



## **Draft budget for 2015: What changes in the field of VAT?**

Following the tabling in the Chamber of Deputies on 15 October 2014 of the draft law (No 6720) on the State budget for 2015, a number of - much awaited - clarifications about the VAT reform have been made.

Although the text is not definitive since it is still at the draft stage, some changes can be anticipated all the same. The necessary adaptations on the part of the companies - communication with clients, updating of accounting software - can therefore be initiated as of now.

**The law should be voted on 18 December 2014 and should enter into force on 1 January 2015.**

### **1. Increase in the rates of VAT**

The aspect of the reform which has attracted the most attention in the media is the increase in the rates:

- The standard rate of 15%, applicable to most transactions, goes up to 17%,
- The intermediate rate of 12% goes up to 14%: it applies to goods/services as varied as detergents, securities custody and management, printed advertising material, deliveries of wine of an alcoholic strength of 13° or less, etc.
- The reduced rate of 6% goes up to 8%: it also concerns a disparate list of goods and services such as electricity, gas, plants, hairdressing, adjustments to clothes, etc.

At first sight, the super-reduced rate of 3% remains the same. It applies to a large variety of staple goods and services: foodstuffs (human and animal), books, children's shoes and clothing, distribution of water, pharmaceutical products, hotel accommodation, carriage of persons, etc.

Nevertheless, indirect changes have been made as regards the super-reduced rate of 3 %:

- as regards VAT on housing,
- and the consumption of alcohol at the point of sale.



## 2. VAT on housing

Until now, in order to benefit from the super-reduced rate, it was sufficient for the occupier -, the owner, tenant or occupier free of charge – to assign the accommodation for use as a main residence, to be evidenced by a declaration to the municipality.

The draft law provides that the benefit of the super-reduced VAT rate of 3% is to be limited to owners occupying their main residence, thereby excluding rented accommodation and accommodation provided free of charge from situations in which the owner may benefit from the super-reduced rate of 3%.

Desirous of sparing projects that are under way, the government has nevertheless provided for a transitional period. This 3% rate is granted following presentation of an application for approval. All applications for approval presented before 1 January 2015 regarding housing intended to constitute the main residence of third parties will continue to benefit from the super-reduced rate of 3% until 31 December 2016.

The draft law justifies this transitional period in terms of the principle of protection of legitimate expectations. A circular<sup>1</sup> of 24 October 2014 sets out the detailed rules for the application of the transitional arrangements, subject to the adoption of the law.

As regards housing in co-ownership, from a practical point of view, the application for approval must in principle be accompanied by a notarised deed including the designation in the land registry. Since this requirement is liable to impede the presentation of approvals, until 31 December 2014 the *Administration de l'Enregistrement et des Domaines* [VAT administration] will allow, by way of derogation, that deed to be replaced by:

- A copy of the "reservation" contract/contract for sale in a future state of completion (such contract has to respect the legal specifications of Article 1601-13 of the Civil Code as far as concerns the designation of the property, the price and the conditions for reimbursement of the deposit).
- A receipt for the application<sup>2</sup> made to the *Administration du Cadastre* [Land Registry Office].

The notarised deed with the designation in the land registry must however be drawn up later and must correspond to the designation of the reservation contract.

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<sup>1</sup> N° 771

<sup>2</sup> Receipt for the "application to issue the descriptive table of the division of a collective building" issued by the *Administration du cadastre et de la topographie*, which contains the specific case number attributed to an application relating to a given property in co-ownership.



Lastly, it should be stressed that only newly created housing (construction, transformation of offices into housing, etc.) is covered by this increase in the rate. Housing constituting the principal residence of third parties will continue to benefit from the super-reduced rate of 3% as far as renovation work is concerned.

### **3. Super-reduced VAT rate and consumption of alcohol at the point of sale**

As from 1 January 2015, restaurant and bar bills should be subject to two VAT rates:

- A super-reduced VAT rate of 3% for food and non-alcoholic beverages consumed on the premises
- A VAT rate of 17% for alcoholic beverages consumed on the premises.

It should be noted that all alcoholic beverages consumed on the premises should be subject to the 17% rate and the 14% rate will not be applicable.

Indeed, the new intermediate rate of 14% on "wines made from fresh grapes of an alcoholic strength of 13° or less" will be restricted to direct sales (in a supermarket, wine merchant, etc.).

### **4. What about transitional transactions: must the 15% rate or the 17% rate be applied?**

In principle, the new rates will take effect on 1 January 2015. Invoices issued as from 1 January should therefore show the new rates. However, what about transactions "straddling" the two years?

VAT is due at the time when the transfer of ownership in the goods takes place (hence in principle on delivery) or at the time when the provision of services is carried out.

The date of the order therefore has no bearing, except where there is an advance payment of a sum: the VAT rate is the one due at the time when the advance payment is collected. All advance payments collected up until 31 December 2014 inclusive remain subject to the present rate of 15%.

It should be noted that the administration fixes no limit as to the amount of advance payments, which may cover the totality of the sales price of the goods delivered in 2015. Consequently, prudence and the risks of default of the other party to the contract should determine the amount of the advance payments.

However, this rule does not concern advance payments in connection with intra-Community purchases of goods. In that case, the totality of the sales price must be subject to the new rates if delivery takes place in 2015.



Example: an individual orders a new car in 2014, for delivery in 2015. Whatever the country of origin of the new car, Luxembourg VAT is always applicable. On the other hand:

- An order placed with a Luxembourg garage may result in an invoice for an advance payment (or even an invoice for the totality of the sales price) with VAT at 15%, provided that the price including all taxes is received by the seller by no later than 31 December 2014,
- An order with a foreign car dealer (not VAT registered in Luxembourg) will result in the application of the VAT rate of 17% on the totality of the sales price, irrespective as to whether the customer makes an advance payment in 2014.

#### **5. VAT credit reimbursed quicker**

This reform has largely gone ignored. Yet you should be aware that the *Administration de l'Enregistrement et des Domaines* must henceforward grant or refuse the repayment of a VAT credit appearing on the taxable person's last account statement within 4 to 6 months of the submission of a request by registered letter.

In other words, this reimbursement could be sought even in the absence of an information notice/assessment of taxation notice [*bulletin d'information / bulletin de taxation d'office*].

Whilst the practice of reimbursement already exists, it will be changed into a right of repayment, subject to a formal procedure including deadlines and means of appeal.

VAT repayments should be made easier as a result.

**REMINDER:** Following the law voted on 26 May 2014, another VAT reform, connected with telecommunication, radio broadcasting and television services and services provided electronically to non VAT taxable persons, will enter into force on 1 January 2015.

As from that date, those services will be subject to the VAT of the Member State in which the consumer has his domicile or habitual residence. In order to prevent multiple registrations in the European Union, a single Mini One Stop Shop system will enable operators to register and to declare and pay the VAT due in respect of these services in a single Member State (the one of its establishment for an EU VAT payer), which will take care of the link with the other Member States where the services are consumed.



FORMERLY *inter*FIDUCIAIRE



## CONTACT

**Delphine Deichtmann**

+352 47 68 47- 443

Delphine.Deichtmann@ifgroup.lu

45, rue des Scillas

L-2529 Howald

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