

France: The Effect of VAT

A review of the application of VAT to industrial property; stricter rules now apply

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The application of VAT to industrial property does not escape the general rule, but France is the only country in which special rules designed to favor the invention and the inventors are applicable. Until recently, the assignment of patents was exempt from VAT, and there were appreciable reductions for exclusive licenses. All this has been replaced by another set of rules which is stricter, but in spite of all this, the rules cannot be compared with the common law systems which exist in foreign countries.

VAT has replaced what was formerly called tax on turnover and tax on services rendered. But the principles of application remain the same.

6 Operations covered by the range of application of VAT are operations relating to a commercial and/or industrial activity, and all operations are especially covered by the law, but on condition that these operations are carried out in France, in accordance with the terms of Article 256 of the General Fiscal Regulations (Code General des Impots). VAT is applicable whatever the legal status of the person, whatever the form or nature of the operation, even if it is occasional.

FRENCH PATENT LICENSES

VAT, in the same way as taxation in general in the field of industrial property, distinguishes between the inventor and non-inventor. The inventor, who is the creator, has the right, according to French regulations, to a privileged treatment.

On the other hand, the person who buys an invention for resale, and who consequently is carrying out a simple business transaction, is necessarily considered as a businessman.

We normally consider the patentee as the inventor. On this point, it must be remembered that a French company, a French body corporate, can qualify itself as an inventor: this too, is quite the exception, and does not exist in any other country. The patentee, a body corporate, is considered as the inventor from the time that the invention was made in accordance with the directives of the company, by an employee of the company and at the company's expense.

Regarding the application of VAT:

(i) The patentee inventor who is a natural person is

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exempt from VAT. The operation is considered as having a purely civil character. The body corporate patentee, if considered as the inventor, is also exempt from VAT. But only the royalties are exempt from VAT, and not other services, such as reimbursement of studies, tooling, etc., which are often the necessary and obligatory accessory to a license, are taxed at the standard rate of 17.60%.

(ii) When a license is granted by a non-inventor, that is to say by an assignee, a person who has purchased the invention and carries out transactions by transferring it, the sums that he receives are subject to the rate of 17.60%. This applies both to assignments and to licenses.

(iii) If there are several applicants, but only one inventor among the applicants, the exemption applies to everyone: in other words, if a patent belongs to A, B and C, and only A is the inventor, B and C are also exempt from paying VAT.

(iv) It frequently happens that a license relates to a mixture of patented and unpatented articles. Therefore, a breakdown should be made between royalties from the patented invention and from the other articles. The royalties from the invention are exempt from VAT, while the rest are subject to VAT. But if the royalties from the patented invention are preponderant, the exemption applies to the whole. The State Council (Conseil d'Etat) is very reluctant to permit such an apportionment, but case law exists, and this may be used as grounds for requesting an exemption.

The general principle is the same. If the inventor grants a license, there is no VAT. Special agreements on this subject have been concluded with Austria, Belgium, Denmark, Great Britain, Italy, the Netherlands, Norway, Sweden, Switzerland, the United States, the USSR and West Germany. The same rules seem to apply, but this is not clear, to Brazil, the Cameroons, Canada, the Comores, Gabon, Israel, Japan, Lebanon, Madagascar, Niger, Pakistan and Upper Volta.

When a license contract provides for the importation of certain products which are required for utilization of a license, VAT is applied, not only on the value of the products, but also on the exportation duties concerning the imported articles. In other words, a certain added value is applied to articles represented by the license royalty.

When a license is for foreign patents belonging to a French national, VAT is not applicable by virtue of the principle of territoriality, since the operation is carried out abroad. If the contract relates to both French and foreign patents, an apportionment should be made.

Know-how licenses are subject to exactly the same system.