

# France: VAT numbers – Caution!

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An article by the CMS VAT Group

July 2011

## VAT numbers – Caution!

**VAT numbers are supposed to enable businesses to identify the appropriate method of accounting for VAT on their transactions and to protect themselves from fraud. Businesses are therefore entitled to expect a more effective system.**

The VAT number is fundamental to the proper operation of the system for taxing supplies of goods and services within the European Union.

It enables the purchaser or client to demonstrate to the supplier that it is a taxable person, or a business treated as a taxable person<sup>1</sup>, so that VAT can be accounted for in the appropriate way. The importance of this is that it makes it possible to obtain VAT exemption in the Member State where goods originate<sup>2</sup>, or to determine place of supply of services, and thus to avoid following the procedures for the wrong VAT regime, which could lead to VAT adjustments for the supplier.

It also enables the supplier to satisfy itself that the business activity of the purchaser or client has in fact been declared to the tax authorities of the relevant Member State (an important point in terms of protecting against any risk of unwitting participation in fraud).

In order to confirm that a given VAT number is valid, the taxpayer uses the VAT Information Exchange System (VIES<sup>3</sup>) which, unfortunately, is not always up to date.

This database, which includes all registrations submitted by EU businesses, is also intended as an anti-fraud tool for the use of Member States.

## 1. The situation

### 1.1. Inadequacies in the administration of VAT numbers

VAT numbers are allocated and cancelled directly by the Member State concerned, which must then make the information available at EU level.

Certain Member States are relatively vigilant and make specific checks when a request is made for allocation of a VAT number. Others are less rigorous and allocate numbers without making any check as to the transactions for which they are required.

Further, it seems that the cancellation of VAT numbers is poorly administered by the Member States, occurring several months or even several years after cessation of trade because Member States are slow to update the VIES data. Thus it is not uncommon for a number to show as valid when that is no longer the case, and vice versa.

Certain Member States, including France, Germany, Spain and Italy, do not yet enter the name and address associated with the VAT number in the database. Hopefully, the requirement to do so as from 1 January 2012, under Regulation (EU) 904/2010 of 7 October 2010, will be observed in practice. The unreliability of the VIES system places a real burden on businesses, which cannot have confidence in their information.

### 1.2. VIES is a defective system and is poorly run by the Member States

VIES is added to by Member States on the basis of the declarations submitted by businesses established or registered in their jurisdiction. It is thus a "two tier" system,

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<sup>1</sup> In relation to services, an artificial person which is not a taxable person but is registered for VAT purposes is treated as a taxable person.

<sup>2</sup> Provided that the supplier also has proof that the goods have been transported to another Member State.

<sup>3</sup> Introduced in 1993 and accessible on the internet at [http://ec.europa.eu/taxation\\_customs/vies/](http://ec.europa.eu/taxation_customs/vies/)

and this leads to errors and inaccuracies. The system does not give suppliers detailed information as to the failures of their client or purchaser to meet its tax obligations.

Further, although it is intended to provide Member States with information on intra-community flows of goods and services, the database, which incorporates all declarations submitted by EU businesses (EC Sales Lists in relation to goods and services) is actually very little used by the Member States. From numerous cases where businesses have unwittingly become involved in fraudulent practices, it can be seen that the information they had supplied in Sales Lists had not been used in any way by the tax authorities of the Member State in which the fraud was committed.

For example, numerous Member States have allocated VAT numbers to defaulting businesses, and have not used VIES to detect this kind of fraud.

The situation is especially regrettable when it is borne in mind that it is not the fraudsters who find themselves pursued and penalised by the tax authorities, but the honest businesses. Cross-border businesses may have their claims to exemption from VAT in their Member State rejected, for example. Ultimately they bear the tax risks flowing from malfunctions in the information exchange system.

Although they have been familiar with the risks involved in border abolition from the outset, Member States have not taken effective action to make the system reliable, to use it appropriately or to alert businesses to the existence of these risks. They agree however that the database is unsatisfactory and that it is insufficiently used by the administrative bodies.

## 2. The proposals

The European Court of Auditors has stated in Special Report 8/2007 that VIES has "serious weaknesses". We think businesses are entitled to expect the relevant bodies to ensure that the data uploaded to the system is highly reliable. They should no longer be systematically expected to take the risk of tax liability.

### 2.1. Towards a more functional and more reliable system

To improve administration of VAT numbers, each Member State should implement a procedure for quickly identifying cases where the allocation of a VAT number is not followed by the submission of returns and declarations by the business concerned. Such numbers should then be withdrawn as soon as trade ceases or as soon as a fraud committed by the business comes to light.

Automatic or near-instantaneous updating is indispensable, whereas this is currently done on an irregular, monthly or quarterly basis.

It should also be possible for data to be fed into the system immediately and in a centralised way, directly by the businesses submitting their Sales Lists via the system. Finally, the feasibility of a single point of contact for the administration of VAT numbers should be considered. Such numbers could be allocated, monitored and withdrawn by a single body working in close collaboration with the tax authorities of each Member State.

This form of centralisation would be in harmony with moves towards closer cooperation between Member States both in terms of information sharing and anti-fraud measures.

### 2.2. Towards a higher level of security for cross-border businesses

If the database was correctly and rapidly updated, and if Member States used it systematically in practice, it could be an effective tool for combating fraud. Automatic linkages could be created between the VIES data and the information given in returns submitted by businesses in the Member State, in such a way that fraudulent conduct could be rapidly and systematically brought to light.

In addition, cross-border businesses need to be able to rely on VIES in order to be sure that the other party to their transactions is a taxable person. The system should also be used to provide greater security for honest businesses who might fall victim to fraudulent schemes.

It seems clear that the division of responsibilities between businesses and Member States needs to be rebalanced. Honest businesses are frequently criticised for not having taken sufficient care to ensure that they were not participating in a fraudulent scheme, in circumstances where their client's VAT number had shown as valid on the system at the time of the transaction, and the business had submitted its Sales Lists such that, in principle, the Member State had been informed of the transactions.

Against that background, honest cross-border businesses who have confirmed their client's VAT number in VIES, who have duly submitted their Sales Lists, and who meet the objective criteria laid down in EU law, are entitled to an assurance that the tax authorities in their Member State will not challenge the basis on which they have accounted for VAT, even if it turns out that they have unwittingly participated in a fraud.

It would be appropriate for Member States to involve themselves in improving VIES and to take greater responsibility for its operation. It is not right for businesses, and only businesses, to bear the tax risks created by the introduction of the single market and the free movement of goods within the EU.

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