



Circular 2020 / C / 58 on donating goods to certain institutions and donations in kind

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 TAXATION

The General Administration of Taxation - Value Added Tax - Personal Tax - Corporate Tax published on 21/04/2020 Circular 2020 / C / 58 on the donation of goods to certain institutions and donations in kind.

This circular deals with a temporary measure taken in the context of combating COVID-19 (Coronavirus) as regards the free provision of medical devices to certain institutions and its consequences in terms of VAT, VenB and GNI / ven.

Furthermore, this circular also discusses a temporary measure regarding gifts in kind that are made in the same context.

Table of contents

I. Object of this circular

(https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_I._Voorwerp_van)

(https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_II._Belasting_over)

(https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_II._Belasting_over)

(https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_II._Belasting_over)

1. Introduction

(https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_1._Inleiding)

(https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_2._Bedoelde_goederen)

(https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_3._Aan_wie)

(https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_4._Who_can_donate_goods)

comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_4. Wie kan)5. Which VAT obligations must the donor comply with?

(https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-

comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_5. Welke btw-verplichtingen)

(https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-

comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_2. Bedoelde goederen)

(https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-

comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_3. Aan wie)

(https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-

comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_4. Wie kan)

(https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-

comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_5. Welke btw-verplichtingen)

III. Corporate tax and tax of non-residents / companies

(https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-

comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_III. Vennootschapsbelasting en)IV.

(https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-

comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_IV. Personenbelasting en)Personal income tax

and tax of non-residents / natural persons

(https://gcloudbelgium.sharepoint.com/sites/minfin-

[fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_IV._Personenbelasting_en](https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_IV._Personenbelasting_en)
[\(https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_IV._Personenbelasting_en\)](https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_IV._Personenbelasting_en)

A. Self-employed persons
[A. Zelfstandigen](https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_A._Zelfstandigen)
[B. Belastingvermindering voor](https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_B._Belastingvermindering_voor)
[\(https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_B._Belastingvermindering_voor\)](https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_B._Belastingvermindering_voor)

1. What does the measure include?
[1. Wat omvat](https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_1._Wat_omvat)

2. To whom does the measure apply?
[2. Voor wie](https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_2._Voor_wie)

3. For which institutions?
[3. Voor welke](https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_3._Voor_welke)

4. What donations are involved?

https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_4_Over_welke5. How is the value of the gifts determined?

https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_5_Hoe_wordt6. Tax certificate

https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_6_Fiscaal_attest

https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_2_Voor_wie

https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_3_Voor_welke

https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_4_Over_welke

https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_5_Hoe_wordt

https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_6_Fiscaal_attest

V. Duration of the measure - cancellation

(https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/value-added-tax/administrative-directives-and-comments/circulars/a7108a58-b6a0-490d-8053-a4d671656345#_V_.Duurtijd_van)

I. Object of this circular

1. In the context of the fight against COVID-19 (hereinafter, Coronavirus), the Minister of Finance decided to take exceptional and temporary tax measures in view of the urgency and seriousness of the situation for the population.

It concerns tax measures with regard to VAT, corporate tax and in-kind donations to specific institutions included in [circular 2020 / C / 46 of 24.03.2020](#).

In view of the urgent necessity, it is decided to extend the goods in question (see point II.2., Below) as well as the categories of beneficiaries (see point II.3., Below).

It is a temporary measure.

II. Value added tax

1 Introduction

2. If a taxpayer withdraws a good from his company to give it away free of charge, this act is, on the basis of Article 12, § 1, first paragraph, 2 °, of the VAT Code, equated with a taxable supply for consideration if for that good or its components, the right to full or partial deduction of input tax has arisen.

3. Article 12, § 1, first paragraph, 2 °, of the VAT Code is the transposition into Belgian law of Article 16 of the Council Directive 2006/112 / EC of 28.11.2006 on the common system of taxation about the added value.

4. Consequently, when a taxable person distributes goods free of charge, this transaction is in principle equated to a supply for consideration.

5. The VAT Code already provides for a number of exceptions to this principle, in particular for the withdrawals that take place

with a view to:

- a. the provision of trade samples or gifts of low value;
- b. the provision for charity of foodstuffs for human consumption, excluding spirit drinks, the intrinsic characteristics of which no longer allow them to be sold, at any link of the regular economic circuit, at the original commercialization conditions;
- c. the provision for charitable purposes of vital non-food products, other than goods that can be used sustainably, the intrinsic characteristics of which prevent them from being sold at any link of the economic circuit at the original commercialization conditions.

6. The government has established that many healthcare institutions in Belgium are confronted with certain shortages of goods in the context of the fight against the Corona virus, while other taxpayers are willing to donate available stocks of these goods to these institutions. However, the VAT charge on this withdrawal may hinder such donations while identifying potential and real needs.

7. Subject to the following circumstances, modalities and conditions, it is decided that the levying of VAT will be relinquished for the withdrawals made by taxable persons supplying goods free of charge to certain health care institutions for use in as part of their usual activity.

2. The goods referred to

8. The following goods are envisaged by this circular:

- a. Medical devices and their accessories as referred to in the Royal Decree of 18.03.1999 on medical devices.

Here are example objectives:

- any instrument, device or device, software or substance, or any other item used alone or in combination, including software specifically intended by the manufacturer for use for diagnostic and / or therapeutic purposes and for its proper functioning is necessary, intended by the manufacturer to be used in humans for the diagnosis, prevention, monitoring, treatment or alleviation of diseases;
- devices intended for clinical research;

- any medical device that is a reagent, a reactive product, a calibration material, a control material, a kit, an instrument, a device, a device or a system that is used individually or in combination and is intended by the manufacturer to be used for the in vitro examination of specimens from the human body, including donated blood and tissue, solely or primarily for the purpose of providing information;
- if, because of market shortages, at the request of an institution as referred to in point 3, goods are donated that will be used as a medical device, when they were not originally intended for this purpose by the manufacturer, they will be assimilated to a medical device as referred to in the Royal Decree as mentioned above.

b. Protective equipment for health care providers and patients. It concerns materials and objects that can actually be used as protection for healthcare providers and patients.

For example : mouth masks, protective clothing, soaps and handles, goggles (diving goggles, safety goggles, ...), waterproof ponchos, ...

g. Donating medicines is not intended.

Moreover, the VAT rate that would apply to the delivery of the above goods is not important.

3. To whom can these goods be donated?

10. The goods can be donated to **government institutions and other public-law bodies** (eg Federal Public Service for Public Health, police forces, aid zones, prisons) that will be responsible for the further distribution or provision thereof according to necessities.

11. To the extent not yet envisaged by paragraph 10 above, goods under this Arrangement may also be donated directly to:

healthcare institutions referred to in the coordinated law of 10.07.2008 on hospitals and other care facilities, the services of

which are normally exempted under Article 44, § 2, 1 ° of the VAT Code;

b. the following institutions as intended by Article 44, § 2, 2 ° of the VAT Code:

- institutions with the aim of care for the elderly;
- nurseries and infants' homes;
- institutions with the aim of care for the disabled;

c. institutions that provide school and university education.

12. In addition, the goods may be donated to **humanitarian aid organizations** to cover their needs for the duration of their intervention during the period of assistance to persons affected or at risk of the corona virus and more generally to provide emergency services. .

13. Institutions, at the point in time the donation of goods, **acknowledged his by the General Administration of Customs and Excise** under which they can enter some relief goods free of VAT and import duties on Belgian territory with the use of the Decision (EU) 2020/491 of the European Commission of 03.04.2020.

These institutions can use these goods only to distribute them free of charge or to make them available to infected persons, to persons at risk of infection or to persons or organizations involved in the fight against coronavirus.

14. These institutions and organizations are hereinafter referred to as 'beneficiaries'.

4. Who can donate goods?

15. First, the taxable persons who have bought or produced the goods referred to in Title 2, above, are the object of this measure where, for that good or its components, entitlement to a full or partial deduction of input tax has arisen.

This not only concerns producers and distribution companies, but also, for example, taxable persons who have purchased goods for use in their economic activity.

These taxpayers are hereinafter referred to as 'donors'.

16. It goes without saying that beneficiaries can also receive goods free of charge from non-taxable persons or from taxable persons without a right of deduction. Obviously, with regard to those donors, the problem of withdrawals and such donations does not fall within the scope of this measure.

The same applies if the donor has received the goods for free (eg distribution platform of goods).

5. Which VAT obligations must the donor comply with?

17. As proof that the taxpayer-donor has donated the goods in question free of charge to an institution referred to under Title 3, in principle, a document must be drawn up for each donation that takes place in which the healthcare institution confirms that the goods in question were obtained free of charge and that undertakes to either use the goods in question themselves in the context of the provision of care or to make it available free of charge to another care institution as intended under Title 3.

The document contains at least the following information per donation:

the date;

b. the (social) name, address and VAT identification number of the taxpayer donor;

c. the (social) name, address and company number of the beneficiary of the donation;

d. a complete and correct description of the donated goods;

e. an indication of the quantity of the goods.

18. The aforementioned document must be drawn up in duplicate, of which each party declares to have received its own and must be dated and signed by the parties concerned.

The aforementioned document serves as a replacement for the taxpayer donor for the document establishing the withdrawal within the meaning of Article 3 of Royal Decree No. 1 of 29.12.1992 regarding the system for the payment of value added tax.

This document also refutes the legal presumption of Article 64, § 1, of the VAT Code for the taxpayer donor.

Administrative tolerances

First tolerance

19. The administration accepts that the taxpayer donor can choose one of the following two methods instead of stating on the aforementioned document the complete and correct description and the quantity of the goods concerned per donation:

a. an indication on the aforementioned document of the groups obtained by donation (blankets, masks, respirators...) and the corresponding quantities. This allows multiple donations to be grouped.

b. the addition of the receipt or scan list as an attachment to this document.

The receipt or scanning list then forms an integral part of the document replacing the document establishing the withdrawal. In view of the fact that they complete the document, this receipt or scanning list must then be submitted together with this document at every request of the administration.

20. Even if one of the aforementioned methods is used, this document replaces for the taxpayer donor the document establishing the withdrawal within the meaning of Article 3 of Royal Decree No. 1 and refutes the legal presumption of Article 64, § 1, of the VAT Code.

Second tolerance

21. The administration furthermore accepts that, if desired, a single collection document will be drawn up no later than the fifteenth day of each month, which will include all donations of the products concerned during the previous month. The collection document may only contain donations made during the month to which it relates.

22. The said collection document therefore has a date, but a reference in the collection document to the actual date of the donations concerned is not strictly required. It is sufficient to refer to the period to which the donations relate. Taxable donors are

obliged to keep the detailed records of the donations in question on the basis of which the collection document was drawn up. This collection document replaces for the taxpayer donor the document establishing the withdrawal within the meaning of Article 3 of Royal Decree No. 1 and refutes the legal presumption of Article 64, § 1 of the VAT Code.

Third tolerance

23. For the taxpayer donor, the aforementioned document replaces the document establishing the withdrawal within the meaning of Article 3 of Royal Decree No. 1 and refutes the aforementioned legal presumption of Article 64, § 1, of the VAT Code. The Administration accepts that, in the circumstances, no entry of this document in the taxpayer's donor's accounts is required.

A sequential number (ie consecutive numbering taken from a continuous sequence) is not required in this regard. The document, dated and signed by both parties involved, must, where appropriate, be kept in chronological order, stating the merchandise categories and the appropriate quantities, or, with the addition of the receipt or scanning list, if desired, on a monthly basis.

III. Corporate tax and non-resident / corporate tax

24. If the donor is subject to the VenB or the BNI / ven, the following measures apply in principle.

It is assumed that the donor has not obtained any advantage for himself and that the donated goods belong exclusively to the beneficiaries (see Title II, point 3). In that case, the donated goods will not be eligible for the application of article 26 WIB 92 (abnormal or favorable benefits granted). In addition, the costs associated with the donated goods are in principle tax deductible within the meaning of Article 49 WIB 92. The measures cited above only apply if all conditions relating to VAT are met.

If the donor (company) is not subject to VAT, the same measures referred to above will apply insofar as that donor provides the same evidence as VAT taxpayers.

IV. Personal income tax and tax of non-residents / natural persons

A. Self-employed persons

25. For self-employed persons (entrepreneurs or practitioners of a liberal profession) who are subject to personal income tax or to the tax of non-residents / natural persons, the provisions set out above under Title III apply mutatis mutandis.

For example, it may be that a veterinarian donates a respirator that he has used for his professional activity to a Belgian hospital. Medical devices and protective equipment donated by self-employed persons in the course of their self-employed activity in accordance with the conditions laid down for VAT are not eligible for the tax reduction for gifts in kind referred to in Title B below.

B. Tax reduction for gifts in kind

1. What does the measure include?

26. Notwithstanding the provisions of Article 14533, § 1, 1^o, CIR 92, the Minister of Finance has decided, in exceptional circumstances and temporarily, to make gifts in kind to specific institutions eligible for the tax reduction for gifts. .

27. This concerns a tax reduction for donations in kind to specific institutions with a value of at least 40 euros (indexed amount). The tax reduction is equal to 45% of the value of the gifts in kind actually made.

The total amount of the value of the gifts for which the tax credit is granted may not exceed 10% of total net income per taxable period, excluding income taxed in accordance with Article 171 WIB 92 (separately taxable income), nor exceed 397,850 euros (indexed amount).

2. To whom does the measure apply?

28. This tax credit applies to taxable persons, natural persons who are subject to personal income tax and, in certain cases, to the taxation of non-residents / natural persons (1) and who make a donation in kind outside the context of a self-employed professional activity. specific settings.

(1) Non-residents whose taxable professional income in Belgium is at least 75% of all of their professional income obtained or earned during the taxable period.

3. For which institutions?

29. Donations in kind must only be made to Belgian university hospitals, to public social welfare centers (including the OCMW hospitals) or to the Red Cross of Belgium (hereinafter 'the institutions'). These institutions are included in the WIB 92 as institutions authorized to issue tax certificates for the gifts they receive.

4. What donations are involved?

30. It concerns donations consisting of all kinds of medical material, of materials and objects that can actually be used as protection for health care providers and patients and of products useful in the fight against the Corona virus and that are designated as such by the institutions.

This concerns, for example (non-limiting list):

- mouth masks
- disinfectants
- test sets for the Coronavirus
- respirators
- protective clothing
- safety goggles, diving goggles
- waterproof ponchos
- etc....

5. How is the value of the gifts determined?

31. The value of the gifts in kind is determined:

- either on the basis of a purchase invoice for the donated material or medical products. This invoice must be presented by the donor to the institution concerned,
- or, in the absence of a purchase invoice, based on an estimate of the value of the donated material by the institution receiving the gift. This estimate is based on the market value of the donated goods.

This estimate is made taking into account the market value of the donated goods on 29.02.2020.

6. Tax certificate

32. Institutions shall draw up the certificates required to enable the taxable person to claim the tax reduction in respect of his income tax return (tax year 2021 - 2020 income).

They provide these certificates to the tax authorities in accordance with the appropriate procedures.

V. Duration of the measure - cancellation

33. This measure, which is taken in the context of the fight against Coronavirus, applies to gifts in kind and donations of goods made from 01.03.2020 to 30.06.2020.

34. This circular completely replaces circular 2020 / C / 46 of 24.03.2020.

Source: [Fisconetplus](#)

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Tags

DEDUCTIBLE VAT

VAT

TAX CREDITS

CORONAVIRUS

PERSONAL INCOME TAX

DONATION

TAXATION OF NON-RESIDENTS / NATURAL PERSONS

TAX CREDIT FOR GIFTS

COVID-19

GIFTS IN KIND

Auteurs



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