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VAT on down payments on goods : what's new January 1, 2023



December 2022

As of January 1, 2023, in the case of a down payment, VAT on the supply of goods will be due upon receipt of the down payment by the supplier and no longer upon delivery of the goods. no longer at the time of delivery of the goods.

Old system: due upon delivery of the goods

Until December 31, 2022, there are two different rules regarding the liability for VAT in case of a down payment. They depend on the nature of the sale. In the case of goods, no VAT is due when the down payment is made. It is the realization of the supply that constitutes the generating event and the moment when the VAT becomes payable. On the contrary, for the supply of services, the VAT is due as soon as the down payment is made.

In 2021, the Administrative Court of Appeal of Nantes finally ruled that this rule was contrary to the European Union VAT Directive and more specifically Article 65. **This article states that VAT is due upon payment of a deposit, regardless of the nature of the transaction: goods or services.**

Definitions and reminders

The deposit

The deposit corresponds to a transaction that has already been partially completed. The professional and the consumer are each obliged to keep their commitment. A contract, an order form, or the fact of paying a deposit are considered as an engagement. The professional must supply the goods or services and the consumer must buy the goods or services provided for in the contract (unless otherwise agreed between the 2 parties). If one or the other withdraws, if he changes his mind, he can be sentenced to pay damages.

The advance

The advance corresponds to an operation that has not yet started. The professional or the consumer can go back on his commitment. The money advanced is lost for the consumer if he cancels his purchase or his order. On the other hand, the professional who does not provide the goods or services must

reimburse twice the amount paid to the consumer.

The plan as of January 1 2023: payable upon collection of the on the delivery of the goods

The Finance Act 2022 has corrected this situation **by aligning the system of advance payments on goods with that of services as of January 1, 2023.**

Article 269(2)(a) of the General Tax Code stipulates that as of January 1, 2023:

"For the supplies mentioned in a and a ter of 1, the VAT becomes payable when the chargeable event occurs. However, in the case of an advance payment, the tax becomes payable at the time of its collection, up to the amount collected.

However, for supplies of electricity, gas, heat, refrigeration or similar goods giving rise to successive statements or collections, the liability may, at the option of the taxpayer, arise at the time of debiting;

in any event, it shall take place as soon as advance payments are received and up to the amount of the advance payments, when they are requested before the occurrence of the chargeable event or the debit".

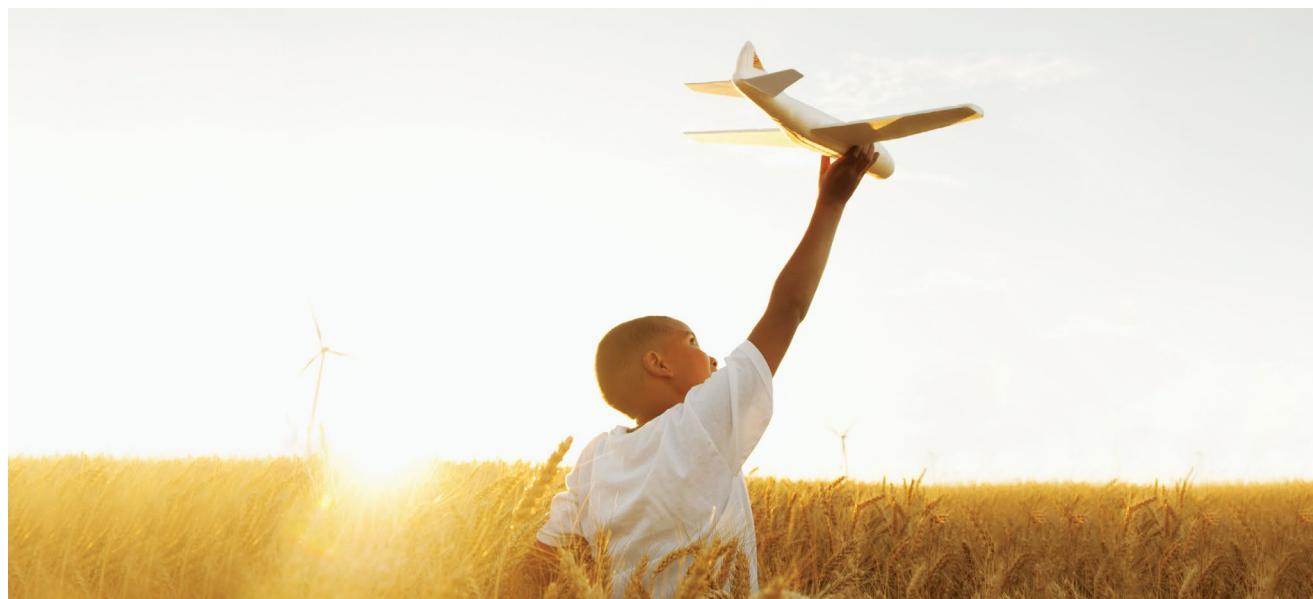
Thus, the VAT relating to the supply of goods becomes payable by the seller as soon as he collects the down payments for the amount actually collected. **And by reciprocity, the VAT that has become payable by the seller is then recoverable by the buyer.**

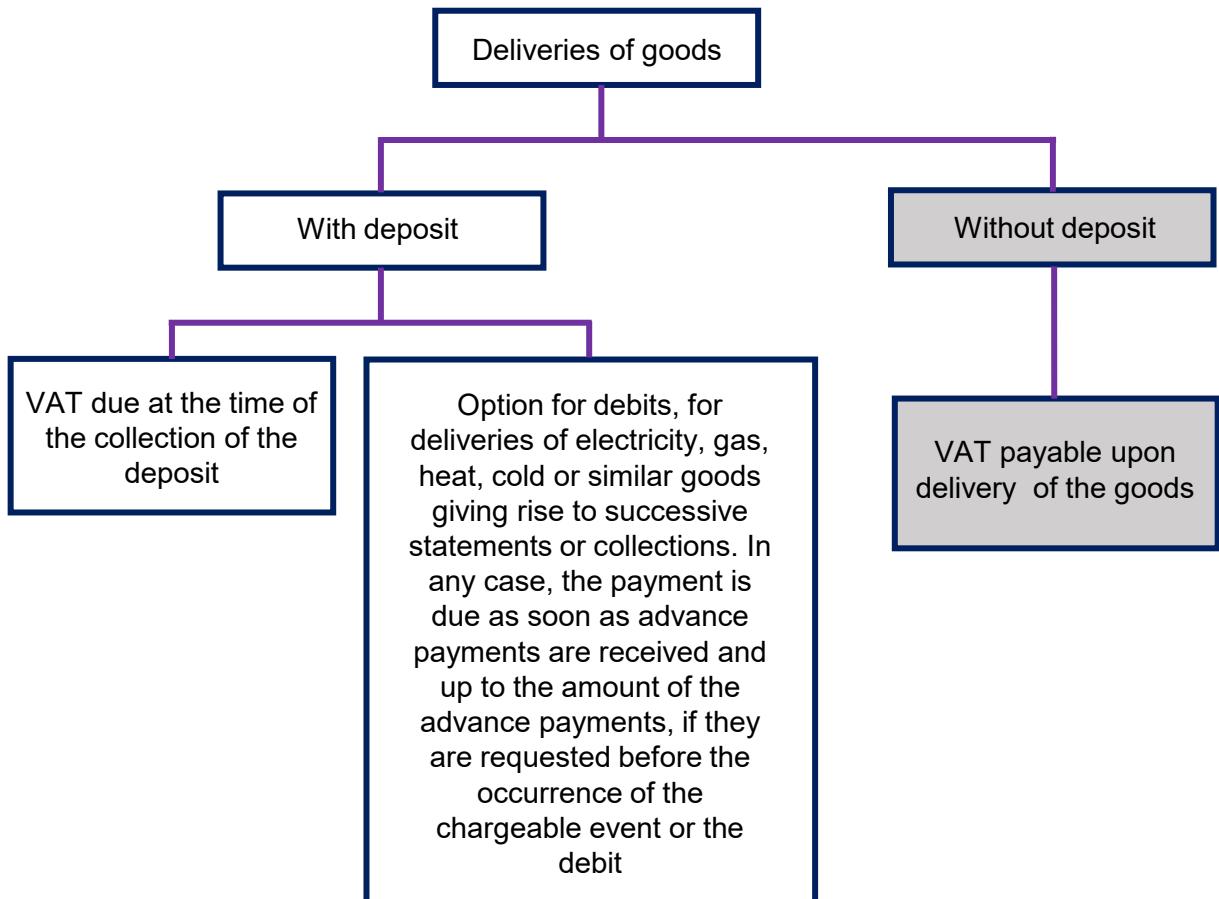
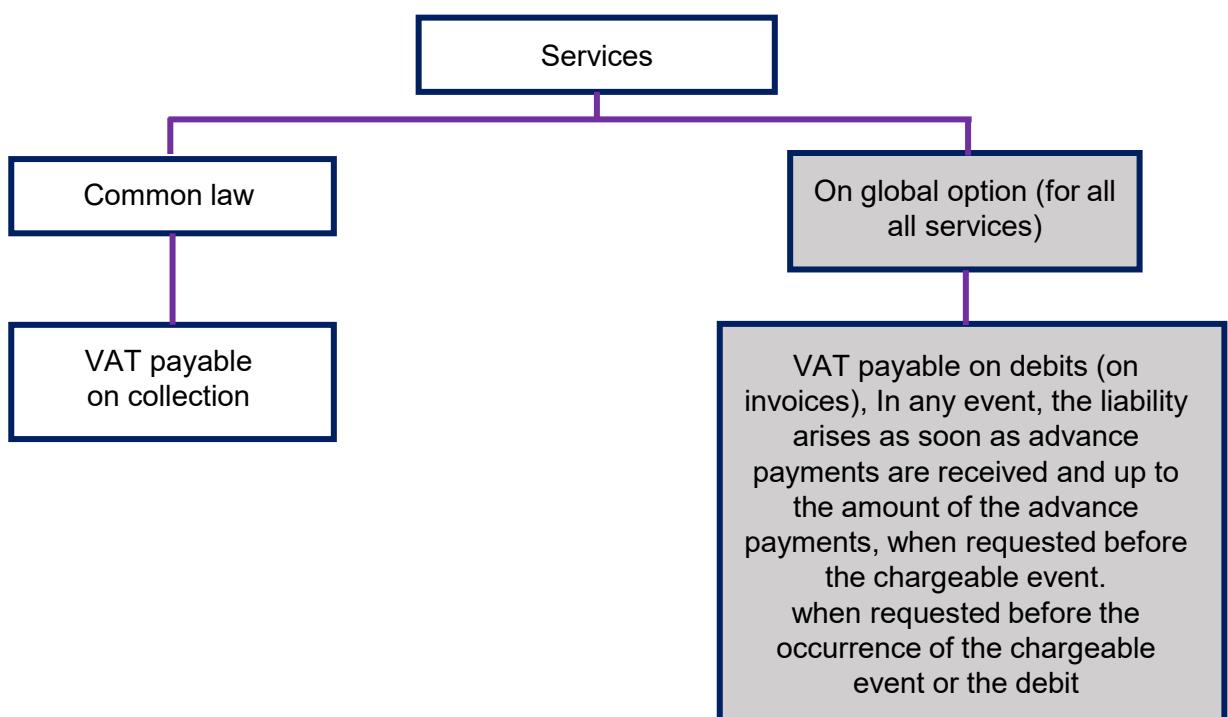
In the absence of a down payment, the VAT is due upon payment on delivery.

What are the consequences?

From now on, as soon as the taxpayer wishes to obtain an advance payment from his client, he will have to establish systematically an "advance payment" invoice that complies with all the formal requirements in terms of VAT,

He will have to draw the consequences for his VAT return.



Summary diagram of the VAT liability for the supply of goods***Summary diagram of the VAT liability for the supply of services***



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