

The Luxembourg Freeport

Luxembourg VAT considerations

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Introduction

LE GOUVERNEMENT
de Grand-Duché de Luxembourg

ADMINISTRATION DE L'ENREGISTREMENT ET DES DOMAINES

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Recherche

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A la Une

TVA sur le commerce électronique

Spécifications du fichier d'import XML
Specifications of the XML import file
Spezifizierungen der zu importierenden XML-Datei
[plus d'info]

TVA - Logement

Formulaires/brochures
Généralités
FAQ

Les dossiers traités actuellement en matière de remboursement de TVA 12% datent de **novembre 2013**.
[plus d'info]

Actualité récente

TVA - Zone franche, vente aux enchères et marché de l'art

Zone franche, vente aux enchères et marché de l'art. Afin de promouvoir les activités futures de la zone franche et d'améliorer le régime fiscal applicable au secteur de l'art, M. le Ministre des Finances vient de déposer le projet de loi no. 6713 à la Chambre des Députés. ...
[plus d'info]

Focus

Missions et valeurs de l'administration

Vacance de poste

eTVA

FAIA

⇒ DATA TRANSFER

Validation du n° TVA

Annuaire téléphonique
- alphabétique
- par services

Ventes publiques et adjudications

Demande d'attestation en matière de TVA

eLearning

Etats récapitulatifs - Périodicité de dépôt

avant le 15 du mois qui suit la période de déclaration, en cas de souscription sur formulaire papier

avant le 25 de ce mois, en cas de souscription par l'intermédiaire du portail

Draft Law N°6713 - 28 August 2014

Application of the reduced VAT rate to:

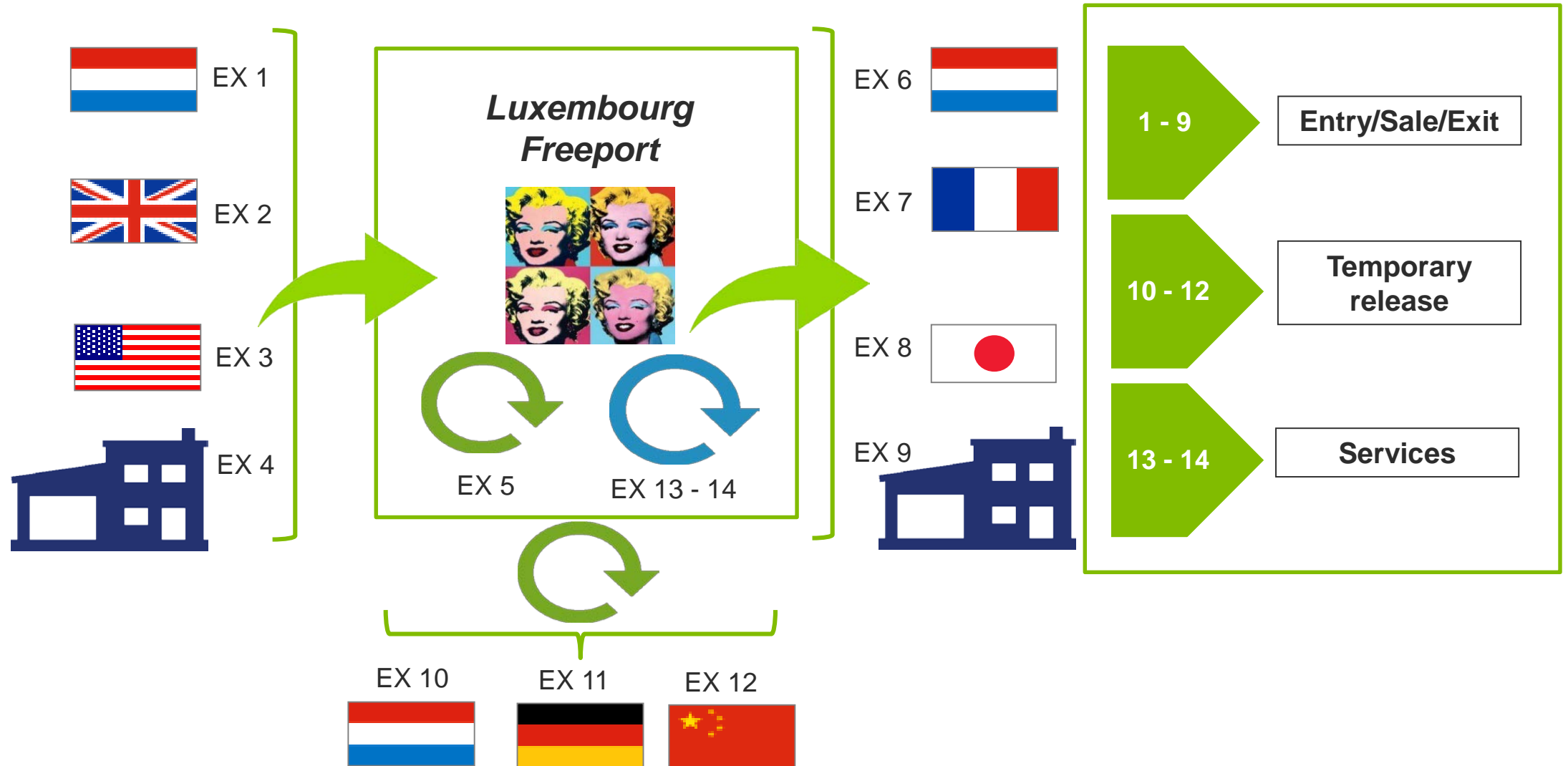
- Collections' items and antiques;
- any imports within the EU;
- Annex E will list the artworks, collections' items and antiques eligible for the reduced VAT rate.

Profit margin scheme applicable to the supply of second-hand goods, works of art, collectors' items and antiques:

- If the purchase price paid by the taxable dealer cannot be determined or is insignificant, then the taxable basis of the sale would amount to 30 % of the sale price (under conditions).
- Extension of this scheme to the organizer of a sale in a public auction.

The Draft Law will enter into force on 1 January 2015.

Introduction



Entry in the Luxembourg Freeport

From Luxembourg to the Luxembourg Freeport

EX 1



Luxembourg

Luxembourg

Luxembourg VAT exempt supply provided that:

- The transport to the Luxembourg Freeport is evidenced;
- The supply is not aimed at final use or consumption.

Whatever the status of the owner (private individual or company – VAT registered or not), his place of establishment or domicile.

(Art. 56 sexies (2) (b) LVATL)

The VAT exemption is temporary.

From another EU country to the Luxembourg Freeport

EX 2



United Kingdom

Luxembourg

EX. 2.1. Luxembourg VAT exempt intra-community acquisition performed by a VAT registered person.

- Whatever the place of establishment or domicile and the country where he is VAT registered.

(Art. 56 sexies (2) (b) LVATL)

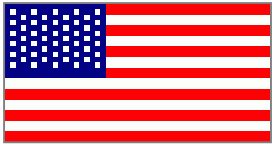
Ex. 2.2. UK VAT due or Luxembourg VAT exempt supply under distance sale regime?

(Art. 14 (3) and 56 sexies (2) (b) LVATL)

The VAT exemption is temporary.

From outside the EU to the Luxembourg Freeport

EX 3



USA



Luxembourg

Luxembourg VAT exempt import provided that:

- The transport of the goods to the Luxembourg Freeport is evidenced by the owner.

Whatever the status of the owner (private individual or company – VAT registered or not), his place of establishment or domicile.

(Art. 19 and 27 (2) LVATL)

The VAT exemption is temporary.

From another Freeport to the Luxembourg Freeport

EX 4



Foreign Freeport



Luxembourg

Luxembourg VAT exempt supply provided that:

- Goods were not put in the free circulation within the European Community before their entry within the Luxembourg Freeport.

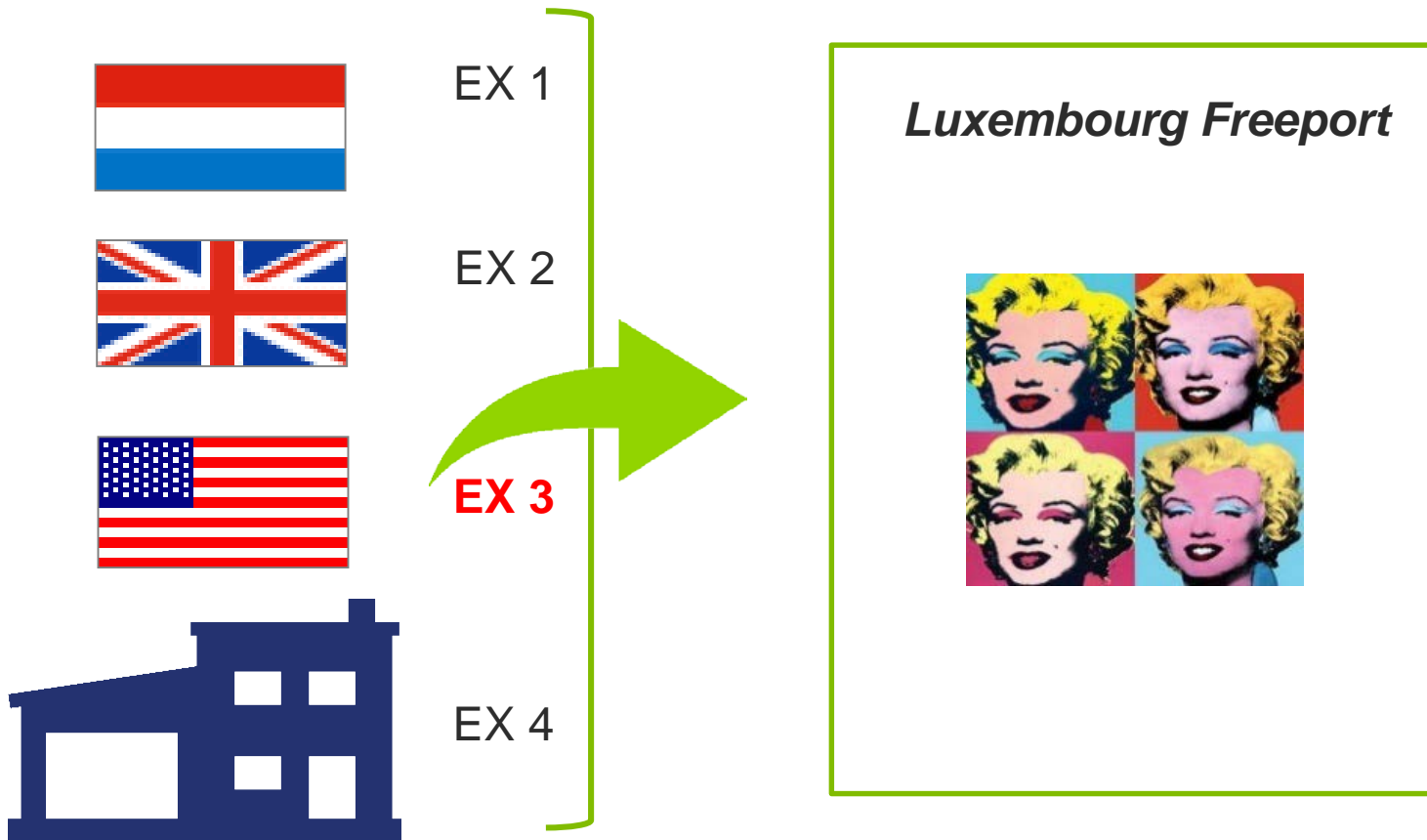
Whatever the status of the owner (private individual or company – VAT registered or not), his place of establishment or domicile.

(Articles 19 (4) and 27 (2) LVATL)

The VAT exemption is temporary.

Entry in the Luxembourg Freeport

Compliance obligations



Compliance obligations

Ex. 1, 2, 3 and 4

- A. Any entry in the Luxembourg Freeport has to be declared by the authorised operator.
- B. Entry in the Luxembourg Freeport does not trigger as such any Luxembourg VAT obligation (e.g. VAT registration, appointment of a fiscal representative, etc.).
- C. Exception: In case the owner is a taxable person not VAT registered in Luxembourg, who performs an intra-community acquisition of goods in Luxembourg: he has to appoint a fiscal representative (or the authorised operator, acting as a fiscal representative) to comply with his Luxembourg VAT compliance obligations (Art. 56 sexies (15) LVATL).

Sale within the Luxembourg Freeport

Sale within the Luxembourg Freeport

EX 5

Luxembourg Freeport



Luxembourg VAT exempt sale

- Provided that the goods are physically stored in the Luxembourg Freeport;

Whatever the status of seller/buyer (private individual or company – VAT registered or not), his place of establishment or domicile.

(Article 56 sexies (2) (b) LVATL)

The VAT exemption is temporary.

If the seller only performs sales of goods within the Freeport, he is not required to VAT register in Luxembourg and to file Luxembourg VAT returns (Art. 56 sexies (10) LVATL).

Exit from the Luxembourg Freeport

Exit from the Luxembourg Freeport

EX 6

**Luxembourg
Freeport**



If the goods remain in Luxembourg:

I. The owner is a non-taxable person:

- The removal triggers the regularization of the temporary VAT exemption on the previous supplies;
- **VAT to be regularized** corresponds to the payments of the VAT that would have been due if each of the temporarily VAT exempted supplies had been subject to VAT (e.g. purchase price, storage services);
- In practice, the VAT due will be determined based on the normal value of the goods at the time of the removal from the Luxembourg Freeport (up to the taxable basis of the import).
- The VAT exemption on the previous supplies is definite in case of the subsequent sale within the Luxembourg Freeport.
- **If the goods are sourced from outside the EU and not customs cleared before being placed in the Luxembourg Freeport: Customs/excise duties** are potentially due upon the removal from the Luxembourg Freeport (Art. 56 sexies (8) LVATL).
- The owner of the goods is liable for (i) the VAT due on the regularization on the temporary VAT exempt supplies and for (ii) the Customs/excise duties;
- This VAT is a final cost for the owner.

II. The owner is a taxable person:

- The removal triggers the regularization of the temporary VAT exemption on the previous supplies;
- The owner may be liable for the payment of (i) the VAT determined based on the normal value of the goods at the time of the removal from the Luxembourg Freeport and (ii) the Customs/excise duties;
- This VAT is deductible by the owner according to the standard VAT rules.

Exit from the Luxembourg Freeport

EX 7

Luxembourg Freeport



If the goods are transported by the owner (or a third party acting on his behalf) from Luxembourg to another EU country

I. The owner is a non-taxable person

- The removal triggers the regularization of the temporary VAT exemption on the previous supplies. The Luxembourg VAT due is a final cost for the owner.
- If the goods are sourced from outside the EU and not customs cleared before being placed in the Luxembourg Freeport: Customs/excise duties are also potentially due.

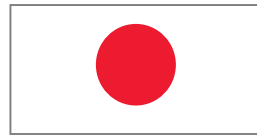
II. The owner is a taxable person

- The subsequent supply of the goods from Luxembourg Freeport to France qualifies as a Luxembourg ("deemed") VAT exempt supply of goods (Art. 43 (1) (d)/ (f) LVATL);
- The temporary VAT exemption on the previous supplies becomes definite for the owner ;
- Should the goods be sourced from outside the EU and not be customs cleared when being placing within the Freeport, the removal of the goods triggers an obligation for the owner to pay the customs duties;
- Transport of the goods to France must be evidenced.
- VAT due in France.

Exit from the Luxembourg Freeport

EX 8

Luxembourg Freeport



The owner is either a taxable person or a non-taxable person:

- **If the goods are sourced from outside the EU and not customs cleared before being placed within the Luxembourg Freeport**
 - The temporary VAT exemption on the previous supplies is definite: no regularization is needed;
 - No customs duties are due.
- **If the goods are sourced from the EU**
 - The subsequent supply of the goods from the Luxembourg Freeport to Japan qualifies as a Luxembourg VAT exempt export of goods (Art. 43 (1) (a) LVATL);
 - The removal of the goods did not trigger any regularization of the temporary VAT exemption on previous supplies;
 - The transport of the goods to outside the EU must be evidenced.

Exit from the Luxembourg Freeport

EX 9

Luxembourg Freeport



If the goods are transported by the owner from Luxembourg to foreign Freeport:

- The owner performs a temporary Luxembourg VAT exempt supply as from Luxembourg (Art. 56 sexies (2) (f) LVATL) provided that he can evidence that the goods will be placed in a foreign Freeport;
- The temporary VAT exemption on the previous supplies becomes definite for the owner – No regularization needed;
- Proof of transport / T1 document to be kept.

Exit from Luxembourg Freeport VAT obligations

Luxembourg Freeport



EX 6



EX 7



EX 8



EX 9



VAT obligations

- A. Any temporary release from the Luxembourg Freeport has to be declared by the authorized operator (Art. 56 sexies 13 LVATL);
- B. The owner has to provide the authorized operator with the purchase invoice if he was not the one who placed the goods in the Luxembourg Freeport (Art. 56 sexies (14) LVATL).
- C. Declaration and payment of the VAT due on the regularization of the temporary VAT exemption on the previous supplies:**
- Through the owner's Luxembourg VAT return (**Ex. 6**);
 - Through his fiscal representative's VAT return if the owner qualifies as a taxable person but is not established and VAT registered in Luxembourg (**Ex. 6**);
 - Directly within the Luxembourg Customs Authorities if the owner does not qualify as a VAT taxable person (**Ex. 6, 7, 8 and 9**).

If the owner is not domiciled/established in Luxembourg and not Luxembourg VAT registered, the authorized operator may act as a fiscal representative for the declaration and the payment of VAT (Art. 56 sexies (15) LVATL).

Temporary release from the Luxembourg Freeport

Temporary release from the Luxembourg Freeport

EX 10



Luxembourg



Example

- The good is removed by its owner from the Luxembourg Freeport and placed in MUDAM;
- After the exhibition, the good will be returned to the Luxembourg Freeport.

In all situations:

- The title over the good remains with its current owner.
- The good temporary released from the Luxembourg Freeport remains within the Luxembourg territory.
- Whatever the VAT status of the owner of the goods and his place of establishment/domicile.
 - **If the goods are sourced from the EU**
 - The removal triggers in principle an obligation for the owner to regularize the temporary VAT exemption on the previous supplies?
 - **If the goods are sourced from outside the EU and were not customs cleared before being place with the Luxembourg Freeport**

No Luxembourg VAT is due on the value of the goods due to the benefit of the temporary admission scheme (time limit of 24 months).

Temporary release from the Luxembourg Freeport

EX 11



Luxembourg



i. The owner of the goods does not qualify as a VAT taxable person:

- The removal triggers in principle an obligation for the owner to regularize the temporary VAT exemption on the previous supplies?
- If the goods are sourced from outside the EU and were not customs cleared before being placed within the Luxembourg Freeport, customs duties are due.

II. The owner of the goods qualifies as a taxable person (or as a non taxable person but is duly VAT registered)

• If the goods are sourced from EU

- The removal triggers in principle an obligation for the owner to regularize the temporary VAT exemption on the previous supplies?
- If the goods are sourced from outside the EU and were not customs cleared before being placed within the Luxembourg Freeport, customs duties are due.

• If the goods are sourced from outside the EU and not customs cleared before being placed within the Luxembourg Freeport

- The operation benefits from the temporary admission scheme (time limit of 24 months);
- **No regularization of the temporary VAT exemption on the previous supplies.**

Example

- Renting-out a good to Pergamon Museum with or without consideration;
- The good is removed by its owner, a private person or a VAT taxable person (or a third party acting on its behalf) from the Luxembourg Freeport and placed in the Pergamon Museum;
- After the exhibition, the good will return to the Luxembourg Freeport.

Temporary release from the Luxembourg Freeport

EX 12



Luxembourg



- The operation benefits from the temporary admission scheme (time limit of 24 months);
- No regularization of the temporary VAT exemption on the previous supplies;
 - Whatever the VAT status of the owner or the place of establishment or domicile.
 - Proof of transport should be kept by the owner.

Example

- Temporary release from the Luxembourg Freeport for the needs of an event taking place in China;
- Release by the owner, a private person or a VAT registered company from the Luxembourg Freeport and transported to China;
- After the event, the good will be transported and placed back within the Luxembourg Freeport.

Temporary release from the Luxembourg Freeport

VAT obligations



The Luxembourg Freeport - Luxembourg VAT considerations

VAT obligations

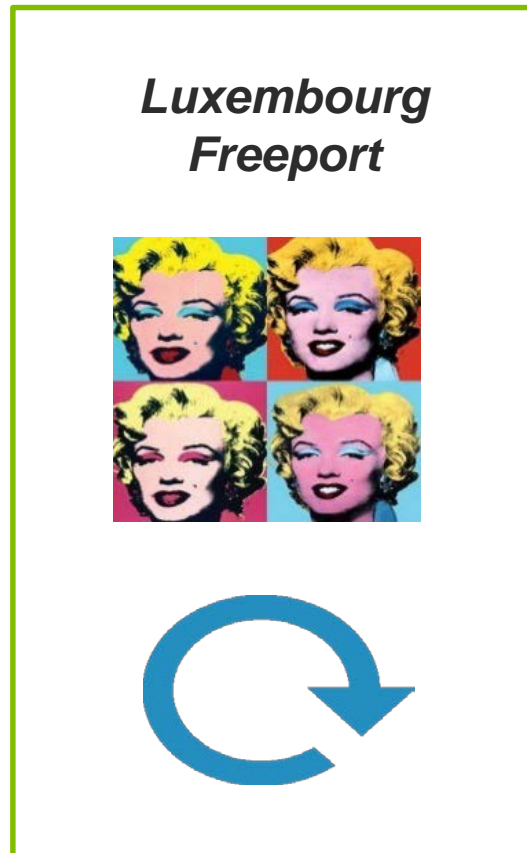
- A. Any temporary release of the good from the Luxembourg Freeport has to be registered by the authorized operator (Art. 56 sexies 13 LVATL) (**Ex. 10,11,12**);
- B. The owner has to provide the authorized operator with the purchase invoice of the good if he was not the one who placed it in the Luxembourg Freeport (Art. 56 sexies (14) LVATL).
- C. Declaration and payment of the VAT due on the regularization of the temporary VAT exemption on the previous supplies:**
- Through the owner's Luxembourg VAT return (**Ex. 10**);
 - Directly within the Luxembourg Customs Authorities if the owner does not qualify as a VAT taxable person (**Ex. 11**).

If the owner is not domiciled/established in Luxembourg and not Luxembourg VAT registered, the authorized operator may act as a fiscal representative for the declaration and the payment of VAT (Art. 56 sexies (15) LVATL).

Services rendered within the Luxembourg Freeport

Services rendered within the Freeport in Luxembourg

EX 13 -14



- Number of services rendered in relation to the stored goods by the authorised operators or any other experts within the Luxembourg Freeport.

Examples of services related to a good	Examples of other services related to the storage
<ul style="list-style-type: none">▪ Photography of the stored goods;▪ Valuations and expert opinions;▪ Workshops for handling, packaging; authentication of stored goods;▪ Restoration of the stored goods.	<ul style="list-style-type: none">▪ Renting out of show rooms for display;▪ On-site logistics services to ship, insure and handle goods and clear customs formalities;▪ Deliveries from tarmac and road;▪ Control of temperature and humidity allowing optimum conservation and preservation conditions for the stored goods;▪ High level of security services.

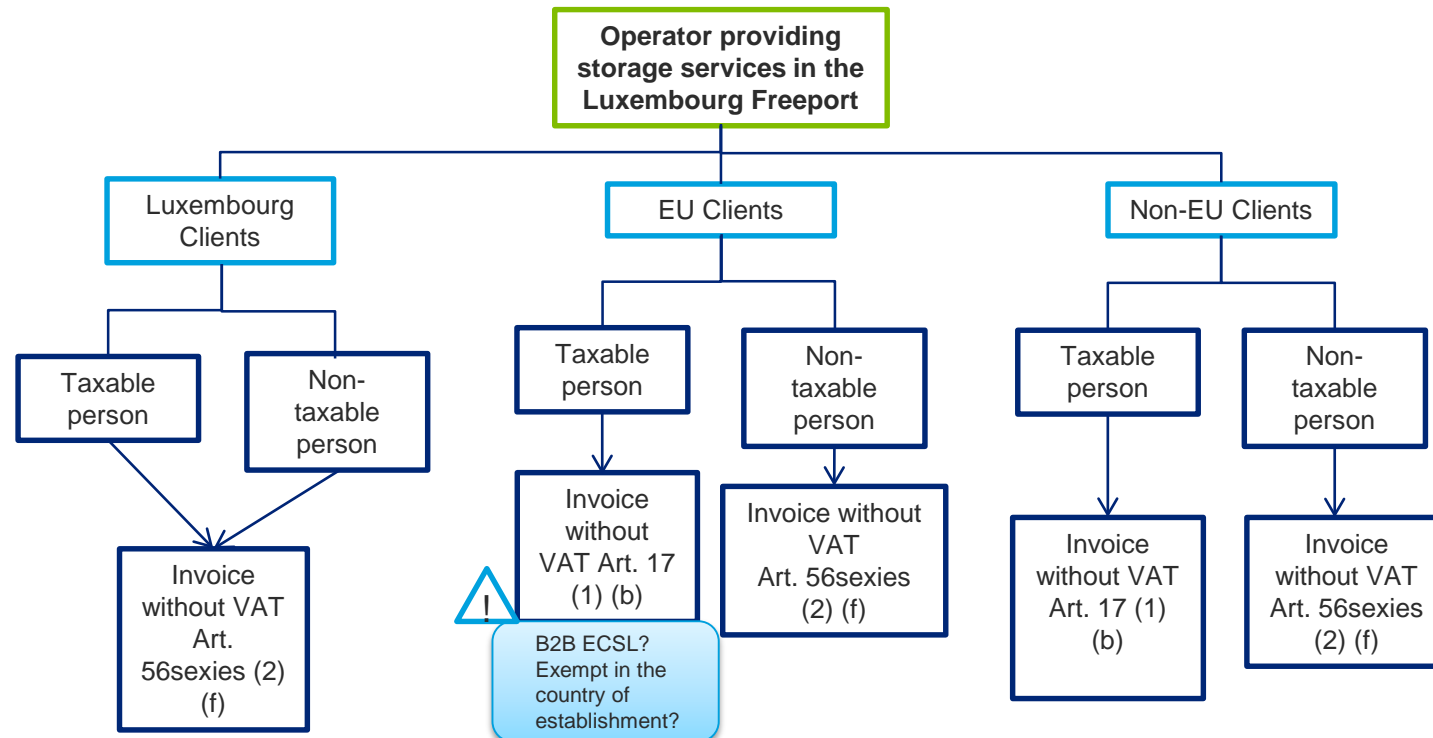
- **Only** handling services and valorisation services, including storage services, performed in the Luxembourg Freeport and not resulting in the exit, are temporary VAT exempt (Article 56 sexies (2) (f) LVAT).

Services rendered within the Freeport in Luxembourg

EX 13 -14

Storage services “in units” cover a bundle of services including on-site logistic services (shipping, packaging, insurance):

- Place of taxation determined by the application of B2B place of supply rules;
- Services eligible for the temporary VAT exemption.

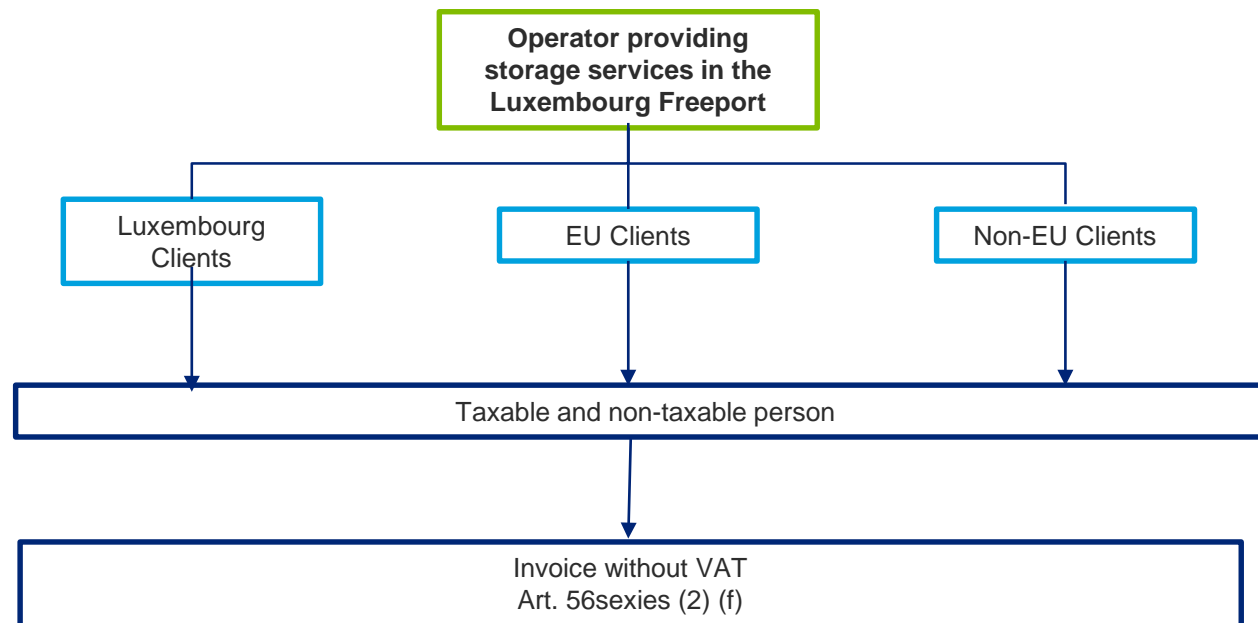


Services rendered within the Freeport in Luxembourg

EX 13 -14

Storage services “*in dedicated space*”:

- Place of taxation determined by the place of supply of services connected with the immovable property, i.e. Luxembourg Freeport (Art. 17 (2) (2) LVATL);
- Services eligible for the temporary VAT exemption.



Services rendered within the Freeport in Luxembourg

- **The temporary VAT exemption may become definite depending on the VAT treatment applied to the subsequent operation for which the stored goods are removed from the Luxembourg Freeport;**
 - The Luxembourg temporary VAT exemption of the services rendered when the goods were stored in the Luxembourg Freeport **becomes definite for the owner**, when:
 - ✓ A sale occurs in the Luxembourg Freeport;
 - ✓ The goods are removed for the needs of a Luxembourg VAT exempt intra-community supply of goods/ or a VAT exempt export of goods.
- In other situations, the **regularization of the temporary VAT exemption on the services supplied** when the goods were stored within the Luxembourg Freeport has to be done.
 - ✓ The “regularized” VAT on the received services may be recovered by the owner according to the standard VAT rules (i.e. through its Luxembourg VAT return or the one of its fiscal representative).
- The authorized operator is required to keep a record of all the services relating to the storage and valuation of the goods while they are stored within the Luxembourg Freeport.

Questions?
Answers?



Your contacts

Partner



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Christian is a VAT partner leading the Deloitte VAT department. During his more than twenty years of experience in international VAT, Christian focused on indirect tax issues (Value Added Tax, Customs Duties, Registrations and Stamp duties) in various industries including retail, telecommunications, entertainment services, transportation, private equity and real estate.

He provides advice to clients in various areas of indirect taxes / Tax Audits / Negotiation with VAT authorities in different countries / Tax controversy services / Tax compliance.

He achieved experience in the consultancy environment as well as in the industry.

Christian holds degrees in accountancy and taxes from HANTAL Kortrijk (Belgium), in tax sciences from Fiskale Hogeschool Brussels (Belgium) and in trade sciences with a tax specialization from EHSAL, Brussels.

He is a member of the Belgian Institute of taxation specialists (IAB / IEC) and a member of the Luxembourg Institute of Experts Comptables (OEC).

He is Deloitte's Indirect Tax EMEA Learning Partner, a regular speaker at various national and international training courses and seminars, and a guest lecturer at a number of universities.

Your contacts

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Raphaël joined Deloitte in 1998. He was appointed Partner in 2008.

He started his career in the Tax department where he has specialized in domestic and international VAT advisory and compliance services. He then specialized in VAT advice to banks, insurance companies and investment funds including private equity & real estate companies.

As an internationally recognized VAT expert, he is regularly advising on major international VAT projects for Fund Services & Insurance (FSI) and Private Equity (PE) groups.

Raphaël is a qualified Chartered Accountant and a qualified Luxembourg tax expert (diploma in Luxembourg taxation from the Training Institute of the Luxembourg Chamber of Commerce).

He holds a finance degree from the Institut Commercial de Nancy (ICN), a superior master's degree of French tax law and a master degree in business law (DJCE/DESS) from the University of Nancy (France). He has also a certificate of specialization in commercial law.

He is a member of the VAT working groups of the Association des Banques et Banquiers Luxembourgeois (ABBL) and the Association of the Luxembourg Fund Industry (ALFI).

Your contacts

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Edwige joined Deloitte in August 2004 as a Consultant in the Tax department, where she is currently a Senior Manager specializing in domestic and international VAT advisory and compliance services.

During her more than 9 years of professional experience she has more specifically focused on VAT advisory services to the financial sector, including private equity & real estate companies, banks, insurance companies, financial sector professionals and large commercial and industrial companies.

Edwige advises clients on a wide range of VAT issues, including VAT implications of mergers and acquisitions, VAT due diligences, input VAT deduction right and VAT cash flow optimization structures and provides her VAT assistance in the context of litigations with the Luxembourg VAT Authorities. As an internationally recognized VAT expert she regularly advises on major international VAT projects for FSI, CIPS and PE/RE groups.

Edwige is a certified Luxembourg Tax expert (diploma in Luxembourg taxation from the Training Institute of the Luxembourg Chamber of Commerce) and she holds the Islamic Finance Qualification.

Moreover, Edwige is a French qualified attorney and holds a superior master's degree in French tax law and a superior master's degree in French business law.

She is often a speaker at internal and external trainings and seminars on VAT and indirect taxes issues.

Edwige is fluent in English and French.

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