

New exemption criteria applicable to sea-going merchant vessels

801-TVA-CRAMP-30-30-30-10

In an update of its "Bofip" bulletin of information [*Bulletin Officiel des Finances Publiques-Impôts*] on 12 May 2015, the administration set out new VAT exemption criteria applicable to merchant vessels operating on the high seas.

1. In an order issued on 21 March 2013 (aff.197/12: BP 8-9/13 inf. 681), the EU Court of Justice ruled that by not subjecting in an effective manner VAT exemption to the operations covered by Article 262, sub-paragraphs 11-2, 3, 6 and 7 of the French General Tax Code [CGI] to vessels transporting paying passengers and those used to exercise a commercial activity, France had failed to fulfil its obligations under the VAT Directive, and in particular Article 148a, c and d thereof.

It will be remembered that the operations referred to in paragraphs 2, 3, 6 and 7 in II of Article 262 of the General Tax Code are as follows: delivery, repair, transformation, maintenance, charter and hire of merchant vessels assigned to navigation on the high seas, vessels used for an industrial activity on the high seas, vessels engaged in a professional maritime fishing activity, lifeboats and other vessels providing assistance at sea; delivery, rental, repair and maintenance of objects to be incorporated in these vessels or used to operate them at sea, as well as the gear and nets used for fishing operations at sea; delivery of goods for the refuelling and provisioning of these vessels; services for the purposes of meeting the direct needs of the vessels and their cargo.

2. The French tax authority has drawn conclusions from this ruling. In an update of its doctrine issued on 12 May 2015, it stipulated that only merchant vessels with a **total length of 15 m or more** and satisfying **four cumulative criteria** may be considered merchant vessels assigned to **navigation on the high seas**. These criteria are as follows:

- be a **commercially registered vessel**. For foreign-flagged vessels, by registration is meant recognition by a foreign authority of a vessel's assignment to a commercial activity;
- be equipped with a **permanent crew**;
- be assigned to a **commercial activity**;
- at least 70% of its total navigation takes place **outside national territorial waters** (BOI-TVA_CHAMP-30-30-30-10 #10).

Maritime merchant vessels that do not satisfy the above conditions are excluded from the VAT exemptions stipulated in Article 262, sub-paragraph 11-2, 3, 6 and 7 of the General Tax Code (aforesaid BOI* #110). *Bulletin of information

Note: Only the last criterion, which is intended to render the conditions in which a vessel is assigned to navigation on the high seas and is the subject of clarifications under 3 below, is really new. The former doctrine applied by the administration already stipulated the first three criteria (TVA-IV-30230). Moreover, sea trips must also constitute the main activity of the vessel relative to its dockside activity (see 5).

Determining the percentage of navigation that takes place outside territorial waters.

3. The 70% referred to in 2 results from the relationship between the number of sea trips leading to the vessel leaving French territorial waters during the **calendar year preceding** the year of the VAT exemption and the total number of trips made during the same period. This percentage is determined each year.

When this percentage stipulated in 2 is **equal to or greater than 70%** in one calendar year, the vessel qualifies for the exemption in the following calendar year. When this percentage is **less than 70%**, the exemption will cease to apply from 1st January of the following year.

For those **vessels** that perform a **specific activity** involving **random sea trips**, such as chemical tankers or cable-laying vessels, the relationship mentioned above may be determined based on the average number of sea trips made during the five years preceding the year of application of the VAT exemption or, if the vessel is used by the operating company for a period of less than five years, the average number of sea trips made in the years preceding the year of application of the exemption, A **sea trip** is any commercial navigation between **two ports** in EU, national or international territorial waters during which are performed operations of loading/unloading of cargo and/or embarking/disembarking of passengers. For the purposes of this calculation, sea trips made for non-commercial reasons, such as sea trials, trips to the shipyard, etc are not taken into account. The percentage thus determined by the vessel operator **has to be substantiated** by appropriate means such as the ship's log or information obtained from the vessel's navigation systems and geo-localisation instruments (GPS readings, tracking system printout, AIS plot) (aforesaid BOI #20).

4. As to **vessels** made available **with crew** for **customers' leisure purposes**, in order to comply with the 70% criterion regarding navigation outside national territorial waters, a charter contract will constitute a single sea trip when no new passenger has embarked or passenger has disembarked permanently during a stopover. Otherwise, the contract will be considered to cover the same number of sea trips as there are stopovers (aforesaid BOI #30).

Note: However, it must be remembered that the exemption from Article 262, paragraph 11-2 of the General Tax Code does not apply to rental and charter operations that consist in making a vessel with or without crew available against remuneration for the purposes of leisure sailings by private individuals, including when the sailing takes place on the high seas and that they "do not themselves assign the vessel to paid work (CJUE 22-12-2010 aff. 116/10: TVA-1V-30232 fv; aforesaid BOI #180: 13F 8-9/13 inf. 682).

5. Furthermore, the exemption may only apply when sea trips are the **main business** of the vessel relative to its dockside activity. The operator has to prove, under his own responsibility and subject to the administration's rights of control, that seas trips are the vessel's main business. For instance, when the number of dockside charter contracts represents less than half the total number of charter contracts signed during one calendar year (aforesaid BOI #30).

Application of the criterion relating to the percentage of navigation outside territorial waters

6. The administration states that the stipulations for calculating the percentage of navigation taking place outside French territorial waters set out in 2 will apply from 2015. The consequences of this stipulation regarding VAT will therefore apply from 2016.

The stipulations applicable during 2014 (TVA-IV-30230) will apply for the purposes of the VAT exemption stipulated in paras 20, 30, 6 and 7 of II of Article 262 of the General Tax Code for the year 2015 (aforesaid BOI #30).

Change of use of a maritime merchant vessel

7. Pursuant to Article 257, subsection 111-2 of the General Tax Code, vessels having benefited from the VAT exemption stipulated in subpara 2 of II of Article 262 of the General Tax Code and which cease to be used exclusively for the use that justified this exemption will be subject to the tax (TVA-IV-30700 s).
In particular, are regarded as having ceased to be assigned exclusively to an exempted use, those commercially registered vessels that change (even outside national waters) their maritime registration and return to France with a maritime leisure registration without the vessel or its identifiers having been modified, and even if the vessel has been sold, leased, etc to another owner or operator.
Similarly, non-compliance by the person for whom the change has taken place (beneficiary of the exemption from VAT) with the conditions listed in 1, constitutes a change of use within the meaning of article 46, annex IV of the General Tax Code, thereby justifying a call for back payment of the VAT by this beneficiary.
These provisions also apply to the operations referred to in paragraphs 3, 6 and 7 of Article 262, II of the General Tax Code (aforesaid BOI, #130),

Reporting obligations

8. **Operators of merchant vessels** engaged in navigation on the high seas communicate to their suppliers a certificate established under their own responsibility certifying that the vessel satisfies the conditions stipulated in 1. On this certificate they undertake to pay the tax should the conditions of exoneration not be fulfilled.
By vessel operator is meant any person employed or appointed by the shipowner, his representative or a company appointed to take permanent responsibility for the safety and maintenance of the vessel.
On the commissioning of a new merchant vessel or during a change of ownership, or when the vessel has never been operated in France, the taxable operator may, in order to benefit from the first year of VAT exemption, communicate to its suppliers or service providers a provisional certificate when he is satisfied that the vessel meets the conditions laid down in 1, and especially the 70% condition. However, if, at the end of the first calendar year of operation, the vessel has not met one of these conditions, not only will he be unable to benefit from the VAT exemption on operations during the following year, but the operator will be liable for payment of the exempted VAT which he has unduly benefited from (aforesaid BOI, #140).
9. **Vendors or service providers** who carry out the exoneration by virtue of 2, 3, 6 and 7 of Article 262, II of the General Tax Code shall henceforth hold the aforesaid

certificate, handed over or presented by the operator of the sea-going merchant vessel (aforesaid BOI #3 220, 340, 465 and BOI-LETTRE-000235)

In an annex to the above-mentioned BOI-LETTRE-000235, the administration proposes a model certificate to be communicated in order to benefit from the VAT exemptions on transactions relating to merchant vessels engaged in high seas navigation.

10. The VAT exoneration enjoyed on the delivery of goods for the **refuelling and provisioning** needs of vessels that are eligible for tax exemptions will be substantiated by the taxable vendor of the goods providing, on each delivery, a customs declaration or any other document stipulated by the customs regulations (CGI am. III art. 74, 5). The refuelling or provisioning company retains these documents as evidence of its accounting after consulting the customs service responsible for monitoring the loading on board of the goods (aforesaid BOI, #465).

REPUBLIC OF FRANCE

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GENERAL DIRECTORATE FOR PUBLIC FINANCES

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DGFIP

Model letter

**LETTER - VAT - Model certificate to be communicated
in order to benefit from the VAT exemptions regarding the operations
by certain vessels as stipulated in II of Article 262 of the French
General Tax Code**

To be printed on the vessel operator's headed notepaper

Re: Certificate of compliance with the conditions applicable to VAT exemptions on operations by certain vessels stipulated in sub-paragraphs 2, 3, 6 and 7 of II of Article 262 of the French General Tax Code [CGI].

I, the undersigned (family name, forename, capacity), certify that the vessel (full name, registration number) fulfils all the conditions for VAT exemptions stipulated in subparagraphs 2, 3, 6 and 7 of Article 262 of II of the French General Tax Code, that is to say:

- it is commercially registered,
- it has a permanent crew,
- it is used for a commercial activity,
- it measures at least 15 m in length,
- at least 70% of its sea trips during the year takes place outside French territorial waters.

Failure to satisfy any one of the above-mentioned conditions constitutes a change of use within the meaning of subparagraph 2 of III of Article 257 of the French General Tax Code justifying a call for VAT back payment by the beneficiary.

Signed in

On.....

Signature.....

Comment(s) relating to this document:

VAT - Scope and territoriality - Exonerations - Transactions relating to vessels