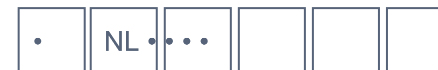

VAT Comment - Chapter 1. The taxpayer (Update on 01.04.2020)

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BOOKWORK I: Tax liability and taxable transactions

Chapter 1: The taxpayer

Hoofdstuk 1 : De belastingplichtige

Updated according to the state of the legislation applicable to 01.0 4 .20 20 01.0 4 .20 20

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The taxable person plays an essential role in the operation of the VAT mechanism.

For example, the supply of a good or the provision of a service is taxable only if it is provided for consideration by a taxable person acting as such.

It is therefore this taxpayer who will ensure correct application of the provisions of the VAT Code and of its implementing decrees. For example, the taxpayer will generally be responsible for:

- the determination of the taxable transaction and the chargeability of the tax on the transactions performed by him (classification and location of the transaction, possible application of the exemption from the applicable VAT rate ...)
- the collection of value added tax
- the correct functioning of the VAT mechanism as he is the only person who can exercise the right to deduct input tax on the supplies or services he has made.

In addition, the status of taxable person is also important with regard to the location of services.

In view of the key role played by the figure of the taxable person in the operation of the VAT mechanism, a clear definition of the term 'taxable person' is therefore essential.

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Afdeling 3 - Definitie

Section 3 - Definition

In accordance with the provisions of Article 4, § 1, of the VAT Code, is regarded as a taxable person *"anyone who, in the pursuit of an economic activity, makes, on a regular or independent basis, for or without profit, mainly or additionally, supplies of goods or services as defined in this Code, wherever the economic activity is carried on".*

This article transposes into Belgian law Article 9 (1) of Council Directive 2006/112 / EC of 28 November 2006 on the common system of value added tax.

1. Kenmerken

1. Features

Thus, any person - person or group - acquires the status of taxable person for carrying out certain activities, even if the proceeds thereof are not classified as operating income for the purposes of income tax.

In principle, the status of taxable person is acquired automatically. This implies that a person who makes deliveries of goods or services under the circumstances stipulated in the Code is legally liable to pay tax, without any formality having to be fulfilled and regardless of the place where he carries out his economic activity.

For the sake of completeness, it should be noted that the status of taxable person for the transactions included in the provisions of Article 8 or Article 44, § 3, 1 °, a),

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third indent or (b), third indent, of the VAT Code is not automatically obtained, but that this capacity should be expressly opted for.

The definition of the term 'taxable person' as included in the provisions of the aforementioned Article 4, § 1 of the VAT Code contains four essentially features that are simultaneously necessary and sufficient. In addition, this definition contains two more non-ESSENTIAL features that prevent any ambiguity.

From the essential features are:

- the capacity of the person: everyone (natural person, legal person, group without legal personality…) is a taxable person
- the nature of the work performed: the supply of goods or services as defined in the Code in the course of an economic activity
- by regular manner in which that activity is performed
- by exercising that activity independently

From two non-ESSENTIAL features are:

- by exercising that activity with or without a profit motive
- the main or additional exercise of that activity

2. The capacity of the person

Article 4, § 1 of the VAT Code states that everyone can be a taxable person.

Everyone should be understood to mean:

- natural or physical persons
- legal persons: companies or associations to which the law assigns legal personality (1), as well as economic partnerships and European economic partnerships

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(1) A company or association that has legal personality awarded is a legal subject who independently bears rights and obligations. A patrimony is created that is separated from the patrimony of the partners. This is particularly the case for commercial companies (general partnership, sponsor company, private company,

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driver , manager , VAT unit , financial commitment , economic connectedness , organizational connection , natural person , legal person , public law body , government , intercommuna , Autonomous Municipal Company , Autonomous public company , intermunicipal partnerships

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Notes

public company, cooperative company), for the civil company partners, partners, hand companies that form the partners

Legal personality is also granted to the State, the Flemish Community, the French Community, the German Community, the Flemish Region, the Walloon Region and the Brussels-Capital Region, to institutions and intermunicipal associations.

- associations and groups of persons who jointly exercise an activity but who are not recognized as legal persons: partnerships…
- VAT units (Article 4, § 2 of the VAT Code)

  *

However, the status of taxable person is not affected by the legal capacity of the person exercising the activity. For example, a minor who supplies goods and services regularly and independently in the context of an economic activity must be regarded as a taxable person, irrespective of whether or not the conditions for conducting a trade (such as whether or not it is fulfilled) are fulfilled. are registered in the Crossroads Bank for Enterprises).

3. The nature of the work performed

3. De aard van de verrichte werkzaamheid

In addition to the fact that everyone can be a taxable person, the fact that the supplies of goods or services described in the Code must be carried out in the course of an economic activity is also a condition for being a taxable person within the meaning of Article 4, § 1, of the VAT Code.

The term 'economic activity' is defined in Article 9 (1) of Directive 2006/112 / EC as' *all activities of a manufacturer, trader or service provider, including the extraction of minerals, agriculture and the exercise of free or equivalent professions. In particular, the economic activity is the exploitation of a physical or incorporeal object in order to obtain sustainable returns from it. '*

It is therefore appropriate to define criteria which allow to distinguish between the concept of 'private wealth management' and the concept of 'economic activity'. These criteria have their origin in the case law of the Court of Justice of the European Union, which has repeatedly ruled on the scope of the concept of 'economic activity'.

Thus, the aforementioned Court has repeatedly stressed that the definitions of the concepts of 'taxable person' and 'economic activities' show that the concept of 'economic activities' has a broad scope, which extends to all stages of production, distribution and provision of services (Court of Justice of the European Union, Judgment *WM van Tiem v State Secretary for Finance,* Case C-186/89, 04.12.1990 (17). Furthermore, the Court also emphasizes the objective nature of the concept of economic activities by stating that the objectives or results as such are not relevant to their definition (see, inter alia, Court of Justice of the European Union, Judgment *R. Enkler v Finanzamt Homburg,* Case C-230/94, from 26.09.1996 , point 25 and Court of Justice of the European Union, Judgment *Marle Participations SARL v Ministre de l'Économie et des Finances,* Case C-320/17, van 05.07.2018 point 22).

In its judgment in WM van Tiem, the Court emphasized that the term 'exploitation' within the meaning of the aforementioned Article 9 (1) of Directive 2006/112 / EC (formerly Article 4 (1) and (2) of the Sixth Council Directive (77/388 / EEC) of 17.05.1977 on the harmonization of the laws of the Member States concerning turnover taxes - common system of value added tax) covers all transactions, whatever their legal form, which are intended to obtain a sustainable yield from the good in question.

The question whether an activity is aimed at obtaining sustainable yield from it is a factual question. In assessing it, all circumstances of the case should be taken into account, including in particular the nature of the case concerned. That criterion must make it possible to determine whether a private individual has used a good in such a way that his activity can be classified as an 'economic activity' within the meaning of Directive 2006/112 / EC. The fact that a business is suitable solely for economic exploitation is generally sufficient to allow it to be assumed that the owner exploits it for the benefit of its economic activities and thus to obtain sustainable returns from it.

Comparing the circumstances in which the person concerned actually operates the business with those in which the corresponding economic activity is normally carried on may be a method for determining whether the activity is designed to generate sustainable returns. If a private individual actively takes steps to perform a particular act by using means comparable to those offered by a manufacturer, dealer or service provider within the meaning of the second subparagraph of Article 9 (1) of Directive 2006/112 / EC that activity should normally be classified as an 'economic activity' within the meaning of this provision (Court of Justice of the European Union, Judgment *Ainārs Rēdlihs against False ieņēmumu dienests,* Case C-263/11, 19.07.2012 , points 33 to 36).

It is noted that although criteria related to the results of an activity are not appropriate in themselves to determine whether that activity aims to generate sustainable revenues, the duration of the activity, the size of the clientele and the amount of the yields – factors which therefore form part of the circumstances of the particular case – can be taken into account along with other factors (Court of Justice of the European Union, Judgment *R. Enkler v Finanzamt Homburg,* Case C-230/94, van 26.09.1996 point 29).

From the foregoing it appears that the assessment of the concept of 'economic activity' within the meaning of Article 4, § 1 of the VAT Code constitutes a factual matter based on the analysis of a set of elements, such as the number of exploited cases and the number of its nature, the manner and context of acquisition, the income derived from this operation, the manner of financing the activity, the existence or otherwise of active commercialization operations, the operating conditions, the status of the operator and the interest from the clientele. When a sufficient number of these criteria are of significant importance, it can be established that the person or group acting in such circumstances,

For the sake of completeness, the emphasis is placed on the fact that carrying out acts of an unauthorized nature (for example the sale of stolen goods) does not prevent these acts from being classified as an 'economic activity' within the meaning of the foregoing.

Finally, it is noted that a person or group that is already a taxable person, also for any other economic activity, which he occasionally performs, must be classified as a 'taxable person' insofar as this activity constitutes an activity within the meaning of Article 4, § 1, of the VAT Code (Court of Justice of the European Union, Judgment *Galin Kostov v Direktor na Direktsia „Obzhalvane i upravlenie na izpalnenieto '- Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite,* Case C-62/12, 13.06.2013 point 31).

Here are some examples illustrating the scope of the term 'economic activity':

- the income received by a director in the context of the letting to his company of a part of the family home that belongs to him is not so much the result of the active exploitation of that property but rather of its mere ownership. the income received by a director as a result of the rental of a pilot that he has had built to rent it to his company is classified as income from an economic activity. After all, this is the case

active actions (drawing up plans, building, possibly taking out a loan ...) that go beyond the mere management of a private property and approach the circumstances in which a construction promoter usually carries out his economic activity. The nature of the good is also an indicator that it is an economic activity.

- a natural person who has inherited and rents out several houses, taking into account the interests of the clientele, the amount of revenue and the administrative and technical organization necessary to manage such a property, may pursue an economic activity whether or not he himself is responsible for managing it or relies on a subcontractor to do so.

- a natural person who, in application of the provisions pertaining to corporate donations under registration law, receives an undivided part of real estate which he subsequently leases to the person who continues to operate the company, pursues an economic activity, even if he does not earn any other income the company acquires.

- a natural person who is active in the construction sector and who buys one or more dilapidated houses to renovate, takes out a loan for this, and then rents out these renovated houses and carries out an economic activity.

Thus, the fact that the supplies of goods or services described in the VAT Code are carried out in the course of an economic activity, together with the other conditions included under Title 1 'Characteristics' of Section 3 of this chapter, constitute the elements that allow designate a person or group as a taxable person. Under those conditions, the status of taxable person is attributed to persons or groups who perform the following acts:

- supplies of goods and the provision of services described in the VAT Code that are effectively taxed

- supplies of goods and the provision of services described in the VAT Code that are exempt from tax for reasons including intra-Community supplies and exports (Articles 39 to 42 of the VAT Code)

- supplies of goods and the provision of services described in the VAT Code that are performed outside Belgium
- supplies of goods and the provision of services exempt from tax under Articles 44 and 44 *bis* of the VAT Code.

However, the status of taxable person is not granted to:

- persons or groups who perform transactions 'outside the scope of VAT' and who are not therefore covered by the VAT Code (for example, passive holding companies, anyone who performs free transactions ...)

- to public sector bodies that act as government within the meaning of Article 6, first paragraph, of the VAT Code and this insofar as the acts performed by these bodies are not intended by the second and third paragraphs of Article 6 of the aforementioned Code

- the person who acquires or imports goods within the Community. Although the acquirer or importer owes VAT on these acquisitions and imports, it does not become a taxable person, because only 'outgoing' transactions (deliveries of goods and services made by the person concerned) can give him that status.

It goes without saying that, in order to determine whether or not a person or group has the status of taxable person, only the activity which he himself carries out should be taken into account. Thus, the activities performed by a parent or subsidiary or by a company whose shareholders are the same must be disregarded (Decision No ET 19658 of

31.12.1974).

4. Regular activity

The status of taxable person within the meaning of Article 4, § 1 of the VAT Code is granted to persons or groups who, in addition to fulfilling all other conditions included in Title 1 'Characteristics' of Section 3 of this chapter, are regularly perform the supplies of goods or services described in the aforementioned Code.

Regular activity presupposes a sequence of actions, which does not alter the fact that these actions can be performed at more or less long intervals. It is essential that these actions take place with a certain regularity. For example, the acts described in the VAT Code that are performed in the context of an annual meeting organized at the same time are regarded as a regular activity within the meaning of Article 4, § 1, of the VAT Code (notice no. 81/1971 of 13.05.1971).

It should be noted that it is by no means necessary for these actions to be performed in the context of a professional activity. It is therefore irrelevant whether or not the purpose of this is to acquire means of subsistence.

It follows from the foregoing that a person or group who, by accident or incidental, carries out an act generally carried out by a manufacturer, trader or service provider, in principle not as a taxable person within the meaning of Article
4, § 1 of the VAT Code is considered. For the sake of completeness, it should be noted that a person or group that is already liable to VAT for a certain activity, even for any other economic activity, even if it only happens accidentally or incidentally, as a taxable person within the meaning of Article 4, § 1, of the VAT Code is considered (Court of Justice of the European Union, Judgment *Galin Kostov v Direktor na Direktsia „Obzhalvane i*

upravlenie na izpalnenieto '- Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite, Case C-62/12, 13.06.2013 , points 28 and 31).

The question whether actions should be classified as 'regular' or as 'casual or incidental' is a factual question. It goes without saying that sufficient regularity is required to obtain the status of taxable person. However, the regularity requires that the actions in question are repeated or continuous (see also Written Parliamentary Question No. 1,097 by Mr Paul Van Grembergen, Member of Parliament

18.05.1994).

In the spirit of the foregoing, it was decided that:

- an artist is considered to be a taxable person when he regularly sells his works (decision no. T. 1997/2 of 28.10.1970).
- a person who regularly commits himself to artists to organize an exhibition of their works and, on that occasion, to assist in the sale of the works of art to the visitors of that exhibition is considered to be a taxable person (decision no. T. 1997 of 28.10.1970).
- a rental of movable property is a regular and continuous operation. This is evidenced, among other things, by the periodic receipt of rents which the landlord must subject to tax, even if the landlord grants the enjoyment to only one tenant (decision No. T. 3,484 of 11.05.1971).
- the execution of a single work, which, however, requires repeated actions that are spread over a certain period (for example, the construction of a motorway) is considered to be a regular operation. In principle, the company set up for the execution of the work thus has the status of taxable person, even though it concludes only one contract.
- an activity that is carried on for a relatively long period and that gives rise to the submission of fee statements is regularly regarded as conferring the status of taxable person on the person who carries out this activity. It is of no importance whether or not this activity is carried out for the performance of a one-off assignment (decision no. T. 6.749 of 16.06.1971).
- philatelic circles who regularly deliver goods or services that are covered by the VAT Code and for a special fee (sale of stamps, catalogs, organization of sales between stamp collectors, providing assistance with those sales as brokers, agents or brokers) have the status of taxable person by operation of law. Persons who are not stamp traders but ordinary collectors who happen to sell stamps do not acquire the status of taxable person because of that activity (decision no. T. 2.580 of 15.07.1971).
- natural persons who own pets (dogs, cats…) and who sell the youngsters of those animals are not considered to be taxable and insofar as they only own a limited number of those animals that correspond to normal private use and they

do not systematically pursue the multiplication of those animals but only want to put an end to a temporary increase in their number of animals. However, if the number of animals in his possession is higher than the number of animals normally kept for private use and the breeding of those animals is systematically pursued with the aim of regularly selling them, the owner is considered to be a taxable person (decision no.

ET 13,301 of 21.11.1972).

- a beekeeper who regularly sells all or part of his production as a taxable person (decision no. ET 88.513 of 13.05.1997).
- taxable persons are those who systematically breed racehorses, either in their own establishments, or by calling on third parties (horse breeders, trainers ...), with the aim of regulating and thus repeatedly and continuously selling the horses that originate from that breeding. Taxable persons, on the other hand, should not be considered to be those who, without special breeding of horses, own horses which they participate in races, even if they occasionally sell one of those horses (decision no. ET 8.380 of 26.01.1973).
- if an owner of non-horse-backed racehorses is not deemed to be acting in the exercise of a professional activity for his participation in racing, the fact that he is incidentally using one of his stallions for cover of it is such that he acquires the status of VAT taxable person only because of this. In this regard, the administration has taken the rule that the price charged for the cover is subject to VAT only if the profits from these transactions in income tax are classified as operating income (decision no. ET

  39,076 of 30/07/1981).
- the performance of a financing lease act as referred to in Article 44, § 3, 2 °, b) of the VAT Code, in view of the importance of financing lease contracts and their duration, as a regulated act for which the provider is a taxable person under this provision and Article 4, § 1, of the VAT Code, even if he concludes only one financing lease contract (circular no. AOIF 10/2007 (no.

  ET109.976) from 12.04.2007 , marginal 53).
- the accidental performance of accounting work for a trader is not regarded as a regular transaction for which one is a taxable person. However, a person who regularly carries out that work for one or more traders is regarded as a taxable person.

As indicated earlier, a person or group that is already taxable for a certain activity, also for any other economic activity, even if he only performs it accidentally or incidentally, as a taxable person within the meaning of Article 4, § 1 of the VAT. - Code identified. The status of taxable person is of course also retained with regard to an accidental act that he performs when it can be counted as part of his regular activity, such as:

- the accidental transfer by a study agency of a patent on an invention resulting from the searches it carries out.
- the accidental sale by a taxpayer of an asset used in his enterprise.

5. Independent activity

In addition to fulfilling all other conditions included under Title 1 'Characteristics' of Section 3 of this chapter, the status of taxable person within the meaning of Article 4, §
1 of the VAT Code, that the activities referred to in that article are performed independently.

The condition that an activity must be carried out 'independently' is concluded in accordance with the provisions of Article 10 of Directive 2006/112 / EC, ' *wage-earners and other persons from taxation, insofar as they have entered into an employment contract with their employer or have any other legal relationship from which a relationship of subordination arises with regard to the terms of employment and remuneration and the responsibility of the employer '.*

In this regard, the Court of Justice of the European Union has clarified that an employee does not act in his own name, for his own account and under his own responsibility, but for the account and under the responsibility of the employer. However, there can be no question of a legal link showing a relationship of subordination when one bears the economic risk of the work (see also Court of Justice of the European Union, Judgment *JA van der Steen v Inspector of the Tax Office Utrecht-Gooi / Utrecht office,* Case C-355/06, 18.10.2007 , points 23 and 24 and Court of Justice of the European Union, Judgment *IDE against Inspector of the national tax office,* Case C-420/18, 13.06.2019 , points 32 et seq.).

In order to check whether an activity is performed 'independently', it is not required that the activity is performed completely autonomously. For example, a company that is part of a group and must follow a commercial policy indicated by the parent company does not have total autonomy. Nevertheless, insofar as the other conditions of application of Article 4, § 1 of the VAT Code are met, this company is designated as a taxable person within the meaning of the same Article.

However, if there are any doubts as to whether or not to perform a certain activity 'independently' within the meaning of the foregoing, the position taken with regard to this activity may be in the field of social security or in terms of

income tax is a useful element in assessing this matter of fact. Practice therefore shows that those who are subject to withholding tax are generally not considered to be taxable persons.

In view of the foregoing, it was decided, among other things, that:

- however, an architect trainee who is considered self-employed for the purposes of the social laws is not considered to be a taxable person, because there is a relationship of subordination between the trainee and the traineeship supervisor (decision no. ET 9.195 from 13.06.1972).
- however, if an architect-trainee who is only doing an internship does not wish to rely on what precedes and claims his identification as a taxable person, he will be identified as such with regard to his traineeship activity. In any case, the architect trainee who, in addition to his traineeship activity, also independently carries out taxable transactions, must be regarded as a taxable person for his entire work, so that the services he performs during his traineeship are also subject to VAT (decision no. ET 56,513 of August 22, 1986).
- the administration accepts that there is a bond of subordination in the relationship between the trainee company auditor and the company auditor and that this trainee is thus not already considered a taxable person, although this trainee is considered self-employed for the purposes of the social laws (Notice No. 11/1978, 14.03.1978 , marginal 11).
- As a rule, a family helper acts in a bond of subordination when a set of factual evidence shows that he is permanently working under the leadership of relatives in the context of a family business, insofar as this is in accordance with the actual legal relationships between the parties (decision no. ET 9.922 of 04.09.1972).
- substitute pharmacists are, in principle, considered to be taxable if, temporarily and independently, they temporarily replace an operator in the management of his pharmacy. Nevertheless, it should be noted that pharmacists who substitute only occasionally without making a real occupation of this activity should not be classified as taxable persons, in particular:

  - recently graduated pharmacists who temporarily substitute pending their establishment as operators, commissioners or as the aforementioned substitute pharmacists
  - retired pharmacists who occasionally replace or assist their colleagues
  - salary pharmacists who make substitutions during the holiday period or after their working hours
  - holders of a diploma of pharmacist who, without actually practicing a profession, replace or assist pharmacists for a maximum of several hours per day.

  Moreover, this scheme is only permitted if the persons referred to provide their services only to pharmacists who are taxable persons within the meaning of Article 4, § 1 of the

the VAT Code will be considered. Those persons, on the other hand, are taxable persons for the entirety of their activity if they provide services in whole or in part to persons or institutions that are not taxable persons or taxable persons without a right of deduction, for example to a hospital pharmacy (decision no. ET 8.753 of 15.05.1972).

- the administration accepts that when physical persons who teach other than as wage-earners or in a contractor in an institution whose activities may or may not be exempt from tax in accordance with the provisions of Article 44, § 2, 4 °, a) of the VAT - Code, but nevertheless have a relationship with that institution showing a relationship of subordination with regard to, among other things, the content of the course material to be taught, the timetable, the remuneration, the internal regulations, not acting as self-employed person within the meaning of Article 4 , § 1, of the aforementioned Code, so that no taxable transaction takes place in their relationship. This applies irrespective of whether the physical person concerned has already been registered as a taxable person for the performance of other transactions in the course of his economic activity. The foregoing, however, concerns an admission that the physical person, if he acts in the circumstances as referred to in Article 4, § 1 of the VAT Code, does not have to make use of it. In the absence of the relevant bond of subordination, of which the person concerned provides proof, the status of VAT taxable person cannot be refused (circular AAFisc No. 50/2013 (No. ET 124.537) of 29.11.2013).

- the administration assumes that a sports coach who is not linked to a specific club or federation by an employee contract, nevertheless, in view of the actual working conditions that exist between them, is in a relationship of subordination to that club or federation. That sports trainer is therefore not regarded as a taxable person (decision no. ET 79.369 of 04.02.1994).

- if a person or group is the only economic activity within the meaning of Article 4, § 1 of the VAT Code, the hiring of a physical item to a company of which it is a part, then this rental is deemed to have been carried out independently in the meaning of the aforementioned provision (Court of Justice of the European Union, Judgment *State Secretary for Finance against J. Heerma,* Case C-23/98, 27.01.2000 point 22).
- guides and tour guides who provide their services under the conditions of Article 4, § 1 of the VAT Code must be regarded as taxable persons. However, guides (individuals), other than as paid or competitive tours, may run for an institution (such as a federation of guides or a tourist office), but may nevertheless act in a relationship of subordination to that institution. For example, when that institution determines the content and the timetable of the guided tours, the remuneration and possibly an internal regulation for the affiliated guides. For the purposes of VAT, these guides are not deemed to act independently and are therefore not regarded as taxable persons within the meaning of Article 4, § 1 of the VAT Code (decision no. ET 111.432 of 28.08.2006).

6. With or without profit motive

6. Met of zonder winstoogmerk

The status of taxable person within the meaning of Article 4, § 1 of the VAT Code is assigned to the persons or groups that fulfill the four essential characteristics that have been explained under titles 2 to 5 of section 3 of this chapter . In addition to these essential characteristics, the provisions of the aforementioned Article 4, § 1 also contain two non-essential characteristics, namely the principal or additional exercise of that activity and the pursuit of that activity for or without profit.

In order to be classified as a taxable person, a person or group must not necessarily have a profit-making objective or, in other words, want to make a profit when carrying on an activity. It is therefore of no importance whether one pursues that activity with the aim of obtaining means of subsistence. In this sense, it deviates from the notion of manufacturer or trader, who in principle aim to obtain a sustainable yield from an activity.

As a result, many non-profit persons and groups can be classified as taxable persons within the meaning of Article 4, § 1 of the VAT Code, provided they meet the other conditions of application contained in that Article. For example, a non-profit association, a body governed by public law or a public institution can, under those conditions, also be regarded as a taxable person within the meaning of the foregoing.

7. Mainly or additionally

7. Hoofdzakelijk of aanvullend

In addition to these essential characteristics, which are explained under Titles 2 to 5 of Section 3 of this chapter, the provisions of Article 4, § 1 of the VAT Code also contain two non-essential characteristics, being mainly or additionally performing an activity and performing that activity with or without a profit motive.

It is not important for the acquisition of the status of taxable person within the meaning of Article 4, § 1 of the aforementioned Code or the activity performed – the supply of goods or services as described in the aforementioned Code in the exercise of an economic activity – whether or not additionally.

An additional activity is one that is performed in addition to another which is the main activity. For example, in addition to his main activity for which he does not act independently, but is in a bond of subordination, an employee can also regularly and

independently carry out an activity for which he is regarded as a taxable person within the meaning of the aforementioned Article 4, § 1, of the VAT Code, insofar as all the conditions of application contained in that Article are met.

It is irrelevant here whether or not this additional activity is related to the main activity.

For the sake of completeness, reference is made here to the provisions of Article 56 *bis* of the VAT Code that provide for an exemption scheme for the benefit of small businesses, the conditions of application of which are set out in the Royal Decree No 19 of 29.06.2014 regarding the exemption from value added tax for the benefit of small businesses .

This exemption scheme means that taxable persons whose annual turnover does not exceed 25,000 euros, regardless of whether it concerns a main activity or an additional activity, are on the one hand dismissed from a number of VAT obligations, but on the other also lose the right to deduct withholding tax on expenditure incurred for their activity.

[Table of contents of this chapter] - [Table of contents of the VAT Comment]

Afdeling 4 - Begin en einde van de belastingplicht

Section 4 - Start and end of tax liability

1. Begin van de belastingplicht

1. Start of tax liability

As soon as someone in the conduct of an economic activity regularly and independently performs supplies of goods or services that are described in the VAT Code, this person or group obtains by operation of law in accordance with the provisions of Article 4, § 1 of the VAT Code. the status of taxable person. However, if the conditions set out in that Article 4, § 1 are not met, the person or group in question will not be regarded as a taxable person within the meaning of the same Article. Nor can that person or group voluntarily choose the status of taxable person, even if he would have an interest in doing so.

The status of taxable person is thus, in principle, automatically (2) acquired, without any formality having to be fulfilled and irrespective of the place where the person or group carries on his economic activity. The fact that this has not (yet) been identified as a taxpayer by the administration is therefore of no importance.

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(2) For the sake of completeness, it is noted that the status of taxable person for what the acts included in the provisions of Article 8 or Article 44, § 3, 1 °, a), third indent or b), third indent, of the VAT Code are not automatically obtained but which are expressly for this capacity should be opted for.

However, the question arises when this capacity will start.

In this regard, the Court of Justice of the European Union has already repeatedly clarified that economic activities, within the meaning of Article 4, § 1, of the VAT Code, may consist of several successive acts, and that preparatory acts such as acquisition of business assets should already be included in economic activities. Thus, the initial investment expenditure closely related to and necessary for future exploitation and thus incurred for the benefit and realization of an enterprise is already classified as economic activities (Court of Justice of the European Union, Judgment *DA Rompelman and EA Rompelman- Van Deelen v Minister of Finance,* Case C-268/83, 14.02.1985 , points 22 to 24).

Anyone who carries out such preparatory acts is therefore considered to be a taxable person within the meaning of Article 4, § 1 of the VAT Code and may deduct input tax on the costs relating to those acts in accordance with the provisions of Article 45 of the aforementioned Code. bring. That deduction will remain, even if it is later decided on the basis of the results of a profitability study, for example, that it is decided not to enter the operational phase and to liquidate the company concerned, so that the intended economic activity has not led to taxable transactions (Court of Justice of the European Union, Judgment *Intercommunal for seawater desalination (INZO) v Belgian State,* Case C-110/94, of 29.02.1996 (20).

In this respect, the administration is obliged to take into account the intention announced by that person or group to commence economic activities that give rise to taxable transactions, insofar as this intention is supported by objective data. The Court also emphasizes that the status of taxable person is only definitively acquired if the declaration of

the intention to commence the intended economic activities has been made in good faith by the interested party. In the event of fraud or abuse, for example, if the person concerned has pretended to perform a certain economic activity, but actually wants to include the goods whose input tax was deducted in his private assets, the administration will retroactively refund the deductible claim input tax and this because this deduction was granted on the basis of false statements (Court of Justice of the European Union, Judgment *Intercommunal for seawater desalination (INZO) v Belgian State,* Case C-110/94, 29.02.1996 , points 23 to

24).

Examples:

- the person or group who, by unambiguous acts, is willing to carry out acts regularly referred to in the context of an economic activity in the VAT Code, in particular by activating an organization within which deliveries of goods or services will regularly take place taxable person as soon as he has committed those acts.

- the person or group that buys an existing business becomes a taxpayer at the time of the acquisition.

- the person or group that sets up a company for the purpose of producing and selling goods is a taxable person from the start.
- persons or groups– also called professional founders and sellers– whose regular economic activity consists of disposing for consideration or disposing of buildings or parts of buildings, which they have erected or have erected or which have been paid with VAT, within the stipulated period or with a real right as referred to in Article 9, second To object to the objection of paragraph 2 ° of the VAT Code or to transfer or re-transfer that real right within the same period have the capacity of taxable person within the meaning of Article 4, § 1 of the aforementioned Code. They should be immediately identified as such without waiting for the regular sale of those new buildings to actually commence.

- persons or groups that commence taking acts exempted in accordance with Article 44 of the VAT Code are also regarded as taxable persons. However, in accordance with the provisions of Article 45 of the aforementioned Code, these transactions do not in principle give the right to deduct the input tax levied on the costs relating to those transactions. Those persons or groups should in principle not be identified as such. However, their identification for VAT purposes is required:

  - in accordance with Article 50, § 1, first paragraph, 2 °, a) or b) of the VAT Code if they exceed the threshold of EUR 11,200 (Article 25 *ter,* § 1, second paragraph, 2 °, first paragraph, of the VAT Code) for the intra-Community acquisitions of goods they make (3) or if they opt to subject their intra-Community acquisitions to tax.

(3) The purchase in another Member State of the European Union of goods which be transported from this Member State to Belgium by the supplier, the acquirer or on their behalf.

- in accordance with Article 50, § 1, first paragraph, 4 ° of the VAT Code when they purchase services for which they are the debtor of the tax in accordance with Article 51, § 2, first paragraph, 1 ° of the aforementioned Code.

- in accordance with Article 50, § 1, first paragraph, 5 °, of the VAT Code when they are established in Belgium and provide services that, pursuant to Article 44 of Directive 2006/112 / EC, take place in another Member State and the tax of which is the recipient of the service is due

- in accordance with Article 50, § 2 of the VAT Code when a VAT entity within the meaning of Article 4, § 2 of the aforementioned Code only provides supplies of goods or services for which it is not entitled to deduct.

2. End of tax liability

2. Einde van de belastingplicht

The status of taxable person within the meaning of Article 4, § 1 of the VAT Code will be lost by operation of law if the conditions of application set out in that Article are no longer met (see also Titles 2 to 5 of Section 3 of this chapter). In practice, however, this means that the status of taxable person is lost when the taxable activities are definitively discontinued.

However, a temporary cessation of that activity for any reason (illness, strike, sales stop ...) does not lose the status of taxable person (decision No. T. 2.205 of 03.12.1970). The transfer of a business by a resting trader is an act of a taxable person. The same can be said of the actions carried out by the liquidator with a view to the liquidation of a dissolved company.

A natural person who carries out an activity which gives him the status of taxable person loses this capacity from the time when the liquidation of his company is terminated and no more acts are carried out as referred to in the VAT Code.

On the other hand, if a company is dissolved, it will in principle retain the status of taxable person until the final closure of the liquidation. It goes without saying that the status of taxpayer must always be assessed objectively in function of the real situation of the company concerned and must not depend on the willingness or inaction of the liquidator. The fact that the company does not

owns recoverable assets and its activity, among other things, consists only in recovering its debts against third parties may constitute such an objective criterion (decision no. ET 90.191 of 13.10.1998).

When a notary, identified as a natural person, dies, the chairman of the court of first instance appoints a deputy notary. The National Chamber of Notaries will do the necessary at the KBO to keep the VAT identification number of the deceased notary active until the appointment of a new notary. The identity of the deputy civil-law notary is also communicated to the KBO. This deputy will be able to continue to use the deceased civil-law notary's VAT identification number for the actions he performs as deputy notary of the notary's office until the appointment of a new notary. When a new civil-law notary is sworn in, the heirs must, in accordance with Article 3 of the Royal Decree No. 10, of 29.12.1992, with regard to the exercise modalities of the choices, as referred to in Articles 15, § 2, third paragraph, 21bis, § 2, 9 °, fourth paragraph, 25 *ter,* § 1, second paragraph, 2 °, second paragraph and 44, § 3, 2 °, d) of the Code of value added tax, declarations of commencement, alteration, cessation of activity and prior notifications regarding the value added tax , file a declaration of cessation of activity (form 604 C) within one month (decision No. ET 121.923 / 2 of 15.12.2014).

In the event of bankruptcy, the bankruptcy order does not, however, deprive the bankrupt of the status of taxable person that he previously held because of the activity carried on. For example, the actions performed by the bankruptcy trustee of a bankrupt taxpayer for the execution of the assignment entrusted to him or the actions performed by a third party (for example an accountant) under the supervision of the bankruptcy trustee are deemed to have been performed by the bankrupt himself. As a rule, the bankruptcy trustee must submit a declaration of termination as referred to in Article 3 of the bankruptcy within one month after the bankruptcy has been closed at the control office to which the bankrupt falls Royal Decree No. 10 , aforementioned, of the efficacy in. However, the bankruptcy trustee is allowed to file this declaration before the bankruptcy closes as soon as it appears that the bankrupt mass can no longer carry out transactions for which it can be regarded as a debtor of VAT (see notice no. 26/1978 of 31.08.1978 , marginal 2 and 25, which was amended by Notice No. 8/1994 of 29.03.1994).

[Table of contents of this chapter] - [Table of contents of the VAT Comment]

Section 5 - Effects of taxation

Afdeling 5 - Gevolgen van de belastingplicht

As indicated earlier, the taxable person plays an essential role in the operation of the VAT mechanism and will ensure the correct application of the provisions of the VAT Code and of its implementing decrees.

For example, the taxable person will not only collect the value added tax but also determine the taxability and the chargeability of the tax on the transactions he carries out (classification and place of the transaction, possible application of exemption , applicable VAT rate…). In addition, the correct functioning of the VAT mechanism is based on the fact that, in accordance with Article 45 of the VAT Code, the taxable person is the only person who can exercise the right to deduct input tax on the supplies or services he has provided.

It goes without saying that the status of taxable person entails a number of rights and obligations.

For example, the exercise of the taxpayer's right to deduct and the adjustments that may apply to that right to deduct (withdrawals, commissioning, revisions) will be explained in detail in 'Book III: Right to deduct input tax'.

The main obligations that the status of taxable person entails are explained in 'Book IV: Satisfaction of the tax'.

[Table of contents of this chapter] - [Table of contents of the VAT Comment]

Section 6 - Tax liability of bodies governed by public law and institutions established by bodies governed by public law

Afdeling 6 - Belastingplicht van publiekrechtelijke lichamen en van instellingen die door publiekrechtelijke lichamen zijn opgericht

1. Tax liability of public sector entities

1. Belastingplicht van publiekrechtelijke lichamen

A. Inleiding

A. Introduction

For a detailed explanation of the tax liability of public bodies and public institutions, see circular AAFisc No. 42/2015 (No. ET 125,567) of 10.12.2015 .

This circular aims to address both the consequences of it Judgment of the Constitutional Court No 104/2008 of 17.07.2008 , whereby the Court of Appeals Article 39, a, of the Program Law of 27.12.2006 (BS 28.12.2006), as the main principles of the judgments delivered by the Court of Justice of the European Union in this field are set aside in the administrative comments.

B. Wetgevend kader

B. Legislative framework

The VAT system applicable to public sector entities and public institutions arises from the provisions of Article 6 of the VAT Code, which transposes Article 13 of Directive 2006/112 / EC into Belgian law.

With regard to public-law bodies that act as government, Article 6 (1) of the VAT Code provides for an exception to the principle that anyone who regularly and independently performs acts intended in that Code is regarded as a taxable person. In circumstances referred to in the second and third paragraphs of the aforementioned Article 6, notwithstanding the principle of non-tax liability, public sector entities are nevertheless regarded as a taxpayer within the meaning of Article 4, § 1 of the VAT Code.

In the following sections, the steps to be followed to arrive at the VAT status of public bodies (a taxable person acting as such or a non-taxable legal person) are discussed successively.

C. Beoogde publiekrechtelijke lichamen en openbare instellingen

C. Intended public sector bodies and public institutions

In accordance with article 6, first paragraph, of the Code, the State, the Communities and the Regions of the Belgian State, the provinces, the agglomerations, the municipalities and the public institutions are not regarded as taxable persons for the activities or

transactions that they perform as a government, even if they collect duties, taxes, contributions or fees for those activities or transactions.

This summary shows that public institutions are also envisaged. More specifically, this concerns the public institution that cumulatively meets the following conditions, being the institution that:

- one of the public body - which set it up - has different legal personality
- is established by a law, a royal or ministerial decree, a decree or a regulation (establishment as a foundation)
- is established with the aim of satisfying certain collective needs of general interest
- enjoys an autonomy in the exercise of its activities, in particular for the organization and management thereof
- remains subject to varying degrees to various controls, including government supervision.

By way of example, as public institutions established by way of foundation, the following can be cited: the Institute of Accountants and Tax Consultants (IAB), the Professional Institute of recognized Bookkeepers and Tax Experts (BIBF), the orders of physicians, lawyers or architects, the Foreign Trade Agency, Federal Agency for the Safety of the Food Chain, and the like.

Article 6 of the VAT Code, on the other hand, does not aim at public-law associations that have been established by way of association, and thus not by way of foundation. In the circular AAFisc No. 42/2015 (No. ET 125.567) of 10.12.2015 described rules do not therefore apply in respect of intermunicipal associations (4), intermunicipal partnerships (subject, for these two structures, of the specific rules in the event of a complete waiver of regulatory and management rights…), cooperatives of public services, mixed economic enterprises, autonomous municipal and provincial companies, external privatized agencies in private law, and the like. The aforementioned public-law associations are therefore taxpayers within the meaning of Article 4, § 1 of the VAT Code: de Lijn, SRWT, MIVB, the companies for intermunicipal transport, the regional housing companies and the companies recognized by them, the regional water supply companies.

(4) See notice no. 148/71 of 05.10.1971 and notice no 6/75 of 27.02.1975

D. Acts as a government

D. Handelingen verricht als overheid

Pursuant to Article 6, first paragraph, of the VAT Code, the State, the Communities and the Regions of the Belgian State, the provinces, the agglomerations, the municipalities and the public institutions are not regarded as taxable persons for the activities or transactions that they government, even if they collect duties, taxes, contributions or fees for those activities or activities.

According to settled case-law of the Court of Justice of the European Union, two conditions must be fulfilled together for the exception rule of non-taxation to apply, namely that the activities must be carried out by a public-law body in the capacity of public authority.

Regarding the scope of the concept of 'acts that they perform as government' within the meaning of Article 6, first paragraph, of the VAT Code, the Court of Justice of the European Union has clarified that activities performed by public law bodies perform 'as government' in within the meaning of this provision, these are those which they carry out under the legal regime specific to them, excluding the activities which they perform under the same legal conditions as private operators.

The specific mandate of a body governed by public law certainly includes these acts, expressed in acts of will imposed on individuals, in the sense that they must obey them or, if they do not, are forced to comply. This is the case when performing those acts implies the use of government prerogatives.

It should be emphasized that the terms 'activities or actions performed as government' and 'activities performed under sovereign or public authority' are not synonymous. After all, the concept of activities or activities carried out as a government must be given a broader meaning that also includes activities other than those that form part of the fundamental tasks of public authorities in the area of general administration, justice, security or defense. It is therefore clear that certain activities as a manufacturer, trader or service provider, which are carried out, for example, by the municipalities, can be regarded as activities performed as a government.

According to the Court, the definition of 'acts performed as government' cannot be based on the object or purpose of the activity of the body governed by public law. The Court emphasizes that it should also be borne in mind that many tasks originally reserved to the public sector are now performed by private individuals and that, therefore, a definition related only to the subject of the activity cannot suffice.

According to that case-law, the decisive criterion is the circumstances in which the activities are carried out which determine the scope of the non-tax liability. To the extent that this provision makes non-tax liability dependent on the

Provided that the relevant public-law bodies act as a government, the activities they perform as a private-law body, and therefore not as a public-law body, are excluded from non-tax liability.

To determine whether an activity is carried out as a government is therefore also necessary– to support the fact that the activity is carried out by a public-law body– the general context and the manner in which this activity is performed are important.

Consequently, the only criterion which can be used to distinguish with certainty between the two categories of activities is therefore the legal regime applicable under national law (excluding activities carried out by public sector bodies under the same legal conditions as private operators). Court of Justice of the European Union, Judgment *Ufficio distrettuale delle imposte dirette di Fiorenzuola d 'Arda v Comune di Carpaneto Piacentino and Comune di Rivergaro and others v Ufficio Provincial imposta sul valore aggiunto di Piacenz,* Cases C-231/87 and 129/88, 17.10.1989 , points 13 et seq.).

Notwithstanding the frame of reference as evidenced by the aforementioned case law, in practice it is not always easy to determine the legal regime applicable under national law for each individual act.

In view of the distinction already made between the public institutions that are formed by way of foundation and the institutions by way of association (see section C above) and taking into account the context in which they act as well as the way in which they carry out their activities the administration as a starting point that public sector entities in Belgium, in principle, always act as government within the meaning of Article 6, first paragraph, of the VAT Code, and therefore do not have the status of VAT taxable person, without prejudice of course to the possible application of Article 6, second or third paragraph, of the aforementioned Code (see sections E and F below).

E. Significant distortion of competition

E. Concurrentieverstoring van enige betekenis

However, if a public-law body carries out acts as a government, it is granted the status of taxable person in accordance with the provisions of Article 6 (2) of the VAT Code for those activities or activities for which treatment as a non-taxable person would lead to significant distortions of competition. .

With regard to the concept of 'distortion of competition', the Court of Justice of the European Union has clarified that the second subparagraph of Article 13 (1) of Directive 2006/112 / EC (which

Belgian law was transposed by Article 6 (2) of the VAT Code) it must be interpreted that public sector entities must be regarded as taxable persons for the activities they perform as public authorities, not only when the circumstance that they are not taxable under the first subparagraph of paragraph 1 or paragraph 2 of that provision leads to significant distortions of competition to the detriment of their private competitors, but also where such distortion results to their own disadvantage (Court of Justice of the European Union, Judgment *Finanzamt Düsseldorf-Süd v SALIX Grundstücks- Vermietungsgesellschaft mbH & Co. Objekt Offenbach KG,* Case C-102/08, 04.06.2009 , point 76).

Furthermore, the Court clarifies that the concept of 'significant distortion of competition', which would lead to treatment as a non-taxable person of public sector entities engaged in public service activities, must be assessed with regard to those activities as such, without that assessment relating to a specific local market. The term 'would lead to' within the meaning of the second subparagraph of Article 13 (1) of Council Directive 2006/112 / EC of 28.11.2006 is to be interpreted as meaning not only effective competition but also to potential competition, provided that the possibility of a private operator entering the relevant market is real and not purely hypothetical (Court of Justice of the European Union, Judgment *Commissioners of Her Majesty's Revenue & Customs v Isle of Wight Council,* Case C-288/07, 16.09.2008).

In addition, the expression "of any significance" must be understood in the sense that the actual or potential distortions of competition must be of more than insignificant size.

Taking into account the foregoing, the following conditions must be cumulatively met so that, in accordance with the provisions of Article 6, paragraph 2, of the HEM, public bodies become, in accordance with the provisions of Article 6, paragraph 2, of the

- the public bodies perform the same actions as other economic operators, mainly from the private sector
- the performance of these actions leads to a real or even potential competition distortion of any significance, the cause of which is treatment as a non-taxable person
- it concerns a real or even potential competition distortion to the disadvantage of particular competitor or such a distortion of competition to the disadvantage of the relevant public-law bodies.

In other words, the provision of Article 6 (2) of the VAT Code in turn constitutes a derogation from the exception that is a non-taxable person, so that one falls back on the general rule of the taxable person.

The question whether a particular activity carried out by a public sector body gives rise to 'significant distortions of competition' is a matter of fact which is considered on a case by case basis and for each activity separately.

The administration assumes that there is no significant distortion of competition with regard to a particular activity, if the annual turnover of an economic activity does not exceed EUR 25,000. That threshold must therefore be assessed per activity carried out by that body governed by public law, so that only the turnover relating to that activity is taken into account (and not per transaction).

The public body that exceeds the threshold of EUR 25,000 in relation to a particular activity during the calendar year, must immediately contact the competent VAT inspection center.

Said VAT control center will decide on the basis of the factual elements and after having taken cognizance of the arguments of the public body whether there is any significant distortion of competition within the meaning of Article 6 (2) of the VAT Code. When in doubt, the VAT control center will seek the advice of the central VAT services of the General Administration of Taxation.

F. Specific work that is not insignificant

F. Specifieke werkzaamheden die niet van onbeduidende omvang zijn

Pursuant to Article 6, third paragraph, of the VAT Code, public sector bodies in any case have the status of taxpayer for the activities referred to in that third paragraph insofar as they are not of negligible importance, because the potential for a competitive disturbance is significant.

However, this is an exhaustive list that must be strictly applied and that transposes into Belgian law Annex I to the aforementioned Directive 2006/112 / EC, which may not be limited or extended by the Member States.

The provisions included in Article 6, third paragraph, of the VAT Code therefore in turn constitute an additional restriction on the rule of non-tax liability of public sector entities. The aim of this legal provision is to prevent certain categories of economic activities, the importance of which arises from the nature of those activities, from being charged from VAT for the mere fact that they are carried out by public sector bodies such as government.

The assessment of the insignificance or otherwise of the activities included in Article 6, third paragraph, of the VAT Code constitutes a matter of fact that must be investigated on a case-by-case basis and for each activity.

The Administration accepts that a certain activity is insignificant if the annual turnover of that activity does not exceed 25,000 euros. For the sake of completeness, below is a comparative table between the provisions of Article 6, third paragraph, of the VAT Code and those of Royal Decree 26 with regard to subjecting public institutions to value added tax, which by Royal Decree of 20.12.2007 was closed.

Royal Decree No. 26 (Repealed)	Article 6, third paragraph, of the VAT Code
The following are regarded as taxable persons for value added tax:	
1 ° the services and authorities of the State, of the Communities, of the Regions, of the provinces, of the agglomerations and of the municipalities, as well as of the public institutions, with regard to:	
• the supply and supply of water, gas, electricity and steam;	2 ° the supply and supply of water, gas, electricity and steam;
• the sale of agricultural and horticultural products, and of foodstuffs from an agricultural or trading company;	
	5 ° the delivery of new goods produced for sale;
• granting the right to wholesale sale of agricultural and horticultural products on a public market organized in an establishment specially equipped and operated for this purpose and the supply of goods and services which they provide in this context;	6 ° the acts of the agricultural intervention agencies with regard to agricultural products, which are carried out on the basis of regulations on a common market organization for these products;

	7 ° the operation of commercial fairs and exhibitions;
• the sale of trees and wood from a forest company;	
• the supply of goods and the provision of services in the context of the operation of ports, navigable waterways and airports;	4 ° the supply of goods and the provision of services in the context of the operation of ports, navigable waterways and airports;
• the operation and granting of rights to the operation of a restaurant, a hotel or a café open to the public;	11 ° the supply of goods and services performed by company canteens, company shops, cooperatives and similar establishments;
• the operation and granting of rights to the operation of a school for the driving of motor vehicles;	
2 ° the services and authorities of the provinces and municipalities, as well as public institutions, with regard to:	
• the operation and granting of rights to operate a parking facility, storage facility, camping area, radio or television distribution network and slaughterhouse;	8 ° the exploitation and the granting of rights to the exploitation of a parking lot, a warehouse and / or a camping site;
• the establishments, transfers and retransfers of real rights to immovable property by their nature which are excluded from the exemption in Article 44, § 3, 1 °, b) of the Code of value added tax;	
• the sale of real estate excluded from the exemption in Article 44, § 3, 1 °, a) of the Code of value added tax;	

• the so-called real estate leasing as referred to in Article 44, § 3, 2 °, b) of the Value Added Tax Code;	
3 ° the Directorate of Prison Labor and the autonomous penal institutions that fall under the Ministry of Justice;	
4 ° the Industry Promotion Service;	
5 ° the General Savings and Annuity Fund;	
6 ° the Director of Telegraphy and Telephony;	1 ° the telecommunication services;
7 ° the Belgian Official Gazette;	
8 ° (lifted)	
9 ° the Belgian Office for Business and Agriculture;	
10 ° (lifted)	
11 ° the Directorate for Maritime Transport;	
12 ° the Test Bench for Firearms;	
13 ° Flemish Radio and Television broadcaster, Broadcasting of the Flemish Community, the 'Radio-Télévision belge de la Communauté française' and the 'Belgischer Rundfunk';	12 ° the supply of goods and the services provided by radio and television broadcasting services.
14 ° the Royal Mint of Belgium;	
15 ° the National Institute for Radioactive Waste and Enriched Fissile Materials (ONDRAF / NIRAS).	
	3 ° freight and passenger transport;

	9 ° the work on advertising;
	10 ° the services of travel agencies as referred to in Article 1, § 7;

In this regard, it is noted that the acts performed by a public-law body as a government and which were not expressly included in Article 6, third paragraph, of the VAT Code, but were previously mentioned in Royal Decree 26, in principle lead to a distortions of competition (see section E above).

G. Acts that are envisaged in Article 44 of the VAT Code

G. Handelingen die worden beoogd in artikel 44 van het Btw-Wetboek

When a body governed by public law, as referred to in Article 6 (1) of the VAT Code, carries out acts that are intended by one of the provisions of Article 44 of the aforementioned Code, it must be investigated whether treatment as a non-taxable person of that public law body could lead to significant distortions of competition to the detriment of private competitors or to the detriment of the public-law body itself (see Section E above).

This is partly due to the Judgment of the Constitutional Court No 104/2008 of 17.07.2008 , whereby the Court of Justice, Article 39, a) of the Program Law of 27.12.2006 (BS 28.12.2006). On the basis of this article, the status of taxpayer has been automatically granted to public institutions that perform acts as referred to in Article 44 of the VAT Code.

In this respect, marginal 24 and 25 of circular AAFisc no. 42/2015 (no. ET 125.567) from 10.12.2015 it has been noted that a public-law entity, which does not have the status of taxable person, may experience a distortion of competition to its disadvantage if, as a lessee, it leases a real estate financing lease as referred to in Article 9, second paragraph, 2 °, and Article 44, § 3, 2 °, b), wishes to enter into the Code and must meet the conditions set out in the Royal Decree No 30 of 29.12.1992 regarding the application of value added tax to the real estate finance lease . In accordance with Article 1, 1 °, of the aforementioned Royal Decree, the contract must, however, relate to built real estate erected or acquired by the company specialized in financing rent or real estate leasing, in accordance with the instructions specified by the prospective lessee to be

to be used as a taxable person in the exercise of his activity (whether or not exempted in accordance with Article 44 of the VAT Code).

There may even be a potential distortion of competition in favor of a non-taxable public-law body, for example if, in the context of Article 19, § 2, first paragraph, 1 °, of the VAT Code, it carries out work in its own personnel immovable state, since the aforementioned article applies only to taxable persons and in no way with regard to work in immovable state of any kind (incorporation, thorough renovation, repair, maintenance, cleaning ...), carried out by a public-law body that is not - taxable person is designated.

Taking into account the foregoing, the administration assumes that the acts performed by a public-law body as a government and which are intended by the provisions of Article 44 of the VAT Code in principle lead to a potential distortion of competition. Therefore, a public-law entity that carries out such acts in accordance with the provisions of Article 6, paragraph 2, of the aforementioned Code must be regarded as a taxable person if the relevant distortion of competition is significant.

Nevertheless, the assessment of a "significant" distortion of competition constitutes a factual matter which must be considered on a case-by-case basis and for each activity.

The administration assumes that there is no significant distortion of competition with regard to a given activity if the annual turnover of this economic activity does not exceed EUR 25,000.

However, the public-law body can refute this presumption of tax liability by submitting a reasoned petition stating the absence of a distortion of competition.

H. Practical applications

The practical application of the provisions of circular AAFisc No. 42/2015 (No. ET 125.567) of 10.12.2015 is explained on the basis of a number of application cases with which public sector bodies are often confronted. These 'Frequently Asked Questions' can be consulted in circular 2017 / C / 91 of 22.12.2017 on practical application cases regarding the tax liability of public sector entities and decision no.

ET 129.914 from 27.04.2016 .

For a detailed explanation of the tax liability of aid zones, reference is made to decision no. ET 128.051 of 14.12.2015 .

2. Intermunicipal companies

2. Intercommunales

If, in the context of its statutory mandate, the intermunicipal association actually acts in place of the affiliated municipalities, and the latter waive their regulatory and management rights in respect of the assignments for which they bore the expenses in favor of the intermunicipal association the sums paid by the municipalities to the intermunicipal association are not the price of a service, but a financial contribution to the management costs.

The question whether a municipality has actually waived its regulation and management rights with regard to a specific assignment for the benefit of an intermunicipal association to which it has joined, in such a way that the intermunicipal association performs its management instead of its member is an issue to be assessed on a case-by-case basis. However, it was decided that a municipality has not waived its regulatory and management rights effectively when:

- a municipality may make use of a public tender for the execution of acts of which it has left the management to an intermunicipal association.
- a municipality reserves the right to carry out the task left to the intermunicipal association itself.
- more generally, the municipality, despite its accession, remains free to choose its contractual partner.
- enter into ties with the intercommunal associations in the services and administrations of the State or provinces.

A. Actual waiver of regulatory and management rights

A. Werkelijke afstand van reglementerings- en beheersrechten

If the municipality actually transfers its management rights to the intermunicipal association, a distinction must be made with regard to the applicable regulation depending on whether the management activities carried out by the intermunicipal association in place of the municipalities are subject to VAT or not. .

the management activities are subject to VAT

a. de werkzaamheden van beheer zijn aan de btw onderworpen

These activities are those for which the municipalities are designated as taxable persons with a right of deduction in accordance with Article 6, second and third paragraphs of the VAT Code (see sections E and F of Title 1 'Tax liability of public sector entities' above). This concerns, among other things, the work relating to the supply to consumers of water, gas, electricity or steam.

The following solutions apply:

- the intermunicipal company provides goods and services directly to consumers without the intervention of the municipality.

  VAT is payable in the relations between the intermunicipal company and the consumers at the price requested from the consumers. Only the intermunicipal company has the status of taxable person. That capacity gives her the right to deduct input tax on that activity.

- the municipalities themselves provide the goods and services to consumers, but leave all or part of the management of that activity to the intermunicipal company. The tax is, in principle, payable in relations between the municipality and consumers, on the amount requested for the services and goods supplied to them. The municipality has the status of taxpayer and in that capacity deducts the input tax relating to that activity. On the other hand, the tax is not payable on the amounts that the municipalities pay to the intermunicipal company as a participation in the management costs. However, the input tax with which the administrative costs are encumbered may be deducted by the municipalities, to the extent that the municipalities participate in those costs.

  However, as the intermunicipal company is often better equipped than the municipalities to fulfill the formalities required for the application of VAT, the administration will not criticize the following solutions:

  - if the municipalities leave the management entirely to the intermunicipal company (for example the supply and provision of water, gas, electricity or steam), it may be assumed that the intermunicipal company provides the goods and services directly to the consumers. In that case, the tax may be paid in the relations between the intermunicipal company and the consumers and the intermunicipal company may submit a global VAT return for all the supplies made to the consumers of the affiliated municipalities.

  - if the municipality is only partially responsible for the management of a business sector to the intermunicipal authority, it can be assumed that the intermunicipal company is the taxpayer for that management and the costs thereof, increased by the tax, may be charged to the municipality. The city should pay the tax

pay on the supplies and services it provides to consumers, after deduction of the tax charged to it, while the intermunicipal company itself deducts the tax on which its management costs are charged. In this context, it is noted that, in the event of resale by a municipality to consumers of water, gas, electricity or steam purchased from an intermunicipal company, the tax on that purchase is due.

b. management activities are not subject to VAT

b. de werkzaamheden van beheer zijn niet aan de btw onderworpen

These activities are those for which the municipality does not have the status of taxable person in accordance with Article 6, second and third paragraphs of the VAT Code (see sections E and F of Title 1 'Tax liability of public sector entities' above). This is the case, for example, for the collection of household waste.

In relations between the intermunicipal company and the municipalities, the tax on the financial contribution of those municipalities in the management costs is not payable. However, the intermunicipal company does not have the status of taxpayer in respect of that activity and it cannot deduct input tax relating to that activity.

However, this special arrangement does not apply when a municipality affiliated with an intermunicipal company proceeds to tender for the execution of a work and invites the intermunicipal company to tender, like the other contractors. If necessary, the intermunicipal company is a taxpayer to the extent that it performs work for the municipality as a result of the allocation.

B. There is no real waiver of regulatory and management rights

B. Geen werkelijke afstand is van reglementerings- en beheersrechten

With regard to these activities for which there is no waiver of the regulation and management rights for the benefit of the intermunicipal association, the rules of common law must be applied. Thus, the intermunicipal associations as such do not act in accordance with the provisions of Article 6 of the VAT Code, but are regarded as a taxable person within the meaning of Article 4, § 1, of the aforementioned Code.

For example, in the absence of a real distance, an intermunicipal association that, in the course of a regular activity, makes deliveries of goods or services as referred to in the Code for the benefit of an affiliated municipality,

under a association contract, subject these supplies of goods or services to VAT.

However, with regard to the various activities that are subject to tax, even if they are carried out by a public-law body (acts as referred to in Article 6, second and third paragraph of the VAT Code), such as, for example, the delivery and distribution to consumers of water, gas, electricity or steam, the special rules stipulated in point a. of section A 'actual waiver of regulatory and management rights' may be applied, even in the absence of an actual waiver.

C. Other actions

C. Andere handelingen

This refers to the acts that an intermunicipal association performs outside its statutory mandate, such as the supply of goods and the provision of services directly to persons other than the municipalities that have joined. However, these transactions are subject to the usual VAT arrangements applicable to those transactions (see notice no. 148/1971 of 05.10.1971 , amended by the

letter no 6/1975 of 27.02.1975).

3. Autonomous municipal and provincial companies

3. Autonome gemeente- en provinciebedrijven

As emphasized in marginal 5 of circular AAFisc No. 42/2015 (No. ET 125,567) of 10.12.2015 the provisions of Article 6 of the VAT Code are not intended for public-law associations that have been formed by way of association, and thus not by way of foundation.

The autonomous municipal and provincial companies with legal personality are therefore not intended by the provisions of Article 6 of the VAT Code, but are regarded as taxable persons within the meaning of Article 4, § 1 of this Code if they perform acts referred to in that Code (also see decision no. ET 101.890 of 27.03.2002).

The application of certain exemptions included in the provisions of Article 44 of the VAT Code, which is subject to the condition that the institutions concerned may not systematically aim at making a profit, still leads in practice to autonomous municipal companies.

This issue is explained in detail at decision no. ET 129.288 of 19.01.2016 and whereby Mr. Minister provided additional information in his reply to Oral Parliamentary Question No 1,955 by Mr People's Representative Luk Van Biesen van
06.12.2017 .

As far as their nature is concerned, there is little doubt that the acts performed by an autonomous municipal company as the operator of an establishment for sport, culture and entertainment are envisaged as a whole by an exemption from Article 44, § 2, 3 °; 4 ° a); 6 °; 7 ° and 9 ° of the VAT Code. However, the scope of these exemptions is limited to transactions carried out by non-profit-making institutions whose revenue from the exempted activities is used exclusively to cover their costs.

A. Concept of 'non-profit institution'

A. Begrip 'instelling zonder winstoogmerk'

The notion of non-profit making institution was clarified by the Court of Justice of the European Union in its judgment in Kennemer Golf & Country Club (Court of Justice of the European Union, Judgment *Kennemer Golf & County Club v Secretary of State for Finance,* Case C-174/00, van
21.03.2002). In order to assess whether an institution qualifies as a non-profit institution, all activities of that institution should be taken into account. It is not sufficient that the transactions which qualify for the exemption are carried out on a non-profit basis, whereas other transactions are conducted for a commercial purpose. The institution, taken as a whole, has no profit-making objective if it does not seek to make a profit for the purpose of its distribution among its members. The existence of such an objective must be determined on the basis of the institution's statutory objective and the actual factual circumstances of the case.

If an institution qualifies as a non-profit institution on the basis of the aforementioned criteria, it is irrelevant whether or not it systematically realizes or pursues surpluses. As a non-profit institution, it also qualifies as an institution that systematically seeks surpluses, provided that these are not distributed as profit to members. The condition that the institutions concerned may use the revenue from the exempt activities only to cover their costs implies that they are allowed to realize or even pursue surpluses, provided that these surpluses are not distributed as profit to members and that the institutions use these surpluses for the purpose of their exempt transactions.

A different interpretation would be to prohibit institutions from closing their financial year with a positive balance and to prevent them from creating reserves that they can use to maintain or improve the exempt transactions they have granted. The Administration has subscribed to the aforementioned principles regarding the scope of the term 'non-profit institution' (decision no. ET 104.780 of 27.11.2003).

B. The autonomous municipal company as an institution with or without a profit motive

B. Het autonoom gemeentebedrijf als instelling met of zonder winstoogmerk

The fact that an institution receives operating subsidies does not in itself affect the application of the aforementioned exemptions.

The granting of operating grants may prove that the institution or establishment itself does not have sufficient resources to cover its expenditure, in other words that its revenue itself is not sufficient to cover its operating costs. It follows that the granting of operating subsidies may indicate that there is no profit motive (Written Parliamentary Question No. 1.320 by Mr Representative Stephan Goris from

12.06.2006).

The then Minister in charge of the Modernization of Finance and the Fight against Tax Fraud added to the Minister of Finance has clarified the scope of this ministerial answer. It is clear from that answer that, according to normal rules, the tax liability with a right to deduct input tax cannot be disputed for autonomous municipal companies that have not taken the form of an nv or a bv and that have an establishment intended by Article 44, § 2, 3 °. , of the VAT Code (mutatis mutandis article 44, § 2, 4 °, a); 6 °; 7 °, and 9 °, of the VAT Code), which according to the articles of association show that they have a profit objective and that they aim to distribute profit (Oral Parliamentary Question No. 519 by Mr Representative Jan Peeters of 11 December 2007). Mr. Minister of Finance has further clarified in this regard that autonomous municipal companies that have not taken the form of an nv or a bv and that develop activities whose exemption depends on the lack of profit motive, fall outside the scope of the relevant exemption if their articles of association provide that any winnings will be distributed to members and that this will actually happen (Written Parliamentary Question No. 842 by Ms deputy representative Valérie Warzee-Caverenne of 02.04.2014).

C. Influence of receiving subsidies by an Autonomous Municipal Company of the municipality

C. Invloed van het ontvangen van subsidies door een Autonoom Gemeentebedrijf van de gemeente

The classification of an autonomous municipal company as a taxpayer with a right to deduct within the meaning of Article 4 of the VAT Code does not prevent the administration from later examining whether the statutory provisions are purely theoretical and, if necessary, decide that the aforementioned exemption still applies. (see in this regard, inter alia oral parliamentary question No. 1,592 by Mr People's Representative Roel Deseyn of 28.01.2015).

This will be the case when systematic shortages occur on the part of the autonomous municipal company because the prices charged to visitors to the establishment are not sufficient to cover the operating costs of the autonomous municipal company and it is therefore impossible to distribute profits. To this end, the operational result of the global activity of the autonomous municipal company must be taken into account (Written Parliamentary Question No. 481 by Mr Representative Benoît Dispa of 16.07.2015).

In that context, given the close link between the autonomous municipal company and the municipality, the operating grants made available to the autonomous municipal company by the municipality cannot be classified as revenue from a particular activity. As a result, operating grants should not be classified as additional revenue, nor should they be deducted from the costs incurred in determining the accounting result. Subsidies directly related to the price awarded by the municipality to the autonomous municipal enterprise are included in the taxable amount of VAT and are therefore added to the revenue of the autonomous municipal enterprise to determine whether the provisions of the articles of association governing profit and purpose distributions are theoretical or not.

There is a direct link with the price only if the subsidy is specifically paid to the subsidized body to supply a specific good or to provide a specific service. This link between the grant and the price must be made clear by an examination of the specific circumstances underlying the payment of the consideration. On the other hand, it is not necessary for the price of the good or service, or part of it, to be determined. Suffice it to be determinable (Court of Justice of the European Union, Judgment Office des produits wallons ASBL v Belgian State, case C-184/00, of 22.11.2001 , points 11 to 13).

Attention is drawn to the fact that price subsidies can only be fixed or adjusted for the future and not for the past. For example, it is possible to adjust the amount of the price subsidies during the financial year, but only for the future and not for the past.

For the sake of completeness, it is noted that operating grants as well as grants directly related to the price made available to the autonomous municipal company by a non-municipal authority are generally classified as revenue from a particular activity and are included in the assessment of the profit motive (see also Written Parliamentary Question No. 1,955 by Mr People's Representative Luk van Biesen of 06.12.2017).

D. Other elements to be taken into account in determining whether an autonomous municipal company already

D. Andere elementen waarmee rekening moet gehouden worden om te bepalen of een autonoom gemeentebedrijf al

does not qualify as a non-profit institution

In order to determine whether or not an autonomous municipal company should be classified as a non-profit institution, the following elements must also be taken into account:

- To determine the profit, account must be taken of the accounting result (including depreciation, provision of commission…) and it is not only possible to compare between the book for incoming invoices on the one hand and the book for outgoing invoices / diary for receipts on the other.

  It is noted that if, for example, employees are made available to an autonomous municipal company for free by a municipality, or if a municipality carries out free activities for an autonomous municipal company, the value of this provision (potential personnel costs) or the value of those free actions should not be taken into account to determine the aforementioned accounting result. In the present case, the determination of such a notional cost would give rise to significant additional administrative burdens for the autonomous municipal undertaking and could also create practical controllability difficulties for the administration (see also Written Parliamentary Question No. 1,955 by Mr People's Representative Luk van Biesen van

  06.12.2017).

  As a rule, the administration will not regard this provision of personnel free of charge or the performance of such free actions by a municipality for an autonomous municipal company as abuse within the meaning of Article 1, § 10 of the VAT Code.
- The overall result of the activity (ie not activity by activity) of the institution should be taken into account. However, both exceptional income (eg income from real estate and financial transactions) and exceptional costs are not taken into account. The profit / loss position should be structural and independent of any incidental income or expense events. Finally, it should be noted that all that precedes applies mutatis mutandis to autonomous provincial companies.

4. Inter-municipal partnerships

The treatment of value added tax inter-municipal partnerships, as set out below, is the subject of decision no.

ET 111.703 from 06.09.2006 .

Inter-municipal cooperation is cooperation on a voluntary basis between two or more municipalities with a view to achieving a common objective. Flemish

Decree concerning intermunicipal cooperation of 06.07.2001 regulates the provisions that apply to all partnerships of municipalities whose entire jurisdiction falls within the Flemish Region.

This decree distinguishes the intermunicipal partnerships without legal personality (the long distance association) and with legal personality (the project association, the service association and the commissioning association) that are explained below.

A. Unincorporated partnerships

A. Samenwerkingsverbanden zonder rechtspersoonlijkheid

The long distance association is a form of cooperation without legal personality and without management transfer. Municipalities can opt for this form of collaboration to carry out a specific project. Unless otherwise provided by decree, other legal persons, both under public and private law, may participate.

These long distance associations operate under their own name and can receive goods and services and provide goods and services from their own organization. They act as a separate entity vis-à-vis third parties. The long distance association is regarded as a taxable person for the supply of goods and services for the benefit of participating municipalities and third parties.

The agreement may stipulate that one of the participating municipalities is appointed as the managing municipality where the seat is located and which represents the long distance association. The managing municipality can deploy its own staff for the benefit of the partnership. This provision of personnel and the contributions of the municipalities to the long distance association are not subject to VAT unless the municipalities act as taxable persons with a right to deduct tax on the basis of Article 6, second and third paragraph of the VAT Code (see sections E and F of Title 1 'Tax liability of public sector entities' above). Cash contributions are in no way subject to VAT.

B. Partnerships with legal personality

B. Samenwerkingsverbanden met rechtspersoonlijkheid

Two or more municipalities can also establish a partnership with legal personality to realize their objectives that belong to one or more substantively related policy areas. In addition to municipalities and provinces, unless otherwise provided by decree, only autonomous municipal companies, PCSWs and their associations, insofar as they consist exclusively of public legal entities, and other

partnerships established in accordance with the provisions of the decree of 06.07.2001 participate in this. The partnership with legal personality is a legal entity under public law. However, its commitments are not of a commercial nature.

The municipalities decide on the management transfer in accordance with the articles of association of the partnership. Management transfer refers to the entrustment by the participating municipalities to the joint venture of the execution of decisions taken by them within the framework of its objectives, in the sense that the participating municipalities deny themselves the right to carry out the same task independently or together with third parties. The existence of a management transfer must be evident from the statutes of the intermunicipal partnership. In this respect, it is noted that the principle of exclusive services, whereby municipalities opt to purchase certain services exclusively from the partnership, cannot be regarded as or equated with management transfer.

There are three forms of partnership with legal personality:

a. projectvereniging

a. project association

The project association is a non-management partnership that aims to plan, execute and control a clearly defined project.

With regard to VAT, the project association must be regarded as an ordinary taxpayer as referred to in Article 4, § 1 of the VAT Code.

b. dienstverlenende vereniging

b. service association

The service association is a partnership without management transfer that aims to provide a clearly defined support service to the participating municipalities, possibly for different policy areas.

With regard to VAT, the service association must be regarded as an ordinary taxpayer as referred to in Article 4, § 1 of the VAT Code.

c. opdrachthoudende vereniging

c. commissioned association

The commissioning association is a partnership with management transfer to which the participating municipalities entrust the implementation of one or more clearly defined powers with regard to one or more functionally related policy areas.

Since there is a transfer of management by the participating municipalities at the commissioning association, the commissioning association acts for and instead of these municipalities. The transactions that the commissioning association thus carries out in place of the municipalities are subject to VAT or not, and depending on the municipalities concerned, whether or not they are regarded as taxable persons with a right of deduction for the performance of those transactions in accordance with Article 6, second and third paragraph of the VAT Code (see sections E and F of Title 1 'Tax liability of public sector entities' above).

For further information in this regard, reference is made to section A of title 2 'Intercommunales' above.

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Afdeling 7 - Toevallige belastingplichtigen

Section 7 - Accidental taxable persons

1. Toevallige leveringen van nieuwe gebouwen of van zakelijke rechten op die gebouwen

1. Accidental deliveries of new buildings or real rights to those buildings

In principle, the status of taxable person is acquired automatically. This implies that a person who makes deliveries of goods or services under the circumstances stipulated in the Code is legally liable to pay tax, without any formality having to be fulfilled and regardless of the place where he carries out his economic activity.

It should nevertheless be noted that persons who just happen to alienate new buildings or who establish, transfer or re-transfer real estate rights on those buildings under the provisions of Article 8 of the VAT Code do not acquire the status of taxable person by operation of law, but that they are expressly required to do so. opt.

The intention is:

- he who, other than in the exercise of an economic activity, has erected, had erected or acquired a building or part of a building with

payment of the tax, and no later than 31 December of the second year following the year of the first putting into service or the first taking possession of that good, for alienation of this good and the associated land, status of taxable person.

- a person who, other than in the pursuit of an economic activity, has erected a building or part of a building, had it erected or obtained it with tax, and on which he, no later than 31 December of the second year following the year of first occupation or first possession of that property, for a vested title, establishes a real right within the meaning of Article 9, second paragraph, 2 °, of the VAT Code has the status of taxpayer in respect of this establishment (5).

- a person who, other than in the exercise of an economic activity, has a right in rem within the meaning of Article 9, second paragraph, 2 °, of the VAT Code that was established or transferred to him with tax payment , by 31 December of the second year following the year of the first occupation or first possession of that good, for consideration, transfer or retransfer, with regard to the transfer or re-transfer of this business right to a building or a part of a building as a taxable person (5).

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(5) This person is also a taxable person when

concerning the establishment of the right in rem also relates to the associated terrain.

The manner in which the option is to be made, as well as the arrangements for deduction and payment of VAT, are specified in the Royal Decree No. 14 of 03.06.1970 with regard to the alienation of buildings, parts of buildings and the associated grounds and the establishments, transfers and retransfers of a right in rem within the meaning of Article 9, second paragraph, 2 °, of the Value Added Tax Code on such goods .

This option gives the aforementioned persons and groups the opportunity to dispose of the new building or a part of that building under the application of VAT or to establish, transfer or transfer a real right in respect of such a building under application of the VAT. in accordance with the provisions of Article 45 of the VAT Code, to recover the input tax levied on the costs that they had to pay for the construction or acquisition of that building or for the establishment, transfer or re-transfer of a real right on such a building.

For a detailed explanation of the VAT treatment of the accidental deliveries of new buildings or parts of new buildings or of the real rights in those buildings, and more generally for the VAT treatment of transactions relating to

real estate is referred to 'Bookwork VI: Specific topics - Chapter 16 - Sections 1 and 2'.

2. De personen of groepering die toevallig een nieuw vervoermiddel intracommunautair leveren

2. The persons or group who happen to deliver a new means of transport intra-Community

In accordance with the provisions of Article 8 *bis,* § 1 of the VAT Code is also regarded as a taxable person ' *anyone who happens to supply a new means of transport for consideration under the conditions of Article 39a* ".

It should first be noted that the status of taxable person within the meaning of Article 8 *bis,* § 1 of the VAT Code is obtained by operation of law, and thus not by option.

This article has three essential features:

- the capacity of the person: everyone is a taxable person
- the object of the act: a new means of transport
- the act: delivery of the new means of transport is carried out for consideration under the conditions of Article 39 *bis* of the VAT Code.

Under Article 8 *bis* of the VAT Code, anyone who performs the acts referred to in that article acquires the status of taxable person. The following are thus intended:

- private persons (salaried employees, pensioners…)
- public sector bodies and public institutions, even if they only act as government and are not regarded as taxable persons with a right of deduction in accordance with article 6, second and third paragraph of the VAT Code (see sections D, E and F of title 1 ') Tax liability of public sector entities of section 6 above)
- passive holdings
- …

The second condition is that the means of transport is a 'new means of transport' within the meaning of Article 8 *bis,* § 2, 2 ° of the VAT Code must be noted.

Thus are meant the by Article 8 *bis,* § 2, 1 ° of that Code intended:

- land vehicles, if their delivery takes place within six months from the date of their first entry into service or that have not traveled more than 6,000 kilometers

- boats if their delivery takes place within three months from the date of their first commissioning or that they have not sailed for more than 100 hours
- aircraft if their delivery takes place within three months from the date of their first entry into service or that they have not flown more than 40 hours.

The last condition is the provisions of Article 8 *bis,* § 1 of the VAT Code that only the delivery, for a consideration, of the aforementioned new means of transport is intended when it is carried out under the conditions of Article 39 *bis* of that Code. The delivery of the new means of transport is effected by the seller, by the customer or is dispatched or transported to the customer on their behalf, outside Belgium, but within the Community, without distinction for the application of this provision or the acquirer in the Member State of destination is a taxable person, a non-taxable legal person or another non-taxable person.

For a further explanation of the consequences of the tax liability within the meaning of Article 8 *bis,* § 1 of the VAT Code regarding the accidental intra-Community supply of a new means of transport, reference is made to 'Book II: Determination of the taxable basis and the applicable rate - Chapter 8: Exemptions for exports, intra-Community supplies and acquisitions, imports and international transport '.

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Section 8 - Partial and mixed taxable persons

Afdeling 8 - Gedeeltelijke en gemengde belastingplichtigen

The provisions of Article 4, § 1 of the VAT Code have already clarified that a taxable person is considered *"anyone who, in the pursuit of an economic activity, makes, on a regular or independent basis, for or without profit, mainly or additionally, supplies of goods or services as defined in this Code, wherever the economic activity is carried on".*

Now the same person or group, in the exercise of its economic activity, can simultaneously perform various kinds of actions, so the following actions can be distinguished:

- acts that fall outside the scope of the VAT Code, such as, for example, free acts or acts performed as a government for which the relevant public-law body does not have the status of taxpayer (acts 'performed as a government' that neither lead to significant distortions of competition, nor acts intended by Article 6 (3) of the VAT Code to the extent that they are not insignificant).

- transactions that grant the person or group in question the status of taxable person and that fall within the scope of the VAT Code. These actions can be further divided into two groups:

  - taxable transactions and transactions which are exempt from tax in accordance with Articles 39 to 42 or 44 *bis* of the VAT Code which, in accordance with the provisions of Article 45 of the aforementioned Code, grant the right to deduct the input tax levied on the costs related to those transactions.

  - acts intended by the provisions of Article 44 or 44 *bis* of the VAT Code which are exempt from tax and which, in principle, do not, in accordance with the provisions of Article 45 of the aforementioned Code, grant a right to deduct the input tax levied on the costs relating to those transactions.

1. Partial taxpayer

1. Gedeeltelijke belastingplichtige

Any taxable person within the meaning of Article is considered a partial taxable person
4, § 1, of the VAT Code that carries out activities that fall within and outside the scope of that Code.

With regard to transactions that fall within the scope of application of the VAT Code, both intended groups of transactions are intended, being:

- taxable transactions and transactions which are exempt from tax in accordance with Articles 39 to 42 or 44 *bis* of the VAT Code granting the right to deduct input tax.

- the acts intended by the provisions of Article 44 or 44 *bis* of the VAT Code which, in principle, do not confer the right to deduct input tax.

Examples:

- a passive holding company grants rights to a patent, trademark, trademark
- a body governed by public law has two tasks. On the one hand, issuing official documents such as identity cards, travel passes, driving licenses ... for which she becomes non-taxable in accordance with Article 6 (1) of the VAT Code.

marked. It thus concerns an act outside the scope of application of the VAT Code. On the other hand, it provides passenger transport as referred to in Article 6, third paragraph, of the VAT Code for which it is thus regarded as a taxable person when this transport is of more than insignificant size.

2. Mixed taxpayer

2. Gemengde belastingplichtige

Mixed taxpayer is any taxpayer within the meaning of Article 4, § 1 of the VAT Code who only carries out transactions that fall within the scope of that Code and on the one hand concerns transactions that are intended by the provisions of Article 44 or 44 *bis* of the VAT Code which in principle do not confer a right to deduct input tax and, on the other hand, taxable transactions or transactions exempt from tax in accordance with Articles 39 to 42 or 44 *bis* of the VAT Code and which grant the right to deduct input tax.

Examples:

- physicians who are licensed to sell medicines regularly
- a passenger transport company that also transports the sick and injured with specially equipped means of transport.

Both the partial and the mixed taxpayer can exercise their right to deduct input tax in accordance with the provisions of Article 45 of the VAT Code only in proportion to the transactions for which a deduction exists. For further explanation in this regard, reference is made to 'Book III: Right to deduct input tax - Chapter 11: Right to deduct'.

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Section 9 - Silent commercial companies, temporary commercial companies, partnerships and de facto associations

Afdeling 9 - Stille handelsvennootschappen, tijdelijke handelsvennootschappen, maatschappen en feitelijke verenigingen

Following the introduction of the Code of companies and associations (BS of 04.04.2019) a number of company forms are gradually disappearing as of 01.05.2019, including the silent trading company and the temporary trading company.

In view of the transitional provisions provided for in the law 23.03.2019 introducing the Companies and Associations Code and containing various provisions (Belgian Official Gazette of 04.04.2019), a detailed explanation is still provided below with regard to the VAT tax liability of silent trading companies and the temporary trading companies.

1. Silent trading company
1. Stille handelsvennootschap

The silent trading company is an unincorporated company in which one or more persons take an interest in the transactions of one or more others acting in their own name (Articles 2, § 1, and 48 of the Companies Code).

The silent trading company remains unknown to third parties. It has no common name and no legal personality. Third parties trade only with the manager (manager) of the company and have no direct action against the partners of a silent trading company, which are limited to a mere participation (Article 54 of the Companies Code).

The silent trading company is not classified as a taxable person.

For the purposes of VAT, the manager of the silent trading company is deemed to act as a broker within the meaning of Articles 13, § 2, and 20, § 1 of the VAT Code (see notice no. 17/1971 of 22.01.1971 , marginal 1 to 6). The manager is therefore deemed to have received the goods and services from the hidden partners and in turn to have supplied them to third parties. In the relationship of the partners to the manager, the tax is due on the taxable contributions in kind that the partners make in the company. The manager carries out goods and services to third parties entirely on his own behalf and charges them VAT. He may deduct the tax charged on his contribution by his partners.

2. Temporary trading company
2. Tijdelijke handelsvennootschap

The temporary commercial company is a company without legal personality which, without having a common name, pursues one or more specific commercial transactions.

has (Articles 2, § 1, and 47 of the Companies Code). A temporary commercial company is involved as soon as two or more persons jointly carry out one or more specific transactions with a third party, without using a common name.

The temporary trading company does not have legal personality, but the partners are known to third parties with whom they trade. These partners have been severally held vis-à-vis third parties with whom they have acted and can therefore be summoned directly and personally (article 53 of the Companies Code).

In principle, the temporary trading company is not classified as a taxable person. However, under certain conditions, the partners may opt to classify the company as a taxable person. This choice is irrevocable.

A. The temporary commercial company that is not a taxable person

A. De tijdelijke handelsvennootschap die geen belastingplichtige is

The supplies of goods and services that the temporary commercial company provides for third parties who have concluded contracts with it are presumed to have been carried out directly by the partners, each for their own part. The obligations of a taxable person who supplies goods or provides services must be fulfilled by each partner individually, each for his own part. However, the partners may appoint someone who is responsible for issuing the invoices to third parties. These invoices must explicitly state the partner or partners in whose name and for whose account they were drawn up (see notice no. 17/1971 of 22.01.1971 , marginal 10).

B. The temporary commercial company that is a taxable person

B. De tijdelijke handelsvennootschap die belastingplichtige is

Although the temporary commercial company does not have legal personality, it can be identified as a taxable person within the meaning of Article 4, § 1 of the VAT Code when the transactions for which it is incorporated are sufficiently important. The company must keep its own accounts that are sufficiently detailed and the partners, who must choose domicile in this country, appoint someone who will be charged with fulfilling the obligations under the tax liability of the temporary commercial company. The deliveries of goods and services that the partners provide for third parties within the framework of the company are deemed to have been made by the company. The partners must therefore invoice the company for the price or value of those goods and services and to the

company tax, which is due on the transactions in the relationship of the partners to the company (see notice no. 17/1971 of 22.01.1971 , marginal 12 and 13).

3. The old partnership (before the introduction of the Code of companies and associations)

3. De oude maatschap (vóór de invoering van het Wetboek van vennootschappen en verenigingen)

Following the introduction of the Code of companies and associations (BS of
04.04.2019) and having regard to the transitional provisions in which the law 23.03.2019 introducing the Code of companies and associations and containing various provisions (BS of
04.04.2019), the 'old' partnership will disappear silently.

This partnership is a company with a civil or commercial purpose that does not have legal personality (Articles 2, § 1, and 46 of the Companies Code). It is a consensual contract, independent of any formalities.

The partners of this partnership are related to third parties, either in equal shares, if the company has a civil purpose, or jointly and severally, if it has a commercial purpose. This liability can only be deviated from by an express stipulation in the deed concluded with third parties. In principle, one of the partners of a partnership cannot bind the other partners unless they have given him a proxy (Articles 51 and 52 of the Companies Code).

If one has thus not opted for a specific legal form with legal personality contained in the Company Code, for a temporary trading company or for a silent trading company, the company is subject to the provisions common to all companies.

An irregular company with the object of commercial acts and which is neither a company in formation, nor a temporary commercial company or a silent commercial company, is governed by the rules of the partnership.

With regard to tax liability, the rules applicable to the temporary trading company apply mutatis mutandis to the 'old' partnership (before the introduction of the Companies and Associations Code) (see Title 2 above).

4. The new partnership

Following the introduction of the Belgian Companies and Associations Code (BS van 04.04.2019) the legal figure of the 'partnership' underwent thorough changes. This is explained in detail in Circular 2020 / C / 17 of 22.01.2020 regarding the VAT impact of the introduction of the Code of companies and associations .

The partnership is currently a company with a civil or commercial purpose that does not have legal personality (Articles 1: 5 and 4: 1 to 4: 3 of the Companies and Associations Code). It is a consensual contract.

The partnership is an agreement by which two or more persons undertake to bring their contributions into community, with a view to sharing the direct or indirect capital gain that may result therefrom. It is entered into in the common interest of the parties.

The partnership is 'silent' when it is agreed that it will be managed by one or more managers, whether or not partners, who act in their own name. Unless otherwise agreed, it is entered into with due regard for the person of the partners.

The 'silent' partnership is not regarded as a taxpayer within the meaning of Article 4, § 1 of the VAT Code.

The partnership which the partners agree to enjoy legal personality takes the form of a general partnership or a limited partnership.

It is a general partnership when all partners have unlimited and joint and several liability for the company's commitments.

It is a limited partnership when it is entered into by one or more partners who are jointly and severally liable for the obligations of the company, called the committed partners, and one or more partners who are limited to contributions in cash or in kind and who not participate in the management, called the limited partners.

In the general partnership and the limited partnership, the manager (s) are the administrative body (see Article 4:22 of the Companies and Associations Code).

The partnership which the partners agree to enjoy as a legal personality is always regarded as a taxpayer within the meaning of Article 4, § 1 of the VAT Code, insofar as it meets the other conditions set out in that Article.

The partnership which is not regarded as a 'silent partnership' within the meaning of the foregoing and which does not have legal personality, is now regarded as a taxable person within the meaning of Article 4, § 1 of the VAT Code insofar as it complies the other conditions included in that article. It will therefore have to be identified for VAT purposes.

5. The old de facto association (before the introduction of the Companies and Associations Code)

5. De oude feitelijke vereniging (vóór de invoering van het Wetboek van vennootschappen en verenigingen)

If two or more persons decide to carry out an activity together, this cooperation does not constitute a company within the meaning of Article 1 of the Companies Code
when there is no common name or when no profit is pursued. Such cooperation is considered to be a de facto association (for example, a walking club in the form of a de facto association).

The de facto association may have a civil or commercial purpose. Although it has no legal personality, it can be identified for VAT purposes.

6. The new de facto association (since the introduction of the Companies and Associations Code)

6. De nieuwe feitelijke vereniging (sinds de invoering van het Wetboek van vennootschappen en verenigingen)

Following the introduction of the Belgian Companies and Associations Code (BS van 04.04.2019) the de facto association is currently an association without legal personality governed by the agreement between the parties (Article 1: 6 of the Code of Companies and Associations). This is explained in detail in Circular 2020 / C / 17 of 22.01.2020 with regard to the VAT impact of the introduction of the Code of companies and associations .

In addition, the aforementioned Code of companies and associations states that an 'association' is established by an agreement between two or more persons, called members. It pursues a selfless goal in the course of one or more specific activities that it has as its object. It may not distribute or deliver any capital advantage directly or indirectly to its founders, members, directors or any other person except for the disinterested purpose of the articles of association. Any operation contrary to this prohibition is void (Article 1: 2 of the Code of Companies and Associations).

The actual association within the meaning of the aforementioned Article 1: 6 of the Companies and Associations Code can therefore only pursue a selfless purpose. It can thus pursue economic activities within the meaning of Article 4, § 1 of the VAT Code, but may only pursue a disinterested purpose.

The pursuit of an equity advantage to distribute or deliver it to members is therefore not permitted in accordance with the provisions of Article 1: 2 of the aforementioned Companies and Associations Code. The pursuit of a capital advantage is therefore only permitted if that capital advantage is part of the selfless purpose

Although the de facto association has no legal personality, it is always regarded as a taxable person within the meaning of Article 4, § 1 of the VAT Code, insofar as it meets the other conditions set out in that Article and therefore serves VAT have purposes identified.

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Section 10 - Taxable persons not established in Belgium

Afdeling 10 - Niet in België gevestigde belastingplichtigen

1. Principle

1. Beginsel

It is apparent from the definition of the taxable person according to Article 4, § 1 of the VAT Code that the attribution of the status of taxable person to a natural or legal person is not

depends on the existence in Belgium of a domicile, registered office or registered office of this person, or of any other operating office.

A person not established in Belgium who carries out a taxable activity within Belgium within the meaning of the Code, is considered for the purposes of the Belgian VAT legislation for the transactions (deliveries of goods and services) carried out in this country. as a taxpayer.

However, the scheme applicable to taxable persons not established in Belgium who provide supplies or services in Belgium differs depending on whether or not they have a permanent establishment in Belgium.

Below you will find a brief overview.

2. The non-resident taxpayer with a permanent establishment in Belgium

2. De buitenlandse belastingplichtige met een vaste inrichting in België

A. The term permanent establishment for outgoing transactions (supplies of goods and / or services)

A. Het begrip vaste inrichting voor de uitgaande handelingen (leveringen van goederen en/of diensten)

For the purposes of Article 21 *bis,* § 1, Article 21 *bis,* § 2, 7 ° *ter,* Article 50, § 1, first paragraph, 1 °, Article 50, § 1, first paragraph, 3 °, Article 51, § 2, first paragraph, 1 °, 5 ° and 6 °, Article 51, § 2, second paragraph , and Article 55 of the VAT Code, a foreign taxpayer has a permanent establishment in Belgium when the following conditions are cumulatively fulfilled (see Article 11, § 2 of the Council Implementing Regulation No 282/2011 of 15.03.2011 laying down measures for the implementation of Directive 2006/112 / EC):

- the taxpayer here has a seat of management, a branch, a factory, a workshop, an agency, a warehouse, an office, a laboratory, a purchasing or sales office, a depot or any other permanent establishment in this country but with the exception of construction sites (regardless of the duration of the works).

- this device is characterized by a sufficient degree of durability and an adapted structure in terms of human and technical resources.
- the aforementioned human and technical resources allow that establishment to regularly supply goods or provide services within the meaning of the VAT Code, where these

activity also takes place and without distinction as to whether these transactions are actually taxed or exempt.

For the purposes of the VAT Code, the taxable person whose registered office of economic activity or domicile or usual residence is not established in Belgium and for whom the above-mentioned conditions are not met are considered to be a taxable person not established in Belgium.

This therefore means that he is considered not to be established in Belgium for his outgoing transactions:

- the foreign taxpayer who does not have any establishment in Belgium;
- the foreign taxpayer who has an establishment in Belgium that does not perform any outgoing transaction (deliveries of goods / services), as intended by the VAT Code. In particular, it concerns the establishment which is merely an office for representation or marketing purposes and which is used only for advertising purposes, for the free distribution of information to the public or for similar activities, or the establishment which is only used for storage or storage of goods .

With regard to Belgian VAT, the foreign taxpayer with a permanent establishment in Belgium is in the same condition as the taxpayer whose domicile or registered office or registered office is located in Belgium. He has the same rights and is bound by the same obligations. He comes under the Centrum Buitenland (Finto, Kruidtuinlaan, ~~50 bu~~s 3410, 1000 Brussels).

B. Het begrip vaste inrichting voor de inkomende handelingen (ontvangst van een dienst)

B. The concept of permanent establishment for incoming transactions (reception of a service)

In accordance with Article 21, § 2 of the VAT Code, the services provided to the taxpayer's permanent establishment located in a place other than where he has established his economic activity, take place where that permanent establishment is established, insofar as that permanent establishment is the sole beneficiary of that service.

A 'permanent establishment for which a service is provided' means an establishment that has a sufficient degree of constancy and has an appropriate structure in terms of human and technical resources to receive and consume the services provided, in other words, the establishment in question must be able to receive and consume the services materially (legal competence is relevant).

no role). The services received will therefore actually be consumed by the permanent establishment (see Article 11, § 1 of the Council Implementing Regulation No 282/2011 of 15.03.2011 laying down measures for the implementation of Directive 2006/112 / EC):

The term 'permanent establishment for incoming transactions' is therefore broader, since it includes:

- the taxable person who is already considered a permanent establishment for his outgoing transactions (see section A above)
- the foreign taxpayer who has an establishment in Belgium from which no action (delivery of goods or service), as intended by the VAT Code, is carried out. In particular, it concerns the establishment which is merely an office for representation or marketing purposes and which is used only for advertising purposes, for the free distribution of information to the public or for similar activities, or the establishment which is only used for storage or storage of goods . A representation or information office of a foreign company in its capacity as 'permanent establishment for incoming transactions' must only be registered for VAT in Belgium if it carries out incoming transactions for which it is a debtor of Belgian VAT (such as the receipt of a service which takes place in Belgium pursuant to Article 21, § 2 of the VAT Code and is provided by a taxable person not established in Belgium). Such a taxpayer falls under the Centrum Buitenland (Finto, Kruidtuinlaan, 50 bus 3410, 1000 Brussels) as he does not have a permanent establishment for his outgoing transactions. To the extent that the foreign taxpayer, who has a simple representative office in Belgium,

3. The non-resident taxpayer without a permanent establishment in Belgium

3. De buitenlandse belastingplichtige zonder vaste inrichting in België

In principle, only taxable persons not established in the Community are obliged to have a liable representative established in Belgium recognized before carrying out any act in Belgium, except for an act for which the tax is charged in accordance with Article 51, § 2, first paragraph 1. °, 2 °, 5 ° or 6 ° of the VAT Code is owed by the contracting partner and unless it concerns an act for which the special regime intended in Article 58 *ter* of the aforementioned Code is applied (Article 55, § 1, first paragraph, of the VAT Code and Royal Decree No 31 of 02.04.2002 regarding the

arrangements for applying value added tax to transactions carried out by taxable persons not established in Belgium).

Taxable persons established in another Member State of the Community therefore no longer have the obligation to have a liable representative recognized for transactions which take place in Belgium and for which they are liable for VAT. If they wish, however, they can have a liable representative recognized when they carry out transactions in Belgium which, if they were carried out by a taxable person not established in the Community, would require the recognition of a liable representative (Article 55, § 2 of the VAT Code).

When a taxable person not established in Belgium but in another Member State of the Community carries out transactions in Belgium for which he is a debtor of the tax in Belgium, except for a transaction for which the special regime referred to in Article 58 *quater* of the VAT Code, he is, in principle, obliged to be identified in Belgium for VAT purposes.

Since this identification is no longer linked to the recognition of a liable representative, it is said that he enjoys 'direct identification'.

When a taxable person not established in Belgium but outside the Community carries out transactions in Belgium for which he is a debtor of the tax in Belgium, he is, in principle, obliged to be identified in Belgium for VAT purposes and this identification is, in principle, associated with the recognition of a liable representative in Belgium.

However, if that taxable person is established in a country with which there is a legal instrument of mutual assistance, the scope of which is the same as that of Council Directive 2010/24 / EU of 16.03.2010 on mutual assistance for the recovery of claims arising from taxes, duties and other measures, and those of Council Regulation (EU) No 904/2010 of 07.10.2010 regarding administrative cooperation and combating fraud in the field of value added tax, he must not have a liable representative recognized and can enjoy “direct identification” (Article 55, § 1, VAT Code). The only third country with which a legal instrument of this type has been concluded is Norway.

The Foreign Center may, under certain conditions, in particular in the case of imports or exempt transactions, release or relieve the taxable person not established in Belgium from the obligations of identification for VAT and recognition of a liable representative in Belgium.

Finally, taxable persons not established in Belgium who use one of the special schemes provided for in Articles 58ter and 58quater of the VAT Code for the telecommunications, radio and television broadcasting and electronic services (Enig Mini Loket - MOSS) that they in Belgium for non-taxable persons, not intended by the general rules on identification for VAT and recognition of a liable representative in Belgium as far as the only transactions for which they are liable for VAT in Belgium.

The liable representative will replace his foreign principal with regard to all rights conferred on the latter and all obligations imposed on him by or in implementation of the Code. He and his principal are jointly and severally liable for payment of the tax, interest and fines the due and payable of which arises from the acts performed here.

In Belgium, there are two categories of liability representation, both of which will be discussed below.

A. First category of liability representation; allocation of an individual VAT identification number

A. Eerste categorie van aansprakelijke vertegenwoordiging: toekenning van een individueel btw-identificatienummer

The first category of liable representation consists in the allocation of an individual VAT identification number in Belgium to the non-resident taxpayer.

In dat geval richt de niet in België gevestigde belastingplichtige aan het Centrum Buitenland een aanvraag waarin hij de bij artikel 53, § 1, eerste lid, 1°, van het Btw-Wetboek voorgeschreven aangifte van aanvang van werkzaamheid doet en de volledige identiteit vermeldt van de aansprakelijke vertegenwoordiger die hij de administratie ter erkenning voorstelt.

The administration assesses the solvency of the liable representative taking into account its commitments. If the liable representative is not sufficiently solvent, a security will be requested to guarantee the recovery of everything that could become due and payable by tax, fines, interest and costs at the expense of the represented taxpayer. The amount of the security is set at a maximum of one quarter of the tax payable by the non-resident taxpayer over a period of twelve calendar months. It is periodically reviewed taking into account the commitments of the liable representative.

B. Second category of liable representation (simplified scheme): pre-recognized liable representative who has a global VAT identification number under which he represents several foreign taxable persons

B. Tweede categorie van aansprakelijke vertegenwoordiging (vereenvoudigde regeling): vooraf erkende aansprakelijke vertegenwoordiger die over een globaal btw-identificatienummer beschikt waaronder hij meerdere buitenlandse belastingplichtigen vertegenwoordigt

The simplified scheme can be invoked by a taxable person not established in Belgium, who does not have an individual VAT identification number in Belgium, if this taxable person carries out only the following transactions in Belgium.

Corresponding Article 2, § 1, of Royal Decree No 31 aforementioned, the following transactions may be carried out under a global VAT identification number:

1 ° if the taxable person is the debtor of the tax resulting from the import of goods into Belgium that are not placed under a bonded warehouse other than a bonded warehouse, to the extent that the importation took place with a view to a subsequent delivery of the same goods ;

2 ° when the taxpayer is the debtor of the tax pursuant to transactions referred to in Article 39quater, § 1, first paragraph, 1 ° and 3 ° of the Code, or when he performs an act of placing goods under a bonded warehouse arrangement other than customs warehouse not subject to tax;

3 ° if he withdraws the goods from a bonded warehouse other than a bonded warehouse, as referred to in Article 39quater of the Code;

4 ° when he carries out an intra-Community acquisition of goods or an act assimilated to this pursuant to Article 25quater, § 1 of the Code and those goods are not placed under a bonded warehouse procedure other than a bonded warehouse, to the extent that the intra-Community acquisition of goods or the equivalent action has been taken with a view to a subsequent delivery of the same goods, exempted by Article 39, § 1, 1 ° and 2 ° of the Code;

5 ° when he carries out an intra-Community acquisition of goods or an act assimilated to it under Article 25quater, § 1 of the Code and those goods are not placed under a bonded warehouse procedure other than a bonded warehouse, with the exception of any other act subject to the tax in Belgium '.

The administration shall allocate to the pre-approved liable representative:

- a global VAT identification number with initial attribute BE 0796.5, exclusively intended for the representation of foreign taxpayers who in Belgium Article 2, § 1, 1 °, of Royal Decree No. 31 perform the aforementioned actions
- a global VAT identification number with initial attribute BE 0796.6, exclusively intended for the representation of foreign taxpayers who in Belgium Article 2, § 1, 2 °, 3 °, 4 °, or 5 °, of Royal Decree 31 perform the aforementioned actions.

This simplified tax representation scheme is characterized as follows:

- a non-resident taxpayer who does not have an individual VAT identification number in Belgium and who only carries out transactions in Belgium for which the simplified scheme applies, may, for the transactions referred to in Article 2, § 1, 1 °, 4 ° and 5 ° of Royal Decree No 31 , aforementioned, have it represented by any liable representative with a global VAT identification number with the appropriate initial reference.

  On the other hand, the license holders of the VAT warehouse scheme are obliged with regard to the transactions referred to in Article 2, § 1, 2 ° and 3 °, of Royal Decree 31 , aforementioned, effected in their VAT warehouse by non-resident taxpayers, using the global VAT identification number BE 0796.6 to represent the latter taxable persons.

  Under the VAT warehouse scheme, any person other than the license holder is excluded from the possibility of representing foreign taxable persons under a global VAT identification number. Obviously, this exclusion does not apply to the arrangement of tax representation via individual VAT identification number;

- Under the global VAT identification number, the liable representative may represent, without the need for separate recognition by the administration for each company, any foreign taxable person who does not have an individual VAT identification number in Belgium and who only carries out transactions for which the simplified scheme can are applied;

- the administration shall assess the solvency of the liable representative taking into account its commitments. If he is not sufficiently solvent, a security is requested to guarantee the recovery of everything that could become due and payable on the taxable persons represented as tax, penalties, interest and costs. The amount of the security is set at a maximum of 10% of the claimable tax for all taxable persons represented together. This amount is periodically reviewed annually taking into account the commitments of the liable representative.

It is noted that the global VAT identification number scheme should never be applied to a taxable person not established in Belgium who, for whatever reason, already has an individual Belgian VAT identification number obtained either through direct identification or through the recognition of a liable representative.

However, the scheme of the global VAT identification number may be applied if the taxable person not established in Belgium also carries out transactions for which he enjoys a dismissal or exemption from the obligation to be identified in Belgium for VAT purposes. In addition, the taxable person not established in Belgium may prefer an individual VAT identification number and therefore waive the identification scheme under a global VAT identification number when, of course, the latter scheme can be applied.

De regeling van het globaal btw-identificatienummer mag evenwel worden toegepast wanneer de niet in België gevestigde belastingplichtige hier te lande ook handelingen verricht waarvoor hij geniet van een ontslag of ontheffing van de verplichting om in België voor btw-doeleinden geïdentificeerd te zijn. Bovendien kan de niet in België gevestigde belastingplichtige de voorkeur geven aan een individueel btw-identificatienummer en bijgevolg afzien van de regeling van identificatie onder een globaal btw-identificatienummer wanneer, uiteraard, deze laatstbedoelde regeling kan worden toegepast.

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Section 11 - Application cases

Afdeling 11 - Toepassingsgevallen

1. Partners whose actions referred to in the Code are limited to the contribution to a company of business

1. Vennoten waarvan de in het Wetboek bedoelde handelingen zich beperken tot de inbreng in vennootschap van bedrijvigheid

Anyone who contributes his activity to a company is in principle a taxable person, if that contribution consists of the provision of services referred to in the VAT Code and not exempted pursuant to Article 44 of that Code, irrespective of whether that contribution takes place in a company that is regularly established. in a so-called actual company. The contributor is therefore obliged to fulfill all obligations normally imposed on taxable persons, but also enjoys the rights associated with this capacity. Insofar as the services are used in Belgium, the contributor must pay the tax at the rate applicable according to the nature of the services contributed, and this on the amount of the net compensation that he receives as the equivalent of his contribution.

If that person is a natural person who is also a manager or manager of the company, he is not a taxable person to the extent that he acts in the performance of his statutory assignment and the tax is not payable on the remuneration he receives under this function .

For practical reasons, the administration does not require that partners be registered as a taxable person if they are taxable only for reasons of their contribution to the company (see also decision no. ET 14.699 of 22.06.1973 and Written Parliamentary Question No. 22 by Mr Senator Lindemans of 08.11.1973).

In principle, this rule only applies if the company in which the contribution is made is a taxable person, who is obliged to submit periodic returns and the entire activity of which is subject to VAT. However, where the company into which the activity is contributed carries out transactions with a right of deduction and other transactions at the same time, this rule may also be applied under the express condition that the activity contributed is not used exclusively for the purpose of carrying out transactions not involving a right of deduction (decision no. ET 19.082 of 24.06.1975 and Written Parliamentary Question No. 258 by Mr Senator Paul Hatry from 23.05.1997).

2. Independent journalists and newspaper correspondents

2. Zelfstandige journalisten en dagbladcorrespondenten

In the relationship between journalists and newspaper correspondents, on the one hand, and the publishers of newspapers and magazines, on the other, the Administration accepts the interpretation of the parties involved that the articles written by the former are protected by copyright and that they are provided to the publishers in the context of a contract for expenditure that is exempt from tax pursuant to Article 44, § 3, 3 ° of the VAT Code.

If, according to the above-mentioned parties, the provision of those written articles does not meet the conditions for being classified as a publishing contract, journalists and newspaper correspondents who regularly provide articles or messages to publishers for remuneration have the status of taxable person. They may, however, be subject to the exemption provided for in Article 56 *bis,* of the VAT Code (Notice No 8/1993 of 10.03.1993).

Natural persons who regularly and independently deliver newspapers and other publications from door to door must not be identified as a taxable person and they are not obliged to fulfill the obligations imposed on taxable persons insofar as they do not carry out any other activity which makes them a taxable person. to gain (notice no 6/1971 of 22.01.1971).

However, persons who purchase newspapers or other publications to resell them from door to door for their own account must be identified as VAT taxable persons, possibly subject to the exemption provided for in Article 56 *bis,* of the VAT Code (decision no. ET 13.351 of 07.08.1973).

4. Syndics

4. Syndici

The VAT regime applicable to syndics is set out in Notice No. 13/1995 of 20.09.1995 .

Pursuant to the provisions of Article 577-5 of the Civil Code , the association of co-owners of buildings or groups of buildings (eg apartment buildings) has legal personality. That legal person, legally called 'the association of co-owners', followed by the statements regarding the location of the building or group of buildings, acts through its bodies, in particular the general meeting of the co-owners and the syndic.

As a body of the legal person, the syndic who acts as a natural person has within his article 577-8, § 4 of the Civil Code and assignment granted by the rules of co-ownership (articles of association of the legal person), not as a taxable person.

When a legal person is appointed as syndic, the latter, as is the case for a natural person, can hardly be regarded as a non-self-employed person. Therefore, a syndic who acts as such in the form of a legal person generally has the status of taxable person. Nevertheless, and by analogy with the natural persons acting as syndic, their administration as a VAT taxable person is not required. Therefore, a legal person who, in addition to his activity as syndic, for which he is not identified as a taxable person, has carried out other activities in the context of an economic activity (for example, broker for the rental or sale of real estate), as a partial VAT taxpayer.

On the other hand, where a syndic, natural or legal person, acts in the performance of a conventional contract, in other words outside the context of his mandate as the body of the legal person, he acts independently and, as a rule, must be classified as a taxable person for that activity.

This is the case, among other things, when a co-owner entrusts the syndic with the management of his private plot.

5. Directors or manager

5. Bestuurders of zaakvoerder

In the past, the administration left legal persons who acted as a body with regard to third parties (directors, managers, liquidators…, hereinafter: directors-legal persons) of the legal person they represented, the choice whether or not to be identified for VAT and whether or not to subject the transactions performed by them in this context to VAT.

The choice made was in principle irrevocable and had to be applied simultaneously for all mandates held by directors-legal persons. Only if it could be demonstrated that the business situation had changed radically, could these legal persons ask the competent VAT control center to revert to the choice made.

Following an opinion from the European Commission, which was of a nature to call into question this optional system for legal persons acting as directors or managers, the administration has decided to apply the ordinary VAT rules with effect from 01.06.2016. As a result, all the aforementioned legal entities have to identify themselves for VAT purposes and the fees they receive for all their transactions that they perform as such must, in principle, be subject to VAT, without any option.

In principle, the directors-legal persons concerned must, from that date, be obliged to be identified as taxable persons for the transactions carried out within the framework of their mandate.

If the conditions of application are fulfilled, however, these legal persons-directors may qualify for the exemptions in Article 44 of the VAT Code or for the exemption scheme for small companies under Article 56. *bis* of the aforementioned Code.

The introduction of the mandatory VAT identification for legal entities - directors from 01.06.2016 implementation is explained in decision no. ET 127.850 of 30.03.2016 .

As far as natural persons are concerned, due to the special nature of their mandate as agent, the administration still assumes that directors or business managers acting in the ordinary course of their statutory duties vis-à-vis third parties act as bodies of the legal person they represented. As a result, they do not act independently within the meaning of Article 4, § 1 of the VAT Code and the transactions performed by them in the context of this statutory assignment are not subject to tax (decision no. ET 79.581 of

27.01.1994).

6. Liquidator

When applying the decision No. ET 125.180 of 20.11.2014 since 01.06.2016, legal entities that act as liquidators (statutory or appointed or appointed by the general meeting) can no longer benefit from an optional system for the actions they perform as such. From that date they are obliged to be identified for VAT purposes, unless they had already been identified due to other activities outside their mandate.

The liquidator may be a shareholder or a partner himself or a former manager or director, lawyer or number professional such as a company auditor, an accountant or a tax consultant. The exercise by a legal person of a mandate as a liquidator is a service referred to in Article 18, § 1, second paragraph, 3 °, of the VAT Code and is in principle subject to VAT when this mandate is performed for consideration.

As is the case with directors and managers, the question whether a mandate from the liquidator is exercised free of charge is a matter of fact. All legal entities that exercise a mandate as a liquidator in a legal entity for consideration must charge VAT on the fees received for this purpose at the normal rate that is currently 21%.

Unless otherwise provided, the liquidator is only entitled to his compensation upon termination of his mandate, ie at the close of the liquidation. In the event of voluntary dissolution, the closure of the liquidation is decided by the general meeting.

There is nothing to prevent the liquidator from requesting that the liquidator may request that the liquidator be appointed and the amount and terms of his payment be determined.

he is paid for his services before the liquidation is closed (interim payments).

In the event of a judicial winding-up, the liquidator must, before the liquidation can be closed, submit a plan for the distribution of the assets among the various creditors to the competent Commercial Court for approval. In the event of a liquidation being claimed by the court, the liquidator is only entitled to his compensation at the time of the liquidation, unless he has obtained permission to receive compensation in the meantime. Such interim payments to court-appointed liquidators are not common. They can occur with long-lasting settlements (decision no. ET 127.850 of 30.03.2016).

As far as natural persons are concerned, due to the special nature of their mandate as an agent, the administration still assumes that liquidators acting in the ordinary course of their statutory duties vis-à-vis third parties act as bodies of the legal person they represented. As a result, they do not act independently within the meaning of Article 4, § 1 of the VAT Code and the transactions performed by them in the context of this statutory assignment are not subject to tax (decision no. ET 79.581 of

27.01.1994).

7. Authors and composers

7. Auteurs en componisten

Authors and composers whose acts of licensing copyrights are carried out through the collaborative company 'Belgian Association of Authors, Composers and Publishers' (SABAM) or the 'Société des Authors et Compositeurs dramatiques', and which no other activities subject to VAT are exempt from VAT obligations.

Accordingly, authors and composers, all of whose copyright licensing activities are carried out through one or the other of these companies and who do not engage in any other activities subject to VAT, should therefore not be registered as VAT awarded (Letter No 166/1971 to

25.11.1971).

8. Solvency researchers

8. Solvabiliteitsonderzoekers

On their application, some credit institutions have obtained a license to relieve the self-employed researchers they have called upon to pay the VAT due on the services of the latter themselves (Note No 181/1971 to

30.12.1971). Accordingly, investigators, who work additionally on behalf of credit institutions that have applied for the authorization referred to above, will be released from all obligations of identification, declaration and payment of VAT, provided that they do not have any other VAT exercise subject activity.

9. Notaries, bailiffs and lawyers

9. Notarissen, gerechtsdeurwaarders en advocaten

The services rendered by notaries and bailiffs on the one hand and lawyers in the exercise of their regular activities on the other hand were up to
01.01.2012 and 01.01.2014 exempt from tax in accordance with the provisions of Article
44, § 1, 1 °, (old) of the VAT Code.

As of the aforementioned dates, the relevant services are no longer exempt from tax in accordance with Article 44, § 1, 1 ° (old) of the VAT Code, but must in principle be subject to tax. For a detailed explanation in this regard, reference is made to the publications listed below:

- notaries: decision No. ET 121.923 of 03.04.2012 and decision no. ET 121.923 / 2 of 15.12.2014
- bailiffs: decision no. ET 122.121 of 08.03.2012 and decision no. ET 122.121 / 2 of 23.04.2012
- lawyers: circular AAFisc No. 47/2013 (No. ET 124.411) of 20.11.2013 , decision no. ET 125,543 from 06.02.2014 , decision no. ET 126.564 of 18.07.2014 , decision no. ET 127,108 of 27.11.2014 , decision no. ET 124.411 / 2 of 23.02.2016 , decision no. ET 130,012 from 02.06.2016 and decision no. ET 126.564 / 2 of 23.09.2016 .

For the sake of completeness, it is noted that, for example, a lawyer can perform acts that are exempt from tax in accordance with another provision of Article 44 of the VAT Code, such as social mediation services, services as provisional administrator, services as debt mediator, etc.

Finally, it is noted that it has been decided that the pro bono services provided by lawyers in the context of legal second line assistance, as well as the pro bono services provided by bailiffs in the context of legal aid, as of 01.04.2017, subject to the normal VAT rate of 21% (see decision No. ET 131.005 of 23.12.2016).

10. Approved business counters

10. Erkende ondernemingsloketten

Recognized business counters perform both public service or public interest functions as well as a number of advisory and accompanying services (excluding services that are by law exclusively reserved for certain free, service and intellectual professions in the economic sector).

The tasks of public service or of public interest are listed, among other things, in Article III.59, of the Code of Economic Law of 28.02.2013 (for example, to register registration companies in this capacity with the Crossroads Bank for Enterprises, receiving on behalf of the Treasury the registration and registration rights, fees and costs for publication, the settling license applications, etc.). The compensation that the business counter receives for these services is determined by Article III.73 of the aforementioned Code.

In addition, business counters may provide advisory and accompanying services to companies, with the exception of services which are by law exclusively reserved for certain free, service and intellectual professions in the economic sector (Article III.59, § 2, of the Code of Economic Law). In application of Article III.73, § 2 of the same Code, the recognized business counters can determine their own pricing for these tasks per transaction or on a fixed annual basis.

The VAT treatment of these tasks is explained in detail in circular 2019 / C / 18 of 20.02.2019 on the tax liability of recognized business counters (ET 130,000).

11. Sharing economy and occasional services between citizens

11. Deeleconomie en occasionele diensten tussen burgers

From 01.07.2016, a legal framework has been provided for the regulation of the sharing economy in tax terms (Program Law of 01.07.2016 - Belgian Official Gazette of 04.07.2016). The person who provides services through an accredited platform can, subject to a number of conditions, benefit from a favorable tax arrangement.

This sharing economy regime is governed by both direct tax and VAT legislation. However, although the two taxes are involved, the rules issued by each of them must be considered separately and in no way affect each other. After all, for example, it is not because a taxpayer natural person

has been identified for VAT to be ex-officio excluded from the sharing economy regime in direct taxation.

Regarding VAT, the biggest asset of this scheme is the fact that the interested person should not, in principle, be identified for VAT. That administrative exemption is granted in particular if a natural person only carries out an activity covered by the collaborative economy scheme or, if the person is a taxable person, if the activity or activities pursued do not require VAT identification.

As of 01.07.2018, this tax advantage scheme has been amended and extended to the association work and occasional services between citizens (Law of 18.07.2018 on economic relance and the strengthening of social cohesion - Belgian Official Gazette of 26.07.2018). However, for the purposes of VAT, this extension only concerns the regulation of occasional services between citizens.

For a detailed explanation of the sharing economy scheme and the scheme for occasional services between citizens, see Circular 2019 / C / 40 of 05.05.2019 FAQ on the sharing economy and occasional services between citizens on VAT (with the erratum from 04.07.2019)

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Section 12 - The VAT unit

Afdeling 12 - De btw-eenheid

Article 4, § 2 of the VAT Code states the following: ' *For the purposes of this Code, the King may, for the purposes of this Code, designate as a single taxable person persons established in Belgium who are legally independent, but who are closely linked financially, economically and organisationally.* '

This article transposes into Belgian law the first paragraph of Article 11 of Directive 2006/112 / EC.

Article 4, § 2 of the VAT Code was implemented by Royal Decree No. 55 of 09.03.2007 concerning the scheme for taxable persons who form a VAT unit .

The VAT unit system entered into force on 01.04.2007.

In the context of the chapter 'Tax liability', a general discussion of the term 'VAT unit' follows below. For a detailed comment, please refer to 'Bookwork VI:' Specific topics '- chapter 16 - section 5: VAT unit' and circular AOIF No. 42/2007 (No. ET 111.702) from 09.11.2007 .

1. General principles of the system of darkness

1. Algemene principes van het stelsel van de btw-eenheid

The VAT unit is designated as a single taxable person who, from its inception, will replace its members for all their obligations and rights as provided for in the VAT Code and the accompanying implementing decrees.

The VAT unit implies, among other things, that no VAT is levied on transactions between the members (the so-called internal transactions). The actions that each member performs for third parties (the external actions) are deemed to have been performed by the VAT unit.

The VAT unit is therefore regarded as a single taxable person for the goods and services obtained from third parties and for the services provided to those third parties. It follows that:

- supplies of goods and services between members of a VAT unit fall outside the scope of VAT
- supplies of goods and services performed by third parties for each member, for the purposes of VAT, are performed for the VAT unit
- the imports and intra-Community acquisitions made by each member are made by the VAT unit
- the supplies of goods and services that each member provides for third parties vis-à-vis the VAT unit are performed by the VAT unit

In a sense, the VAT unit is, in terms of VAT, a legal fiction to which the provisions of the VAT Code apply. Under the normal rules, the VAT unit should be considered a taxable person with the same rights and obligations as any other taxable person.

The VAT unit is classified as a single taxable person and is thus identified under a unique VAT identification number for the VAT unit. This number applies to the submission of the periodic VAT return of the VAT unit, for the holding of the current VAT account of the VAT unit, for the holding of special accounts, if applicable,

for all additional appraisals and for all tax and recovery titles issued by the administration.

Moreover, a taxable person cannot be a member of more than one VAT entity at the same time.

In accordance with the provisions of Article 51 *ter* of the VAT Code, the members of the VAT unit are jointly and severally liable vis-à-vis the State for all VAT debts of the VAT unit.

2. Who can become a member of a VAT unit?

2. Wie kan lid worden van een btw-eenheid?

A. VAT taxability

A. Btw-belastingplicht

Under Article 1, § 1, of Royal Decree 55 aforementioned, to the extent that they are established in Belgium, the taxpayers within the meaning of Article 4, § 1 of the VAT Code can, in accordance with Article 4, § 2 of that Code, be considered as one taxable person if paid is subject to the following cumulative conditions:

- the members are closely linked financially
- the members are closely linked organisationally
- the members are closely linked economically

Only taxable persons established in Belgium can join a VAT unit. Concerning the case law of the Court of Justice of the European Union, Judgment *Commission against Ireland,* Case C-85/11, 09.04.2013 , and Judgment *Commission against Sweden,* case C- 480/10 of 25.04.2013 , the following should be noted. The first paragraph of Article 11 of Directive 2006/112 / EC provides that each Member State is a person who is established in the territory of that Member State and who is legally independent but closely bound together financially, economically and organisationally as one taxpayer. It is not apparent from the wording of the first paragraph of Article 11 above that non-taxable persons cannot be included in a VAT unit.

Nor does it follow from the wording of the first paragraph of Article 11, nor from the operative part of that case-law, that Member States are obliged to provide for the possibility that non-taxable persons may form part of a VAT unit.

Under the second paragraph of Article 11 of Directive 2006/112 / EC, Member States may take all measures necessary to prevent tax evasion or avoidance by using the option provided for in the first paragraph of Article 11. However, such measures must be taken in compliance with Union law. Member States are therefore, subject to this reservation, free to limit the application of the regime provided for in that Article to combat tax evasion and avoidance.

Belgium has made use of the option of the second paragraph of Article 11 of Directive 2006/112 / EC in order to limit the application of the first paragraph of Article 11. Although Article 4, § 2 of the Belgian VAT Code also refers to 'persons', the aforementioned article must however be read together with the provisions of the Royal Decree No. 55 , aforementioned. Under Article 1, § 1, of that Royal Decree, only VAT taxable persons may become members of a VAT unit.

It must therefore be concluded that the aforementioned judgments of the Court of Justice of the European Union do not affect Belgian legislation on the VAT unit or administrative law.

Therefore, non-taxable persons cannot join a VAT unit.

For example, are excluded as a member of a VAT unit:

- the passive holdings
- public institutions, to the extent that they do not act in the context of an economic activity that gives them the status of taxable person
- natural persons who, as such, do not have the status of taxable person, even if they exercise functions as manager or director of companies, of which they are wholly or partly shareholders
- taxpayers established abroad.

B. In België gevestigd / B. Based in Belgium

In accordance with the territoriality principle of tax law, a VAT unit can only be formed by taxable persons established in Belgium.

For the purposes of the provisions of the VAT Code and the decisions taken in implementation thereof, a taxable person is considered to be established in Belgium if he:

- is domiciled (if it is a natural person)
- has its registered office or registered office (if it is a legal person)

- or has a permanent establishment (for example, a branch).

When a taxable person established in Belgium joins a VAT unit, he must join the VAT unit for all of his legal entity, including all his establishments established in Belgium (operating offices, branches).

Taxable persons not established in Belgium cannot be part of a Belgian VAT entity. The same applies to foreign permanent establishments of Belgian companies.

Under the Belgian system of the VAT unit, however, a permanent establishment of a foreign company located in Belgium may form part of a Belgian VAT unit.

In particular, it should be noted that when an establishment of a taxable person is part of a VAT entity, that establishment is, for the purposes of VAT, actually classified as a person distinct from its head office.

This is clear from the case-law of the Court of Justice of the European Union, which states that Articles 2 (1), 9 and 11 of Directive 2006/112 / EC must be interpreted in the sense that the services supplied by a a third country has its head office established for its branch in a Member State, that it constitutes taxable transactions if that branch is a member of a group of persons that qualify as one taxable person for value added tax (Court of Justice of the European Union, Judgment *Skandia America Corp. (USA), branch Sverige v Skatteverket,* case C-7/13, 17.09.2014)

The aforementioned judgment has consequences only if a taxpayer has several establishments, at least one of which is not established in Belgium. After all, it is true that a Belgian taxable person who joins a VAT entity in Belgium is always expected to join with all establishments that he has in Belgium.

Consequently, the transactions carried out for consideration, when they are performed between two establishments of a taxable person A, in particular an establishment A1 in Belgium and an establishment A2 outside Belgium, are subject to VAT if one or both establishments are part of their country. of a VAT unit within the meaning of Article 11 of Directive 2006/112 / EC.

For more information, see the decision no. ET 127.577 of 03.04.2015 .

3. The conditions of connection

3. De verbondenheidsvoorwaarden

The system of the VAT unit is optional, with the exception of what is stated under Title 4 'Mandatory entry of a taxable person' below. Once all the conditions of affiliation have been fulfilled, taxable persons established in Belgium can opt to form a VAT unit or to join an existing VAT unit.

Moreover, the conditions of close financial, economic and organizational commitment are cumulative and must be met by the taxable persons who would like to form a VAT unit. This relationship must already exist at the time of the request for the creation of the VAT unit and be permanent, which means that it must be maintained throughout the existence of the VAT unit (see, for example, the Written Parliamentary Question No. 542 by Mr People's Representative Peter Luykx dated 24.07.2012).

However, the relationship between the taxable persons who want to form a VAT unit can be demonstrated through taxable persons or non-taxable persons who do not want or cannot form part of the VAT unit themselves.

A. Financial commitment

A. Financiële verbondenheid

Article 1, § 1, 1 °, of Royal Decree No. 55 , aforementioned, provides that taxable persons must be closely linked to each other in order to benefit from the system of the VAT unit.

a. Financial affiliation with legal persons with a capital represented in shares

a. Financiële verbondenheid bij rechtspersonen met een in aandelen vertegenwoordigd kapitaal

It Royal Decree No. 55 , aforementioned, establishes a presumption that, in any event, the condition of close financial commitment is satisfied where, directly or indirectly, there is a direct or indirect control relationship between them (see
circular AOIF No. 42/2007 (No. ET 111702) of 09.11.2007 , chapters 3.1.2. and 3.1.3.).

In addition to that presumption, the administration assumes that the condition of financial commitment is fulfilled when a taxable person, directly or indirectly, owns 10% or more of the social rights of another company with which he wishes to form a VAT group. Insofar as a taxpayer through multiple intermediaries

cumulatively owning 10% or more of the social rights of another company with which he wishes to form a VAT unit, this condition is also deemed to be fulfilled (see circular AOIF No. 42/2007 (ET111.702) from 09.11.2007 , chapter 3.1.1).

The administration also assumes that this condition is fulfilled when 10% or more of the social rights of the taxable persons wishing to participate in the VAT unit are, directly or indirectly, in the same hands. It is irrelevant whether the shareholder is part of the VAT unit or not. In other words, the condition is also met if the shareholder chooses not to be part of the VAT unit or to be part of the VAT unit.

In the case of indirect participation (A owns an indirect participation in C, if it owns social rights in B, which itself owns social rights in C), a double restriction should be applied for the calculation of the ratio of social rights (first in function of the ratio of social rights held by A in B and subsequently in function of the ratio of social rights held by B in C).

However, the fact that companies form part of a consortium within the meaning of Article 10 of the Companies Code is not in itself sufficient to demonstrate the existence of a financial relationship between the companies.

In the same vein, the condition of financial commitment cannot in any event be deemed to be fulfilled if two companies, one of which does not have a stake in the capital of the other, conclude an agreement under which one of those companies administers or operates the other. even if that agreement allows the managing company to make all decisions in any domain (commercial or social policy, etc.).

b. Financial bond with persons other than legal persons with a share capital

b. Financiële verbondenheid bij andere personen dan rechtspersonen met een in aandelen vertegenwoordigd kapitaal

In the case of persons other than legal persons with a capital represented in shares, this financial relationship is, in accordance with Article 1, § 1, 1 °, second paragraph, of the Royal Decree No. 55 , aforementioned, in any event satisfied when the majority of the assets they have deployed for the needs of their economic activity belong directly or indirectly to the same person (see also circular AOIF No. 42/2007 (No. ET

111.702) from 09.11.2007 , chapter 3.1.4.).

It is noted that only account is taken of assets made available free of charge by the same person.

As regards the assessment of the financial commitment of persons other than legal persons with share capital, it is also analogous to rely on the basic principles applicable to legal persons with share capital. In this respect, the administration has issued the decision no. ET 122.346 of 16.10.2014 published. Pursuant to that decision, close financial commitment also exists if one of the following conditions is met:

- a person owns at least 10% of the assets of a person other than a legal person with a share capital.
  een persoon bezit minstens 10% van het patrimonium van een persoon andere dan een rechtspersoon met een in aandelen vertegenwoordigd kapitaal.

This refers to the case where a person A, without consideration, makes assets available to person B and that these assets represent a value of at least 10% of the assets of person B. The rental of goods for consideration is not an element of financial commitment .

The value of the assets made available must be at least 10% of the value of B's portfolio. It is up to the parties to determine the value of such assets. It goes without saying that this value should not be underestimated or overestimated. If the assets made available free of charge are not included in the financial statements, the value of the aforementioned assets must be demonstrated by other documents.

It is also noted that the assets that A makes available to B may not be definitively acquired by B. In that case, there is no longer any financial connection between A and B. For example, membership fees, contributions, gifts and subsidies are principle finally acquired by B.

- a person undertakes to bear the operating losses of a person other than a legal person with a capital represented in shares.
  een persoon verbindt er zich toe de exploitatieverliezen van een persoon andere dan een rechtspersoon met een in aandelen vertegenwoordigd kapitaal ten laste te nemen.

This refers to the case in which a person A irrevocably undertakes to bear the losses arising from the economic activity of a person B. Granting a credit or loan is not an element of financial commitment.

- a person has a decisive or significant influence on the policy of a person other than a legal person with a share capital.
  een persoon heeft een doorslaggevende of betekenisvolle invloed op het beleid van een persoon andere dan een rechtspersoon met een in aandelen vertegenwoordigd kapitaal.

This includes the case in which a person A has the right with regard to person B to appoint or dismiss the majority of the directors, holds at least 20% of the voting rights in the general meeting, and so on.

In addition, the administration shall investigate the specific cases submitted to it to determine whether or not such persons are related to those persons.

However, the mere fact that candidate members have one or more joint directors is not sufficient to demonstrate financial commitment.

B. Organizational connectedness

B. Organisatorische verbondenheid

Article 1, § 1, 2 °, of Royal Decree 55 , aforementioned, provides that taxable persons must be closely linked to each other in order to benefit from the system of the VAT unit.

In any case, this condition is met when:

- they are directly or in fact, directly or indirectly, under common management (this is in particular the case where the boards of directors or management committees are made up of the same persons and, more generally, in the case of a consortium within the meaning of of Article 10 of the Companies Code), or
- they organize all or part of their work by mutual agreement, or
- they are legally or in fact, directly or indirectly, under the control of one person.

C. Economic connectedness

C. Economische verbondenheid

Article 1, § 1, 3 °, of Royal Decree No. 55 , aforementioned, provides that taxable persons must be closely linked economically in order to benefit from the VAT entity system.

In any case, this condition is met when:

- the principal activity of each of them is of the same kind, or
- their activities complement or influence each other or are part of the pursuit of a common economic goal, or

- the activity of one taxable person is wholly or partly carried on for the benefit of the others.

4. Compulsory entry of a taxable person

4. Verplichte toetreding van een belastingplichtige

In a particular case, a taxable person is obliged to join a VAT unit. This obligation only applies to legal entities with capital represented in shares.

Regarding legal persons, it is presumed that as soon as a company, a member of a VAT unit, has a direct participation of more than 50% in another company, the three cumulative conditions for joining a VAT unit are met and that the latter company, in principle, must form part of that existing VAT entity (see Article 1, § 2 of Royal Decree 55 , aforementioned).

Only direct holdings above 50% are taken into account. For example, the presumption does not apply to a subsidiary that is 33% owned by its three parent companies, even though all three are members of the VAT unit.

Since only entities established in Belgium can be part of the VAT unit, it goes without saying that the presumption does not apply to a subsidiary that is exclusively located abroad.

On the other hand, the presumption applies to the subsidiary established abroad if it has a permanent establishment in Belgium.

The presumption and the associated obligation are applied 'in stages'. In fact, it is necessary to determine individually whether its direct subsidiaries are located in that case.

The presumption that a subsidiary that is owned for more than 50% fulfills the conditions regarding financial, economic and organizational ties for forming a VAT unit can be rebutted, in that, notwithstanding the participation, the relevant legal persons can demonstrate that there are no or only weak economic or organizational links between them or that other circumstances exist that can justify the exclusion of the subsidiary from the VAT unit.

If a member of a VAT unit acquires a direct holding of more than 50% in a taxable person who is already a member of another VAT unit, the latter is

taxable person no longer a member of the VAT unit to which he belonged and becomes a member of the VAT unit to which the taxable person who owns him for more than 50% belongs, except if they can demonstrate that they are organizational, economic or for the sake of other circumstances are not or cannot be interrelated.

For additional information in this regard, please refer to the circular AOIF No. 42/2007 (No. ET 111.702) from 09.11.2007 , Chapter 4.

5. Special case: the creation of a VAT unit between a director-legal person in respect of the legal person in which he holds a director's mandate

5. Bijzonder geval: de oprichting van een btw-eenheid tussen een bestuurder-rechtspersoon ten aanzien van de rechtspersoon waarin hij een bestuurdersmandaat uitoefent

The director-legal person who, with regard to the legal person in which he holds a director's mandate and with which he wishes to form a VAT unit, must be able to demonstrate that he is closely linked financially, economically and organisationally with that company within the meaning of Article 4, § 2, of the VAT Code. To this end, candidate members must take into account the principles contained in the circular AOIF No. 42/2007 (No. ET

111.702) from 09.11.2007 .

It happens, however, that several directors-legal persons jointly manage an operating company. The administration was asked the question of the conditions under which the director-legal persons, together with the operating company, can form a VAT unit in the event that there is no share capital share between the directors-legal persons. In those circumstances, on the basis of one of the criteria stated in circular AOIF No. 42/2007, the aforementioned, no financial connection is possible between the directors-legal persons themselves.

In the context of the elimination of the optional scheme with regard to the tax liability of legal persons - directors (see decision no. ET 127.850 of 30.03.2016) Mr. Minister has decided that directors-legal persons, together with their operating company, can form a VAT unit (and are therefore deemed to meet the conditions regarding financial, organizational and economic cohesion) if the following conditions are met:

- the directors-legal persons are both shareholder and director of the operating company

- the directors-legal persons jointly jointly own more than 50% of the voting rights attached to the operating company's social rights
- There is an agreement between the legal entities under the directors, under which they undertake that any decision regarding the policy orientation of the operating company must be taken with their consent (by unanimity). No decision of the legal persons-directors bound by this agreement can be imposed on any of the other partners who are bound by this agreement. Neither the articles of association of the legal persons-directors nor those of the audited company may contain provisions contrary to the provisions of this agreement.

In those circumstances, the directors-legal persons concerned and the operating company are jointly considered to be closely linked financially, economically and organisationally.

For more information, see the decision no. ET 127.850 of 30.03.2016, chapter III 'VAT unit' .

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