



WHAT'S NEW IN 2022?



AGENDA

Legal News

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- ❖ Open Space – Exercise of domiciliation activity when operating a business center or a coworking space
- ❖ Electronic invoicing in Luxembourg

Taxation of legal entities

- ❖ Shareholder loans and tax transparency
- ❖ Real Estate Levy - Circular of the tax director dated January 20, 2022
- ❖ Tax treatment of the demolition of buildings forming part of the net assets of a commercial enterprise



AGENDA

Taxation of natural persons

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- ❖ Electronic income tax return
- ❖ Reform of the system of non-cash benefits for company cars
- ❖ Deductible premiums under a retirement savings contract
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News from the social sector

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- ❖ Wage tax card in electronic format
- ❖ Non-residents – tax class



AGENDA

News from the social sector (Continued)

- ❖ Home office & COVID-19 – income tax and CCSS membership
- ❖ COVID-19 and aid scheme
- ❖ Taxation scheme for temporary workers

Value added tax – distance selling

- ❖ The VAT reform for e-commerce came into force on July 1, 2021



Trade and Companies Register of Luxembourg Formalism of filing - novelties

As of the end of the first quarter of 2022, any natural person registered with an entity registered in the RCS (shareholder of a limited liability company, managing director, member of the board of directors, auditor, depositary, liquidator,...) must provide his **Luxembourg national identification number** (hereinafter "LNIN").

If the relevant natural person does not have an LNIN, the LBR will create it at the time of acceptance of the application for deposit with the RCS.

The LNIN will not be disclosed to third parties, will not appear on the documents issued by the RCS or on the pre-filled deposit forms, and will not be available on the portal of the LBR.

Exercise of domiciliation activity when operating a business center or a coworking space

There is a growing interest in business centers and coworking spaces in Luxembourg.

This activity coincides with the evolution of the world of work in recent years and can offer a number of benefits.

The CSSF noted that this activity has evolved significantly since then and that these service providers now offer their clients the possibility to set up their headquarters at their address and provide them with additional services - such as managing mail, handling incoming calls or receiving visitors. Some service providers even offer the possibility of setting up a registered office at their address on the basis of "virtual offices" without the customer having to be physically present on site.

Exercise of domiciliation activity when operating a business center or a coworking space (Continued)

In view of this development, the CSSF recalls that the provision of a registered office or business address to a company where it carries out its activities within the scope of its corporate purpose, as well as the provision of services related to these activities, is considered a **domiciliation activity**.

According to the CSSF's administrative practice, the **rental** of a locked and private office to a company where it establishes its registered office is in principle not considered a domiciliation activity, provided that it is a genuine rental, i.e. a continuous and permanent rental that ensures that the renter has private premises for its exclusive use.

If additional services are provided, the activity again falls within the definition of **domiciliation** of business.

Exercise of domiciliation activity when operating a business center or a coworking space (Continued)

The CSSF points out that **members of the regulated professions** referred to in Article 1 of the Law of 1999 (hereinafter the "**Law of 1999**"), with the exception of the specialized professionals of the financial sector who are authorized as domiciliation agents for companies pursuant to Article 28-9 of the Law of 5 April 1993 on the financial sector (hereinafter the "**Law of 1993**"), are exclusively authorized to carry out domiciliation for companies for which they provide professional services. Domiciliation should be only a secondary activity compared to their main regulated activity.

With respect to these regulated professions, any domiciliation activity carried out outside their main activity, such as the operation of a business center or a coworking space, requires the prior approval of the CSSF.

Finally, the CSSF recalls that a violation of the provisions of the 1999 Law constitutes a **criminal offense** punishable by imprisonment from eight days to five years and a fine ranging from 1,250 to 125,000 euros.



Electronic invoicing in Luxembourg

The law of December 13, 2021, amending the law of May 16, 2019, on electronic invoicing in public procurement and concession contracts introduces the obligation for economic operators to send their invoices **electronically to the state in the context of public procurement and concession contracts**.

This will lead to shorter payment periods and more systematic digitalization and automation of public procurement, which in turn will result in efficiency gains and a reduction in administrative burdens for businesses.

Obligations for economic operators to issue and transmit invoices exclusively electronically, i.e. XML files.

Electronic invoicing in Luxembourg (Continued)

Application within the following deadlines:

- For **large** economic operators: from May 18, 2022;
- for **medium-sized** economic operators: from October 18, 2022;
- for **small and newly established** economic operators: from 18 March 2023.

Shareholder loans and tax transparency

The principle of tax transparency is enshrined in Section 11bis of the Tax Adjustment Act of October 16, 1934. Accordingly, partnerships are considered fiscally transparent for income taxation purposes. Despite the fact that partnerships are considered as separate legal entities in corporate law, they are not separate tax subjects. Therefore, for income tax purposes, they are not taxed themselves, but their shareholders, who are personally liable for income tax on their share of the partnership's income.

Following the judgment of December 9, 2021 (No. 41517), the court decided how loan transactions from shareholders to a transparent partnership should be treated for tax purposes. The court considered that a loan granted by a shareholder to a transparent company must be excluded off-balance sheet and reclassified as an additional contribution.

Shareholder loans and tax transparency (Continued)

A loan granted by the shareholder to the transparent company must be excluded off-balance sheet and reclassified as an additional contribution as value received by the transparent company. In fact, the transparent company may generate expenses and income on the basis of transactions with its shareholders, which are otherwise perfectly valid from a legal point of view. However, the contracts between the company and its shareholders do not have any tax implications.



TAXATION OF NATURAL PERSONS

10% real estate tax for certain vehicles investing in Luxembourg real estate (introduced as of January 1, 2021)

The Tax Administration issued a circular on January 20, 2022, providing more detailed information on this real estate withholding tax.

This real estate withholding tax is levied on income derived from the rental of real estate, on capital gains derived from the sale of real estate and, under certain conditions, on capital gains derived from the sale of shares in certain types of companies, provided that the income is derived from real estate located in the Grand Duchy of Luxembourg and is realized or received directly or through a fiscally transparent company or by an investment fund from a vehicle.

Objective: To avoid tax abuse in connection with real estate located in the Grand Duchy of Luxembourg that is managed by investment funds as an investment pool and is only subject to the final withholding tax.



TAXATION OF NATURAL PERSONS

Tax treatment of demolition of buildings forming part of the invested net assets of a commercial enterprise

The Administration issued a circular dated January 5, 2022.

When demolishing a building that is part of the invested net assets of a commercial enterprise, the question arises whether the residual book value of the building (at the time of demolition) must be included in the non-depreciable purchase price of the land or in the depreciable acquisition cost of a new asset (e.g. a new building) or whether extraordinary depreciation is eligible.



TAXATION OF NATURAL PERSONS

Tax treatment of demolition of buildings forming part of the invested net assets of a commercial enterprise (Continued)

A distinction must be made according to the following cases:

- 1) **The building was acquired with the intention of demolishing it.**
 - **Building shows pronounced technical or economic wear and tear:**
 - The expenses for the acquisition of the building (land and building) and the demolition costs are **fully included in the purchase price of the land.**
 - **For buildings that do not exhibit pronounced wear and tear, a distinction must be made between the following two cases:**
 - a) **Intention to create a new asset in place of the demolished building:**
 - The residual book value of the demolished building and the demolition costs are **included in the acquisition cost of the new asset.**



TAXATION OF NATURAL PERSONS

Tax treatment of demolition of buildings forming part of the invested net assets of a commercial enterprise (Continued)

b) No intention to create a new asset in place of the demolished building:

- The residual book value of the demolished building and the demolition costs are included in the purchase price of the land.

2) Building not acquired for demolition.

- Demolished building that was not acquired for demolition and has been used by the company for a longer period of time:
 - The residual book value is written off extraordinarily and the demolition costs are deducted in full at the expense of the demolition year.



TAXATION OF NATURAL PERSONS

Administrative simplification of tax returns for natural persons

A new end-to-end digital tax return process will be available on MyGuichet.lu from February 2022. This development will allow taxpayers to file their income tax returns more easily and quickly and allow the tax authority to process them entirely digitally, significantly reducing the time it takes to issue tax assessments.

In the first phase, this process will be limited to taxpayers who are taxed by assessment and earn income from employment and/or income from pensions or annuities and/or income from rentals and leases.



TAXATION OF NATURAL PERSONS

Reform of the non-cash benefits for company cars

Draft of a Grand-Ducal Regulation presented by the Ministry of Mobility and Public Works on January 11, 2022

Monthly applicable rate on new value of the vehicle (incl. VAT)

CO ₂ Emission class	Vehicle without diesel engine		Vehicle with diesel engine		Vehicle with hydrogen engine		100% Electric vehicle			
	current	new	current	new	current	new	≤ 18kWh/100km		≥ 18kWh/100km	
							current	new	current	new
0 g/km					0,5%	0,5%	0,5%	0,5%	0,5%	0,6%
1 - 50 g/km	0,8%	0,8%	1,0%	1,0%						
51 - 80 g/km	1,0%	1,0%	1,2%	1,2%						
81 - 110 g/km	1,0%	1,2%	1,2%	1,4%						
111 - 130 g/km	1,3%	1,5%	1,5%	1,6%						
130 - 150 g/km	1,5%	1,8%	1,5%	1,8%						
> 150 g/km	1,7%	1,8%	1,8%	1,8%						



TAXATION OF NATURAL PERSONS

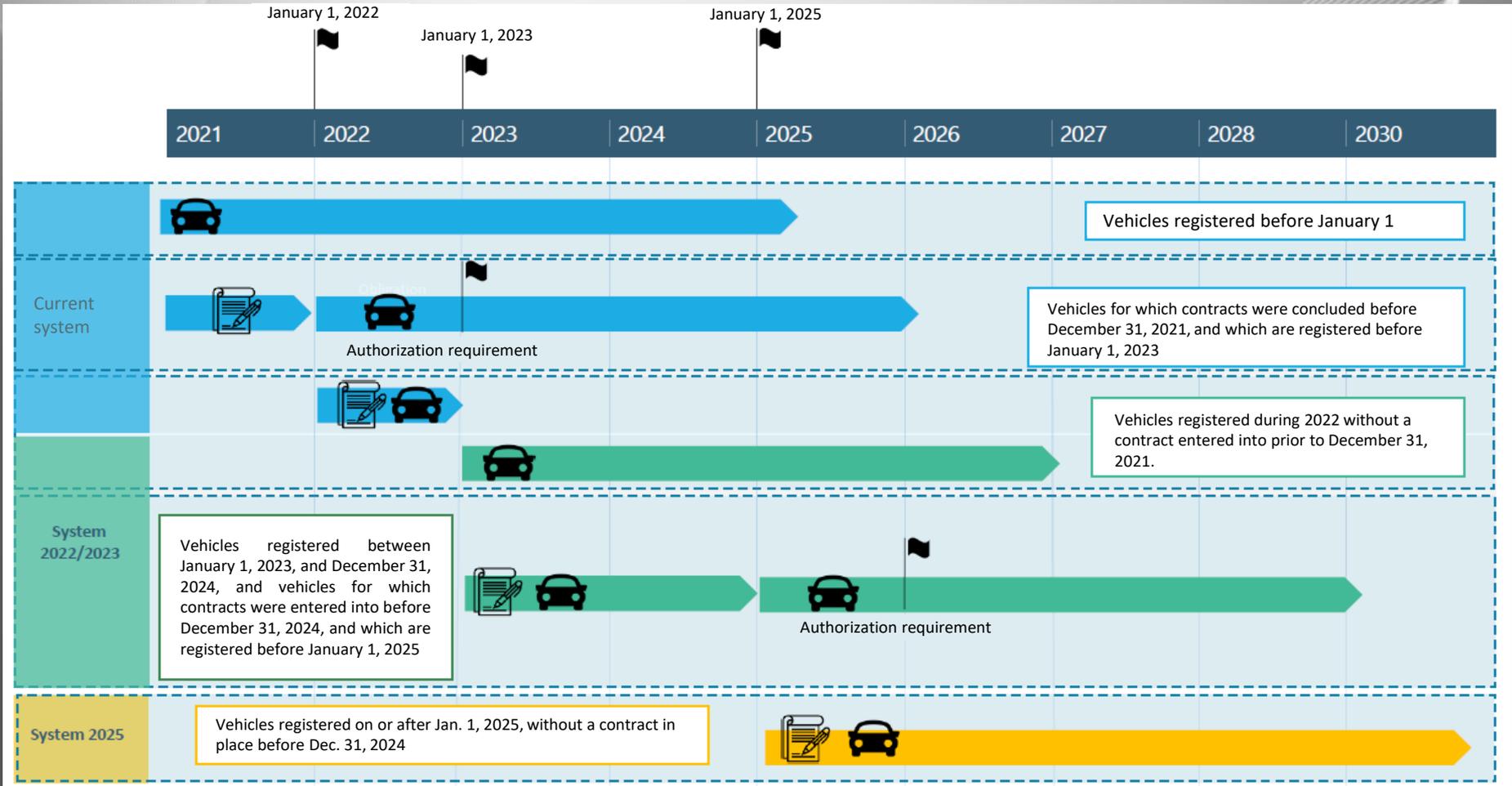
As of 2025

- A monthly rate of 1% or 1.2% will be applied to newly registered CO2 – emission-free company vehicles for the calculation of the non-cash benefit.
- A monthly rate of 2% is applicable for vehicles with thermal engine.



TAXATION OF NATURAL PERSONS

Summary of the implementation



TAXATION OF NATURAL PERSONS

- Aid « Clever lueden, Sue spueren » for private charging stations (also for leased vehicles)
 - up to 750€ for a normal wallbox
 - up to 1.200€ for an intelligent wallbox
 - up to 1.650€ for a wallbox integrated in an intelligent charging management system
- Obligation to pre-fit charging points for indoor and outdoor parking spaces in new residential and other buildings



TAXATION OF NATURAL PERSONS

- New aid scheme for companies investing in charging infrastructure for electric vehicles
 - An aid scheme for small and medium-sized companies only, providing a subsidy of up to 50% of the cost of charging stations and up to 60% of the cost of electricity connection
 - This scheme also applies to leased vehicles



TAXATION OF NATURAL PERSONS

Deductible premiums under a retirement savings contract

Introduction of a new article 111ter L.I.R. for the deductibility of premiums paid into a Luxembourg sub-account of a "Pan-European Individual Pension Savings Product (PEPP)" account.

The objective of PEPP is to allow savers throughout the European Union to save into a single product, even if they move to another EU Member State.



TAXATION OF NATURAL PERSONS

Adjustment of the accelerated depreciation rate on newly built rental properties

REMINDER: Valid from 01/01/2021

	Accelerated depreciation	Special compensation for real estate
Building completed or acquired before 01.01.2021	Interest rate of 6% in the year of completion and the following 6 years	N/A
Building completed or acquired after 30.12.2020	Interest rate of 4% in the year of completion and the following 5 years	Tax-free allowance of 1% of the purchase price (excluding the land portion), capped at EUR 10,000 (EUR 20,000 for spouses/life partners who are jointly liable for tax)
Sustainable energy retrofits (investments)	Interest rate of 6% in the year of completion and the following 9 years	N/A

TAXATION OF NATURAL PERSONS

Double taxation agreement with France

The French government is stepping back from the application of the new tax treaty between France and Luxembourg.

The impediment is the replacement of the exemption as a method of eliminating double taxation with the credit method.

In line with OECD standards, the new 2018 agreement replaced the exemption mechanism with the credit mechanism. In order to avoid significant double taxation, the French resident receives a tax credit equal to the amount of tax paid in Luxembourg, which is credited against the tax due in France. This tax credit may not exceed the amount of French tax due on such income.

After the new tax treaty was postponed for one year, the government has now announced that the taxpayers concerned will have the opportunity to request the application of the provisions of the old tax treaty for the taxation of their income in 2020 and 2021.



Adjustment of the « Mutualité des Employeurs »

Class	1	2	3	4
Contribution 2021	0,53%	1,05%	1,50%	2,88%
	↓	↓	↓	↓
Contribution 2022	0,60%	1,13%	1,66%	2,98%

Only applicable to regular salary payment (no bonuses).

Accident insurance

Class	1	2	3	4	5
Contribution 2021	0,675%	0,75%	0,825%	0,975%	1,125%
Contribution 2022	0,675%	0,75%	0,825%	0,975%	1,125%

Applicable rates according to the bonus-malus factor set by the competent fund (17 existing classes, depending on the main activity of the company).

Please note that the contribution to accident insurance remains unchanged with respect to 2021.

« Health at work »

	2021	2022
Contribution	0,14%	

The contribution remains unchanged for the year 2022.

NEWS FROM THE SOCIAL SECTOR

Indexation of social minimum wages

	2021 (01/01/21)	2022
SSMNQ	2.201,93 €	2.256,95 €
SSMQ	2.642,32 €	2.708,35 €
Index (general)	834,76	855,62
Index 100	263,78	263,78
CCSS Upper limit (monthly)	11.009,65 €	11.284,77 €



Indexation of social minimum wages (Continued)

Last increase in wages (+ 2.5%) at **01.10.2021**.

The monthly ceiling taken into account by the social security for the calculation of contributions is also increased.

The general index remains unchanged.

Wage tax card in electronic form

Previously: Wage tax cards were issued in paper form and sent to the taxpayer, but not to the employer or the pension fund.

During the 2021 tax year: Each taxpayer continued to receive a wage tax card in paper form at the beginning of the year.

But: Additional provision in electronic form to the employer (test period).

From tax year 2022: Wage tax card will be provided to the employer and the employee. Provision to the employer takes place only in electronic form. The employee must check and keep his original, but not send it to the employer.

The (electronic) wage tax cards will be issued in a multi-year version, i.e. without an end date, for employees with a permanent employment contract.

Wage tax card in electronic form (Continued)

Transition phase: May 1, 2021 to December 31, 2021

Mandatory phase: started on January 1, 2022

Employer's obligations:

If no wage tax card is issued, the employer is obliged to deduct tax for the relevant employee according to the most expensive tariff provisions (unless exempted by the ACD).

At least once a month, each employer must access the wage tax cards available electronically and review all outstanding wage tax cards at the time of access.

Failure to comply with this requirement may result in the employer being specifically requested to comply by the relevant tax office, failing which the employer will be subject to a penalty.

Employers were contacted by the ACD during 2021. They were also able to request an access code for their service provider.

Non-residents – tax class

Change of tax class by tax return

All non-residents requesting a change in your tax bracket on the tax return for year X must submit this return **no later than March 31, X + 1.**

No change will be granted after this deadline!

Home office & COVID 19 – Wage tax

Current:

- **Persons living in France** who work in Luxembourg are entitled to 29 days of home office per year without having to pay income tax in France
 - plan to increase to 34 days per year
- in **Belgium** the number of days is 34 days (since 01/01/22)
- in **Germany** it is 19 days

Exceptions due to COVID situation: home office days which fall in the period mentioned below are not taken into account for the above limits:

- **France:** period from March 14, 2020 to March 31, 2022.
- **Belgium:** Period from March 11, 2020 to March 31, 2022.
- **Germany:** period from March 11, 2020 to March 31, 2022
 - However, extensions of these periods could occur.

Home office & COVID 19 – CCSS Membership

Luxembourg and Germany, France and Belgium have agreed to maintain a derogation under which home office days related to the COVID-19 crisis will not be taken into account when determining the social security rules applicable to cross-border workers until June 30, 2022.

This new agreement will avoid a change of affiliation if the 25% threshold for cross-border workers provided for in EU legislation is exceeded.

Thus, a cross-border worker who performs his work from his place of residence (due to COVID-19 provisions) will continue to be affiliated to the Luxembourg social security system until the end of June 2022.

COVID 19 – Refunds of the « Mutualité des employeurs »

Reminder:

Due to the continued payment of wages in the event of illness and since this situation has a significant, financial impact on employers and self-employed persons, a special reimbursement has been introduced.

Thus, the refunds of the « Mutualité des employeurs » remain fully taken into account for illness related to quarantine or isolation measures prescribed by the Director of « Santé ».

The reimbursement rate increases from 80% to 100% in these cases.

This measure took effect **retroactively from July 1, 2020** and remains in force.

Short-time work & other aid 2022

In order to support companies and their employees affected by the COVID-19 crisis, new specific conditions for short-time work have been adopted **until June 30, 2022**, as well as for the "uncovered costs" aid and the economic development aid. However, short-time work only affects the following industries: HORECA, event and entertainment industry, culture and new car sales. In all cases, short-time work is reserved for companies with a plan to maintain employment.

The idea is to return to a « normal » situation.

The short-time work will be divided into 2 different periods, which are:

- from **March 1 to April 30, 2022** and
- from **May 1, 2022 to June 30, 2022**.

Short-time work & other aid 2022 (Continued)

From **March 1 to April 30, 2022**, the hours in short-time work are limited to 20% of the total normal monthly working hours of the company, except for the hotel industry, which benefits from a rate of 40%.

For the period from **May 1, 2022 to June 30, 2022**, the rate is reduced to 10% and 30% respectively for the hotel industry.

The other aids:

- **Economic development aid:** €1,000 per employee or self-employed person for the months of March and April 2022 and €500 for the months of May and June 2022. Furthermore, the monthly aid of €250 per employee in short-time work will be eliminated.
- **Aid for "uncovered costs":** only hotels and campsites can benefit from this aid as of March 2022

Taxation regime for temporary workers

- As of January 1, 2022: flat-rate taxation on remuneration paid by temporary employment agencies for a contract to temporary workers whose gross wages do not exceed €25/hour.
- The lump sum tax is **10%** of the taxable income
- Separate accounting for the lump sum tax and taxes on normal remuneration
- In X+1, the entrepreneur issues two separate wage certificates:
 - one certificate summarizing all contracts of employment subject to lump sum taxation, together with additional information, and
 - one for employment not subject to lump sum taxation, together with additional information.

Taxation regime for temporary workers (Continued)

- The employer's obligation to submit the statement electronically remains. However, additional information must be provided on the electronic statement, including :
 - a reference to the lump sum taxation scheme
 - An indication of the date of the first and the last assignment contract subject to the lump sum taxation scheme.
 - In the case of multiple temporary employment assignments subject to the lump sum taxation regime, the above information must be present within a single certificate.

Taxation regime for temporary workers (Continued)

- Finally, the Tax Administration (ACD) no longer issues tax cards to employees subject to the lump sum taxation system.
- In the employee's tax return:
In the case of taxation by tax base: remuneration taxed on a lump sum basis and the lump sum tax shall be disregarded both in the determination of income and in the determination of deductible special expenses and in the crediting or allowance of tax deductions
- By way of derogation, an employee subject to lump sum taxation may, upon request (to be submitted after the end of the tax year), receive an adjustment in accordance with the normal tax deduction system

VALUE ADDED TAX - DISTANCE SELLING

The VAT reform for e-commerce came into effect on July 1, 2021

As of **July 1, 2021**, distance selling between traders and individuals will be taxed in the **country of arrival** if the seller has made distance sales to EU countries for an amount exceeding the **global threshold of 10,000** euros.

This annual threshold is now a global threshold rather than a country-by-country threshold.

As of July 1, 2021, there will be an option to opt for the OSS system – the single point of contact – for distance selling sales. This arrangement will allow the taxable seller from Luxembourg to fulfill his obligations in all Member States through a simple electronic portal in Luxembourg.



VALUE ADDED TAX - DISTANCE SELLING

The VAT reform for e-commerce came into effect on July 1, 2021 (Continued)

For online platforms where products are purchased and delivered, it is believed that remote sales will facilitate from now on.

As of July 1, 2021, **VAT is applicable to the following activities:**

- Distance sales of imported goods with a shipping value of up to 150€ for a non-taxable person;
- Supplies of products in the EU intended for a non-taxable person and dispatched by a taxable person from a third country.





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