electronically supplied services (1), telecommunications services (2) and radio and television broadcasting services (3).

NB.: This does not apply to online sales of physical goods such as CDs/DVDs, books in paper format, video games on physical media or any other item not delivered electronically.

1. Electronic Services

Services provided via the Internet or an electronic network, which renders the service automated, with minimal human intervention, and impossible to provide without information technology.

These services include:

1.1. Supply and hosting of computer sites, remote maintenance of programs and equipment:

- a) supply and hosting of websites;
- b) automated program maintenance, remote and online;
- c) remote systems administration;
- d) online storage of data allowing storage and retrieval of specific data electronically;
- e) online supply of disk space on demand.

1.2. Supply of software and updating thereof:

- a) software used online or downloaded (including procurement/accounting programs), anti-virus software) and their updates;
- b) software used to prevent the appearance of advertising banners, also known anti-banner filters;
- c) drivers to download, such as software for interconnecting a computer and peripherals (such as printers);

- d) automated online installation of filters on websites;
- e) Online automated installation of firewalls.

1.3. Supply of images, texts and information, and provision of databases:

- a) viewing or downloading elements used to personalize the computer's "desktop";
- b) viewing or downloading photos, images, or screensavers;
- c) digitized content from books and other electronic publications;
- d) subscriptions to online newspapers and periodicals;
- e) blogs and website traffic statistics;
- f) online news, traffic information and weather reports;
- g) online information generated automatically by software, based on data entered by the customer, such as legal or financial data (e.g., real-time stock market prices);
- h) supply of advertising space (e.g., banners on a website or web page);
- i) use of search engines and internet directories.

1.4. Supply of music, films, and games, including games of chance or gambling, and political, cultural, artistic, sporting, scientific or entertainment shows or events:

- a) viewing or downloading music on computers and cell phones;
- b) viewing or downloading songs, excerpts, ringtones, or other sounds.
- c) viewing or downloading films;
- d) downloading games from computers and cell phones;
- e) access to automated online games that are dependent on the Internet or similar electronic networks and where the individual players are geographically distant from each other;
- f) reception of radio or television broadcasts via a radio or television broadcasting network, the Internet, or a similar electronic network, for listening to or viewing programs at a time chosen by the user and at the user's individual request, based on the list of programs selected by the media service provider, such as television or video-on-demand channels;
- g) reception of radio or television broadcasts via the Internet or a similar electronic network (IP), unless they are broadcast simultaneously with their transmission or retransmission on a radio or television broadcasting network;
- h) the supply of audio and audiovisual content via communication networks that are not provided by, and under the editorial responsibility of, a media service provider;
- i) the subsequent supply of a media service provider's audio and audiovisual production, broadcast via communication networks by a person other than the media service provider.

1.5. Supply of remote education services.

- a) automated remote learning that relies on the Internet or a similar electronic network for its transaction and requires little or no human intervention for its supply, including virtual classrooms, except where the Internet or similar electronic network is used merely as a means of communication between teacher and student;
- b) exercise books completed online by students with automatic grading requiring no human intervention.

1.6. Autres services :

- a) the supply of digital products in general (software and its modifications or updates);
- b) services to ensure or support the presence of companies or individuals on an electronic network, such as an Internet site or page;
- c) services generated automatically by computer on the Internet or on an electronic network, in response to specific data entered by the customer;
- d) granting, for value, of the right to put goods or services up for sale on a website operating as an online marketplace, where potential buyers make their bids by an automated process and where the parties are notified of the completion of a sale by a computer-generated e-mail (online auctions);
- e) Internet service packages (ISPs) in which the telecommunications aspect is ancillary and secondary (i.e., packages that go beyond simple Internet access and include other elements such as content pages providing access to news, weather, or tourist information; game areas; site hosting; access to online debates).

2. Telecommunications services

Services for the transmission, emission and reception of signals, writing, images and sounds or information of any kind, by wire, radio, optical or other electromagnetic means, including the assignment and granting of a right to use means for such transmission, emission, or reception.

Are, for example, covered:

- a) fixed and mobile telephony services for the transmission and commutation of voice, data, and images, including telephony services with an imaging component (videotelephony services).
- b) telephone services provided over the Internet, including Voice over Internet Protocol (VoIP) (videotelephony);
- c) voice mail, call waiting, call transfer, caller ID, three-way calling, and other call management services;
- d) paging services;
- e) audio text services;
- f) fax, telegraph, and telex services;
- g) internet access provision;
- h) private connections providing telecommunication links for the exclusive use of the licensee.

3. Radio and television services

Services consisting of the supply of audio and audiovisual content, such as radio or television programs that are under the editorial responsibility of a media service provider based on a program schedule via communication networks that are provided to the public for simultaneous viewing or listening.

These include:

- a) broadcasting of radio or television programs transmitted or retransmitted over a radio or television network;
- b) radio or television programs broadcast via the Internet or a similar electronic network (IP), if they are retransmitted simultaneously with their transmission or retransmission on a radio or television network (live Internet retransmissions).

3.22. Reform of the VAT on e-commerce: entered into force on July 1, 2021

The reform is in fact based on the extension of the one-stop shop VAT service.

Distance sales

The Finance Act for 2020 (in France) incorporated EU Directive 2017/2455 of December 5, 2017, reforming VAT on e-commerce. At the request of several member states, the directive's effective date was postponed from January 1, 2021, to July 1, 2021. The Finance Act for 2021 enacted this postponement.

Until June 30, sales of goods by a professional established in the European Union to a private individual established in another Member State (B to C relations) are subject to VAT at the rate of the seller's country of business. On the other hand, if a sales threshold to the country is exceeded, the amount of which is fixed at €100,000 or €35,000 per year, the transactions are subject to VAT in the country of destination, and the seller must register for VAT in that Member State.

The December 5, 2017, directive replaces these thresholds with a single sales ceiling of €10,000.

To avoid companies having to declare VAT in numerous countries, if this threshold is exceeded, the VAT to be paid in each state by the operator can be declared on a one-stop shop as has already been the case for e-services since 2015 (declaration on the MOSS platform for mini-one-stop-shop).

Electronic interfaces: new taxpayer

To reduce the risk of fraud, the directive of December 5, 2017, establishes the rule according to which in certain cases, electronic interfaces will be liable for VAT. These are the situations for which they facilitate:

- distance sales of imported goods under €150 (transactions now subject to VAT)
- domestic deliveries or intra-Community distance sales of goods made through them by a seller not established in the European Union.

The VAT on these transactions may also be transferred to each State of consumption via a one-stop shop (IOSS for Import One-Stop-Shop).

One stop shop

Since April 22, 2021, it has been possible for companies to register with the "OSS-IOSS" (One-Stop-Shop - Import One-Stop-Shop) one-stop VAT shop.

Companies opting for this system are no longer required to register with the tax authorities of each Member State to declare and pay the VAT due. VAT can now be paid to a single Member State via this one-stop shop.

The MOSS (mini One-Stop-Shop) used to declare VAT on supplies of telecommunications, radio, and television broadcasting or electronic services will continue to exist until June 30, 2021. The last reporting period will run from July 1 to July 20, 2021. The registration of companies on the "MOSS" window will be automatically renewed for the OSS-IOSS window.

Source : <https://www.impots.gouv.fr/portail/actualite/un-nouveau-guichet-unique-de-tva-pour-les-transactions-de-commerce-electronique-partir-du>

3.3. Online discharge as a means of collection and expansion of the tax base

Online discharges offer advantages for both taxpayers and tax authorities.

Gains taxpayers:

- 1) Online issuing of tax receipts saves users a great deal of administrative burden, and enables active taxpayers (qualified as such by the tax authorities) to obtain tax receipts online from any location, without having to visit the tax authorities in person;
- 2) It does not allow physical contact between tax authorities and users. These contacts can sometimes lead to corruption.

Gains for the tax administration:

- Taxable base broadening measure;
- Measure of forced collection of taxes and duties due;
- Improves the general business climate (online attribution of the document).

Main guidelines of the online discharge procedure.

- Tax discharge is mandatory for all transactions between the taxpayer and the financial authorities (B2A) (customs and the Treasury) and certain targeted companies.
The online tax discharge system requires taxpayers to be included in an active file produced by the tax authorities.
The cumulative conditions required to obtain it are as follows:
 - be registered;
 - be up to date with reporting obligations;
 - be up to date with payment obligations;
- Taxpayers meeting these conditions must be able to print out their tax discharge directly by entering their tax identification number on the tax administration portal;
- The active taxpayer file must be managed dynamically, to enable companies that have regularized their situation to join the file as soon as their file has been regularized;
- The assets file must be shared by Customs, the Treasury, and major companies.
- Automatic alerts will have to be created in the file shared with other administrations to target companies whose discharge has been rejected, so that all the consequences (freezing of imports, eviction from public contracts, etc.) can be drawn from it.

The mechanism provides for a file of assets to be made available on the portal opened by the General Tax Directorate. The taxpayer can print it out directly without too much difficulty if he or she is on the list of assets.

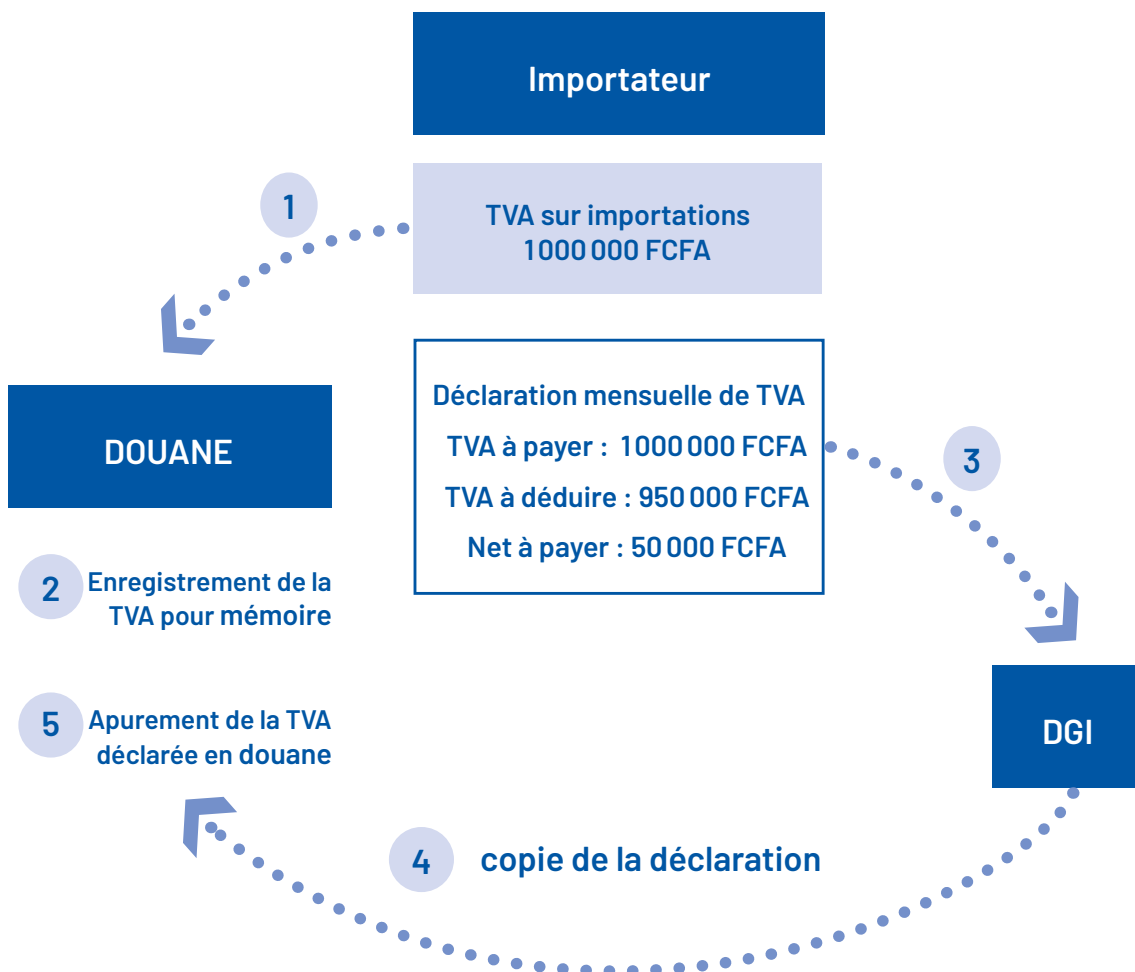
3.4. Accounting VAT procedure (deferred payment of VAT)

The principle of accounting VAT is to defer payment of the VAT due on importation until the VAT return has been filed with the tax authorities. The aim is to offset gross VAT ("General Directorate of Taxes") against deductible VAT ("Customs Directorate"). In this way, (1) the company no longer advances VAT to the customs authorities, (2) the tax authorities no longer must refund the part of the gross VAT that has become deductible and not chargeable, and (3) the company pays net VAT if the deductions are lower than the gross VAT.

The procedure consists of (1) for customs: recording the amount of VAT due on imports (accounting entry without payment); (2) for the company: (i) declaring the amount of VAT on imports on the monthly VAT return filed with the General Directorate of Taxes, (ii) deducting the part of this VAT allowed for deduction; and (iii) paying the amount of net VAT, and (3) for the General Directorate of Taxes: sending the copy of the VAT return to customs for clearance of its records (see diagram below).

The monthly VAT return would be adapted to isolate gross VAT and deductible VAT on imports. This system should be used for "citizen" companies, which import large industrial equipment but are engaged in export activities (subject to the zero rate of taxation) and which meet the conditions laid down by a regulation or directive (being in good standing with the tax authorities).

To ensure that the procedure runs smoothly and safely, it is vital that the customs authorities receive timely information on declarations filed with the tax authorities.



Comments on the scope of accounting VAT. This concerns VAT on petroleum products, which are excluded from the regime. The reason for this exclusion is that, since only VAT on petroleum products used in mining activities is fully deductible, it is necessary to check that these goods are being used correctly (destination control).

It should be recalled that the tax authorities have the same powers as customs to conduct destination checks to ensure that goods are used in accordance with the law. Regular checks are conducted in this respect, particularly for products gaining from exemptions under public procurement contracts. In addition, there is nothing to prevent the two administrations from conducting joint controls.

