VAT Comment - Chapter 9: Exemptions envisaged by Article 44 of the VAT Code (Update on 01.06.2020)

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BOOKWORK I I: Determination of the taxable basis and the applicable rate

Chapter 9 : Exemptions envisaged by Article 44 of the VAT Code

Updated according to the state of the legislation applicable on **01.0 6 .20 20**

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Section 2 - Generalities

1. The persons referred to in Article 44 of the VAT Code are taxable persons

To understand the correct scope of the 'exemptions' referred to in Article 44 of the VAT Code, this concept must first be explained. Exemption within the meaning of Article 44 of the VAT Code only relates to the supplies and services expressly listed in that Article. It means that no VAT is payable for those transactions, and this only because an explicit text exempts those transactions normally carried out in the course of an economic activity from tax.

Although the supplies and services referred to in Article 44 of the VAT Code are exempt from tax, they nevertheless remain transactions within the meaning of the VAT Code and confer the status of taxable person under Article 4 of the VAT Code. the person who performs them under the conditions laid down in the latter provision. Thus, he who supplies supplies of goods or services which are exempt from tax under Article 44 is a taxable person for the transactions which he carries out in the pursuit of that economic activity, even if that activity consists only in the provision of exempt transactions for which no VAT is charged. is due. The exemption is limited to the actions mentioned in the said article 44 and can in principle not be extended to the actions associated with the main action.

These connected transactions are therefore, in principle, according to the normal rules on taxation, however, subject to the application of the Article 56 *bis* exemption from tax provided for in the VAT Code in favor of small businesses who do not exceed the annual turnover over 25,000 euro, as defined in Article 1 of Royal Decree No 19 of 29.06.2014 regarding the exemption from value added tax for the benefit of small businesses .

It is also the case that, under certain conditions, various provisions of Article 44 of the VAT Code exempt not only a specific activity, but also closely related acts (written parliamentary question no. 764 by Mr Representative Henri Simons of 27.10.1993).

The exemptions can be divided into three main categories:

- exemptions peculiar to the capacity of the service provider (Article 44, § 1 of the VAT Code)
- social and cultural exemptions (Article 44, § 2 of the VAT Code)
- other exemptions (Article 44, § 3 of the VAT Code).

2. Right to deduct

The fact that the provider of transactions exempted by Article 44 of the VAT Code is a taxable person does not in any way give him the opportunity to subject those transactions to VAT or to exercise any right to deduct input tax. The person who therefore only exempts transactions under Article 44 of the VAT Code is a taxpayer without the right to deduct input tax. Obviously, that person should not be identified as a taxable person for his outgoing transactions .

However, there are a few exceptions to this:

- those who make payment and receipt transactions, with the exception of the recovery of debts, if they choose to tax these transactions (Article 44, § 3, 8 ° of the VAT Code)
- persons who perform acts as referred to in Article 44, § 3, 4 ° to 10 ° of the VAT Code have, pursuant to Article 45, § 1, 4 ° and 5 °, of that Code under the conditions laid down in that provision. , right to deduct input tax.

The taxpayer exempted by Article 44 of the VAT Code is therefore not entitled to deduct the input tax levied on raw materials, materials and consumables, no deduction for general expenses (for example, telephone bill), and no deduction for investment expenditure incurred in the exercise of the exempt activity.

The taxpayer, on the other hand, who does not subject the outgoing transactions to the tax for reasons such as exports or because the place of the transaction is located abroad (Article 45, § 1, 2 °, and 3 °, of the VAT Code) , fully retains its right to deduct.

3. Option option

As a rule, a person who exercises an activity that is exempt from tax under Article 44 of the VAT Code cannot opt to voluntarily tax his services.

However, there is an exception to this rule, namely those who make payment and receipt transactions, with the exception of the recovery of debts, may opt to tax these transactions (Article 44, § 3, 8 ° of the VAT Code.).

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Section 3 - Services performed by doctors, dentists and physiotherapists (Article 44, § 1, 1 ° of the VAT Code)

Pursuant to Article 44, § 1, 1 ° of the VAT Code, the services provided by doctors, dentists and physiotherapists in the course of their regular activities are exempt from tax.

Note

It should be noted that the comments made here regarding Articles 44, § 1 and § 2, 1 °, a) of the VAT Code are not yet in accordance with the judgment of the Constitutional Court regarding the medical exemptions (Judgment of the Constitutional Court No 194/2019 of 05.12.2019). ItThe Constitutional Court has ruled that the medical exemptions included in the provisions of Article 44, § 1 and § 2, 1 °, a) of the VAT Code are applied too widely. However, it is up to the legislator to amend these articles. Pending a parliamentary initiative, the practitioners concerned may already invoke the consequences of this judgment as regards the acts they perform from 01.10.2019. The new legislation and the comments on it will be the subject of a separate circular.

1. Medical services other than procedures and treatments with an aesthetic character

A. Doctors and dentists

The doctors and dentists referred to are those who, in accordance with the laws on medicine in Belgium, are allowed to practice medicine and dentistry.

Civil companies established in a commercial form by doctors or dentists whose corporate purpose is the joint exercise of the profession of doctor or dentist are also exempted to the extent that the services they provide are related to the normal exercise of the profession. profession of doctor or dentist (decision no. ET 63.571 of 06.07.1988).

The exemption is not limited to the provision of medical care, but includes all activities related to the normal practice of the professions concerned. For example, it is assumed:

- that doctors may invoke the exemption for preventive medical examinations or control examinations related to social laws (for example, occupational medicine services)

- that the exemption also applies to laboratory analyzes. In this respect, it is believed that the exemption may also be applied to clinical biological analyzes performed by chemists or licensed chemists or by persons under the responsibility and supervision of physicians or of the pharmacists and licenses mentioned here, including such analyzes that are carried out in order to carry out a judicial order as referred to in Article 18, § 2 of the Code (decision no. ET 28.994 of 19.05.1978 and letter no. 15 / 1979 from 25.07.1979). The exemption includes not only the actual medical examinations, but also the inclusion of the result in the report to be drawn up by the physician as an expert (Written Parliamentary Question No. 74 by Mr Senator Remy Oger of 29.01.1980). It should be noted that research work, including clinical trials, carried out by physicians for a consideration on behalf of third parties (pharmaceutical companies, research agencies ...) is not exempt, even if it is carried out in the context of medical treatment (decision no. ET 116.111 from 21.02.2011)
- The exemption also applies to services provided by doctors and dentists in the field of homeopathy and acupuncture (decision no. ET 129.853 of 03.05.2016).
- that the transport of human organs, human blood and breast milk, in addition to medical care, carried out by a doctor is also exempt
- that dentists, dentistry and dental clinics operated under the responsibility and supervision of persons legally authorized to practice dentistry may rely on the exemption for supplies and repairs of dentures for: insofar as these acts are related to a medical act and are accompanied by appropriate care (Note 57/1972 of 02.06.1972).

Physicians, on the other hand, who have been specifically authorized by the law of 12.04.1958 on the medical pharmaceutical cumul to sell medicines to their patients, carry out two distinct activities in which their activity as a pharmacist is subject to tax while the activity as a doctor is subject to the exemption referred to enjoy.

Persons, such as hand- trailers (decision no. ET 5.224 of 21.06.1971) and herbalists who unlawfully practice medicine cannot invoke the exemption.

B. Physiotherapists

Only physiotherapists who hold the required officially recognized diploma and are legally recognized to practice physiotherapy are eligible for the medical exemption, regardless of whether or not the services they provide are included in the nomenclature of medical benefits. on compulsory sickness and disability insurance.

The exemption may be applied by both natural and legal persons.

The exemption also applies to the activities performed by a physiotherapist in the field of homeopathy and acupuncture (decision no. ET 129.853 of 03.05.2016) .

2. Interventions and treatments with an aesthetic character

A. General

As of 01.01.2016, notwithstanding the general rule for doctors, the medical VAT exemption does not apply to procedures and treatments with an aesthetic effect, in accordance with Article 44, § 1, 1 °, second paragraph, of the VAT Code. character:

- if these interventions and treatments are not included in the nomenclature of medical benefits in respect of compulsory sickness and disability insurance
- if these interventions and treatments are included in the nomenclature of medical benefits in respect of compulsory sickness and invalidity insurance, but do not meet the conditions for qualifying for compensation in accordance with the regulations regarding compulsory medical care and benefits.

The exclusion of the exemption therefore applies to interventions and treatments whose sole purpose is to enhance the appearance.

As of 01.01.2016, the new legal regulation applies with regard to doctors to:

- the services they perform outside of a hospital setting in their private cabinet
- the services they render, in their capacity as self-employed doctors, in hospitals operated by public or private persons and recognized by the competent governmental authorities (recognized hospitals)
- the services they provide, in their capacity as independent doctors, in a private clinic .

For a detailed explanation with regard to this issue, reference is made to decision no. ET 127.740 of 22.03.2016 and ET 127.740 / 2 of 31.05.2016 . This includes:

- which interventions and treatments are intended by taxation
- what about the services performed by doctors in preparation, during or after an aesthetic procedure or treatment
- what if, during the same admission of a patient, two different interventions / treatments, which are not connected, take place
- how should the various forms of cooperation (between doctors, hospitals and other institutions) be treated
- optional special arrangements.

B. Acts intended by taxation

Interventions and treatments with an aesthetic character are interventions and treatments without any therapeutic or reconstructive purpose, the main aim of which is to change the physical appearance of a patient for aesthetic reasons.

Interventions and treatments with an aesthetic purpose, but which also have a therapeutic or reconstructive purpose, do enjoy the VAT exemption as intended by Article 44, § 1, 1 °, first paragraph, and Article 44, § 2, 1 °, a) , first paragraph of the VAT Code.

The psychological benefit associated with changing the physical appearance is not sufficient to qualify the intervention as partially therapeutic. In the assessment of the therapeutic or reconstructive purpose, only the actual physical pathological condition of the patient plays a role for the treating physician and therefore not his or her actual or supposed psychological pathological condition. The subjective opinion of the patient is therefore not taken into account.

Therefore, it is not because patients experience a manifest mental discomfort on the basis of their physical appearance and would experience a psychological advantage in changing that appearance that an intervention, for the purposes of the VAT exemption, could be classified as therapeutic.

To determine whether an aesthetic act is also therapeutic or reconstructive, the 'purpose / purpose' of the intervention or treatment will be decisive.

The VAT exemption is retained in the following cases:

- aesthetic intervention and treatment eligible for reimbursement / reimbursement in accordance with the regulations regarding compulsory medical care insurance and benefits
- aesthetic intervention and treatment with a therapeutic or reconstructive purpose due to illness, injury or congenital defect and which is not eligible for reimbursement / reimbursement in accordance with the regulations regarding compulsory medical care and benefits insurance
- aesthetic intervention and treatment that simultaneously treats a functional discomfort and that does not qualify for reimbursement / reimbursement in accordance with the regulations regarding compulsory medical care and benefits insurance
- interventions and treatments without an aesthetic character, irrespective of whether or not they qualify for reimbursement / reimbursement in accordance with the regulations regarding compulsory medical care and benefits insurance.

In the cases referred to in the previous paragraph, second and third point, (illness / injury / congenital defect / functional discomfort) and provided that the VAT exemption is invoked for these actions, it is the treating physician who performs the aesthetic intervention or treatment. in other words, the doctor who carries out the main act, regardless of whether he acts independently or acts as a salaried or statutory official, who determines in good conscience the therapeutic or reconstructive purpose of the intervention or treatment and is technically liable for this. .

The attending physician must state in a document by means of a concise description in a language understandable for third parties which disease, injury, congenital defect or functional discomfort is involved and how this will be remedied. A mere reference to the patient's medical file is not sufficient for these purposes.

In the event that the aesthetic intervention and treatment is eligible for compensation / reimbursement (see list above, first point), there is never an obligation to state reasons for the treating doctor for VAT purposes.

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Section 4 - Services performed by midwives, nurses and nurses (Article 44, § 1, 2 ° of the VAT Code)

Pursuant to Article 44, § 1, 2 ° of the VAT Code, the services provided by midwives, nurses and nurses in the course of their regular activities are exempt from VAT. This exemption applies to all activities that these persons perform in the normal course of their profession, even if these activities are not included in the nomenclature of medical benefits in respect of compulsory sickness and invalidity insurance. The exemption therefore also applies to the services they provide in the field of homeopathy and acupuncture (decision no. ET 129.853 of 03.05.2016).

No distinction should be made with regard to **nurses** depending on whether they are self-employed in a hospital or home care services. This exemption also applies to nurses who assist in an approved hospital or private clinic with interventions and treatments with an aesthetic character (decision no. ET 130.999 of 28.11.2016).

A **healthcare professional** is the person who is specifically trained to assist the nurse under his / her supervision regarding care provision, health education and logistics, within the framework of the activities coordinated by the nurse within a structured team (see article59of the coordinated law of 10.05.2015 on the exercise of the health care professions) (circular 2017 / C / 26 (no. ET 131.342) of 24.04.2017).

The nurse works in elderly care, a hospital, home nursing or mental health care (psychiatric care homes). The task of a healthcare professional mainly consists of monitoring personal hygiene, help with dressing and undressing, preparing / administering medication and general monitoring of the patient. The activities that nurses may perform by law under the supervision of the nurse are listed in the appendix to the Royal Decree of 12.01.2006 establishing the nursing activities that the nurse can perform and the conditions under which the nurse can perform these actions.

A healthcare professional must register with the 'Agency for Care and Health', or 'la Fédération Wallonie -Bruxelles', or 'der Deutschsprachigen Gemeinschaft '. After registration, the healthcare professional receives a visa from the Federal Public Service for Public Health. That visa is mandatory to work as a healthcare professional.

The focus is on it established that worry scientists still working under the supervision of a nurse. In this context, it must first be ascertained whether the nurse actually acts independently. In the affirmative, it may invoke the exemption referred to in Article 44, § 1, 2 °, aforementioned.

A condition for the application of this exemption is, however, that it concerns healthcare professionals as referred to above and that they are recognized by the Federal Public Service for Public Health.

Note

It should be noted that the comments made here regarding Articles 44, § 1 and § 2, 1 °, a) of the VAT Code here are not yet in accordance with the judgment of the Constitutional Court regarding the medical exemptions (Judgment of the Constitutional Court No 194/2019 of 05.12.2019). The Constitutional Court has ruled that the medical exemptions included in the provisions of Article 44, § 1 and § 2, 1 °, a) of the VAT Code are applied too widely. However, it is up to the legislator to amend these articles. Pending a parliamentary initiative, the practitioners concerned may already invoke the consequences of this judgment as regards the acts they perform from 01.10.2019. The new legislation and the comments on it will be the subject of a separate circular.

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Section 5 - Paramedical professionals (Article 44, § 1, 3 ° of the VAT Code)

Pursuant to Article 44, § 1, 3 °, of the VAT Code, the services provided by practitioners of a recognized and regulated paramedical profession, with regard to their services of a paramedical nature, are included in the nomenclature of medical benefits in kind. compulsory sickness and invalidity insurance, are carried out in the course of their regular activities exempt from VAT.

The exemption only applies to the paramedical professions regulated by law in Belgium, in order to avoid that the provision of unofficially recognized care services and the provision of recognized services by unauthorized persons would be wrongly exempt from tax. The exemption for the paramedical professions is, moreover, limited to the care services that appear in the nomenclature of medical benefits in respect of compulsory sickness and invalidity insurance or in the nomenclature of rehabilitation benefits, regardless of the number of nomenclature benefits that entitle to reimbursement by the INAMI (INAMI) (decision no. ET 104.382 of 13.05.2011).

According to the current state of legislation, in Belgium are referred to as paramedical professions, the operations of the following techniques:

- pharmacy assistance
- audiology
- bandage, orthosis and prosthesis
- dietetics
- occupational therapy
- laboratory and biotechnology, and human hereditary engineering
- speech
- orthoptie
- podologie
- medical imaging.

Note

It should be noted that the comments made here regarding Articles 44, § 1 and § 2, 1 °, a) of the VAT Code are not yet in accordance with the judgment of the Constitutional Court regarding the medical exemptions (Judgment of the Constitutional Court No 194/2019 of 05.12.2019). The Constitutional Court has ruled that the medical exemptions included in the provisions of Article44, § 1 and § 2, 1 °, a) of the VAT Code are applied too widely. However, it is up to the legislator to amend these articles. Pending a parliamentary initiative, the practitioners concerned may already invoke the consequences of this judgment as regards the acts they perform from 01.10.2019. The new legislation and the comments on it will be the subject of a separate circular.

A number of specific cases are discussed in more detail below.

1. Dietitians

The rules that apply with regard to the services provided by dieticians are clarified in decision no. ET 127.206 / 2 of 29.04.2016 .

The profession of dietician may only be pursued by persons who meet the conditions laid down in Article 3 of the Royal Decree of 19.02.1997 concerning the professional title and the qualification requirements for exercising the profession of dietician and establishing the list of technical services and the list of activities that the dietician may be instructed to do by a doctor.

The intervention of the medical care insurance in benefits provided by recognized dietitians is regulated in the nomenclature of rehabilitation services. This nomenclature has the same legal value as the nomenclature of medical benefits in kind. Only the services provided by recognized dieticians that appear in this rehabilitation nomenclature are exempt from VAT, regardless of the number of services that are reimbursed by NIHDI.

The benefits provided by recognized dieticians in the aforementioned rehabilitation nomenclature relate to only a small part of the technical achievements and activities that dieticians may perform on the basis of their diploma under the aforementioned Royal Decree.

Chapter 1 of the appendix to the rehabilitation nomenclature provides for two dietetic services: the benefits 771131 (for patients with a diabetes pass, but without a care program contract) and 794010 (only for care pathway patients, either care pathway diabetes or care pathway chronic renal failure).

The benefits referred to in Chapter 5 of the Annex to the Rehabilitation Nomenclature may also be provided by recognized dieticians, provided that these dieticians have completed additional training in diabetes education in addition to their basic training as a dietitian . This concerns the provisions regarding the education of diabetes patients, namely the provisions 794054 (start-up education), 794076 (follow-up education) and 794091 (education in case of problems).

On the basis of the foregoing, only the dietetic treatments provided by accredited dieticians of diabetics with diabetes pass and of diabetics and patients with renal insufficiency that are included in a care program, as well as the services provided by accredited dietician- diabetes educators for the education of diabetic patients, are exempt from VAT on the basis of of Article 44, § 1, 3 °, of the VAT Code. This exemption applies regardless of the number of treatments that are reimbursed by the NIHDI.

The Minister of Finance has decided that the dietary treatments other than those referred to above - whether or not prescribed by a doctor - that are provided by a recognized dietician and that consist of providing individual information and advice in connection with slimming treatments or slimming programs are exempt from the VAT as family information services within the meaning of Article 44, § 2, 5 °, of the VAT Code (Oral Parliamentary Question No. 7,720 by Mr Representative Benoît Dispa , 12.01.2016).

The other dietetic treatments (such as, for example, advice in the event of malnutrition) provided by a recognized dietician fall under the aforementioned exemption (Article 44, § 2, 5 ° of the VAT Code).

This exemption applies from 01.01.2016.

For the sake of completeness, it is pointed out that the sale of food supplements, meal replacements and protein preparations, among others, is not intended by the above exemptions and is subject to VAT.

2. Speech therapists

The rules applicable with regard to the performances performed by speech therapists are clarified in the decision no. ET 130.538 of 20.07.2016 .

The intervention of the medical care insurance in benefits provided by recognized speech therapists is regulated by Article 36 of the Annex to the Royal Decree of 14.09.1984 establishing the nomenclature of medical benefits in respect of compulsory insurance for medical care and benefits. Only the services provided by recognized speech therapists that appear in this nomenclature are exempt from VAT in accordance with the provisions of Article 44, § 1, 3 ° of the VAT Code, regardless of the number of services that are reimbursed by the INAMI.

The Minister of Finance has decided that speech therapy treatments other than those referred to above - whether or not prescribed by a doctor - that are provided by a recognized speech therapist and that consist of holding individual or collective sessions are exempt from value added tax if family information services within the meaning of Article 44 , § 2, 5 ° of the VAT Code.

This exemption (Article 44, § 2, 5 °, of the VAT Code) applies from 01.01.2016 and is limited to the aforementioned speech therapy treatments.

The aforementioned exemptions do not apply to the speeches and / or workshops given by speech therapists or to the actions they have performed in the context of school or university education or in the context of vocational training. If necessary, the exemption referred to in Article 44 , § 2, 4 ° or 8 ° of the VAT Code applies in principle insofar as the conditions set out in that article are met.

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Section 6 - Performance of health care establishments (Article 44, § 2, 1 °, a) of the VAT Code)

Note

It should be noted that the comments made in relation to Article 44, § 2, 1 °, a) of the VAT Code below are not yet in accordance with the judgment of the Constitutional Court on medical exemptions (Judgment of the Constitutional Court No 194/2019 of 05.12.2019). ItThe Constitutional Court has ruled that the medical exemptions included in the provisions of Article 44, § 1 and § 2, 1 °, a) of the VAT Code are applied too widely. However, it is up to the legislator to amend these articles. Pending a parliamentary initiative, the practitioners concerned may already invoke the consequences of this judgment as regards the acts they perform from 01.10.2019. The new legislation and the comments on it will be the subject of a separate circular.

1. Hospital nursing: general rule

Pursuant to Article 44, § 2, 1 °, a), first paragraph, of the VAT Code, the tax exemptions are hospital care and medical care, as well as the services and supplies of goods closely related to it, performed in the exercise of their regular activity by hospitals, mental institutions, clinics and dispensaries.

However, the exemption referred to in the provision under a) excludes hospital care and medical care, as well as the services and supplies of goods closely related to it, relating to aesthetic procedures and treatments.

"Hospitals" means the health care institutions referred to in the coordinated law of 10.07.2008 on hospitals and other care establishments, that is to say, health care institutions in which appropriate specialist medical examinations and / or treatments are always available in the field of medicine, surgery and possibly obstetrics in multidisciplinarycan be provided, within the necessary and adapted medical, medical-technical, nursing, paramedical and logistical framework, to patients who are admitted and can stay there, because their state of health requires all of this care in order to get the disease as short as possible combat or relieve, restore or improve health or stabilize injuries. These hospitals fulfill a mission of general interest. Under that law, hospitals must meet certain standards and must be recognized by the FPS Health.

The convalescent homes that do not meet those standards are not exempted. The latter also applies to holiday homes proposed as a convalescent home. If necessary, they can invoke the exemption referred to in Article 44, § 2, 2 ° of the VAT Code insofar as the required conditions are met.

The exemption includes the various services provided to the sick and injured (examination, care, nutrition, accommodation, supply of prostheses and medicines associated with care ...), as well as the rental of television sets, telephone services to hospital patients (decision no. ET 110.410 of 23.02.2006) and possibly providing accommodation, food and drinks to persons visiting or accompanying a sick person (decision no. ET 23.202 of 25.04.1977).

It also includes the supply of small items (woven baskets, mats ...) manufactured by the patients, and the small services (paper folding, knitting with wool supplied by customers ...) provided by those patients in the context of the concerns provided to them (decision no. ET 19.964 of 09.10.1975).

It is accepted that the operation of a beverage or eating establishment may also be exempt from tax, provided that such operation is incidental to the exempt activities carried out by a hospital, psychiatric institution or similar institution and the following conditions are **cumulatively** met:

- the operation of the drinking or eating establishment is carried out by a taxable person whose actions are intended in Article 44, § 2, 1 °, a), first paragraph of the VAT Code (hospitals, psychiatric institutions or similar institutions)
- the beverage or dining establishment is operated on the site of the establishment where the exempt transactions as referred to in the first point above are carried out (hereinafter referred to as the establishment concerned)
- the exempt transactions envisaged in the first point form a major part of the transactions carried out by the establishment concerned. This implies that the total amount, per calendar year, of the exempt transactions referred to in that first point is greater than the total amount of the other transactions performed by that establishment, being both the taxed and other exempt transactions (including the drinking or eating establishment))
- in principle, the drinking or eating establishment is only accessible to persons who are also customers of the aforementioned exempt services (patients), their visitors, as well as to staff working in the establishment concerned. This condition is in any case met if the drinking or eating establishment is not accessible outside the opening hours of the establishment and is not directly accessible from the outside (in other words, one must first enter the aforementioned establishment before accessing the beverage or eatery). However, the fulfillment of this condition can also be demonstrated by other factual elements. The term "as well as for the personnel" should be interpreted strictly, in the sense that the exemption from Article 44, § 2, 1 °, a),for the customers of the exempt services (patients, residents...), and for the staff working in the establishment concerned. If the hospital, psychiatric institution or similar institution has a separate company restaurant for the staff, to which patients, residents, etc. do not have access, the exemption of Article 44, § 2, 1 °, a) of the VAT Code applies. **not** for meals or drinks served within that company restaurant
- receipts from the operation of the beverage or eating establishment do not exceed 10% of the turnover of the exempt transactions referred to in the first point of the establishment concerned.

A one-off exceeding of this threshold by 10% to a maximum of 11% of the turnover of the exempt transactions of the establishment concerned as referred to in the first point per period of five consecutive calendar years is not taken into account for the application of this condition.

Neither the nature of the meals provided nor the fact that the establishment concerned also performs taxable activities are of interest from now on (decision no. ET 130.298 of 12.09.2016).

If the operation of the cafeteria is conceded to a third party, this third party must subject his activities to VAT in accordance with normal rules .

It is also accepted that the exemption also applies to the operation of a car park which is accessible only to patients, their visitors and staff of the establishment.

On the other hand, no claim can be made for the exemption with regard to activities that remain foreign to the actual performance of hospitals, such as:

- the supply of medicines to persons who are not cared for in the institution
- the operation of a parking lot that is accessible to everyone
- the delivery and repair of prostheses, which is not associated with the delivery of concerns
- the supply of spectacles and glasses, even to persons examined by a doctor attached to the hospital operating the optical store
- the provision of food and drink by a hospital in a self-service facility accessible to all
- lying in the morgue of a hospital of persons who died outside that hospital (written parliamentary question No. 1.115 by Mr Representative Didier Ramoudt of 31.05.1994 , written parliamentary question No 3-5.633 by Ms deputy representative Clotilde Nyssens from 12.07.2006)
- the operation of a retail trade (books, gifts, flowers, toys...)
- the rental of the equipment of a hospital insofar as it relates to movable property or real estate by destination (the rental of the building is exempted in accordance with Article 44, § 3, 2 ° of the VAT Code).

Nor can the exemption be invoked for the actions that a hospital performs for another hospital if they remain foreign to the actual performance of hospitals, such as:

- washing of linen by a hospital for another hospital
- the rental of medical and / or paramedical equipment by a hospital for another hospital (written parliamentary question No. 322 by Mr Representative Jo Vandeurzen of 23.03.2004).

As a rule, the hospital that regularly carries out such activities must subject them to the tax.

Nor are the actions performed by hospitals on behalf of external companies (for example, testing new medicines or new treatment methods on behalf of pharmaceutical companies) covered by the exemption, even if they are carried out as part of medical treatment. These acts are not classified as hospital care services, but rather are performed in the direct interest of the aforementioned pharmaceutical companies. Consequently, fees paid by pharmaceutical companies to hospitals conducting clinical trials should be taxed (decision no. ET 116.111 of 21.02.2011). The same applies to the compensation paid by a pharmaceutical company to the ethics committee attached to the hospital or to one of the hospitals where the clinical trials are carried out (decision no. ET 116.111 / 2 of 27.06.2013).

2. Hospital nursing in the context of aesthetic procedures and treatments

Pursuant to the derogation for the services of doctors who perform procedures and treatments with an aesthetic character, on the basis of Article 44, § 2, 1 °, a), second paragraph, of the VAT Code, the exemption is hospital nursing and medical care as well as the services and supplies that are closely related to it, which relate to the interventions and treatments as referred to in Article 44, § 1, 1 °, second paragraph, of the VAT Code. For a detailed explanation in this regard , reference is made to decision no. ET 127.740 of 22.03.2016 .

If an operation or treatment undergoing a patient does not come under the exemption as referred to in Article 44, § 1, 1 °, first paragraph, and Article 44, § 2, 1 °, a), first paragraph, of the VAT In that case, the entire treatment invoiced by the hospital or private clinic from admission to discharge of the patient, as well as the stay there from 01.01.2016, will in principle be charged with VAT.

In principle, this means all possible services invoiced by the hospital or private clinic, as referred to, inter alia, in Article 44, § 2, 1 °, a), second paragraph, of the VAT Code, which are provided for the duration of the hospitalization or stay ' *extra muros* ' by any medical or paramedical professional there or carried out on an outpatient basis in the context of an intervention or treatment that is intended and falls within the scope of Article 44, § 1, 1 °, second paragraph, of the VAT Code. It does not matter whether the amount of these actions is paid by the patient or by a third party.

For the duration of the hospitalization (from admission to discharge) of the hospitalized patient as well as for the duration of the patient's stay in a hospital or for all services performed in the private clinic, which are related or inherent are to the aesthetic intervention or treatment as intended by Article 44, § 1, 1 °, second paragraph, of the VAT Code, and during which there is no other intervention as intended by Article 44, § 1, 1 °, first member of the VAT Code, the following services are therefore charged with VAT from 01.01.2016:

- the services of general or plastic surgeons (self-employed, salaried or civil servant)
- the related services of other doctors (anesthetists, cardiologists, ophthalmologists, dermatologists, radiologists ... who are self-employed, salaried or civil servants) as referred to in the main operation (aesthetic intervention and / or treatment), insofar as these are necessary for the realization and / or aftercare of the aesthetic intervention and / or treatment and insofar as these services do not qualify for compensation / reimbursement in accordance with the regulations regarding compulsory insurance for medical care and benefits
- the services of medical professionals other than doctors (physiotherapists, nurses ...)
- the services of paramedical professionals (medical laboratory technologists, technologists medical imaging ...), which are performed in close collaboration with and under the supervision and responsibility of a doctor, specialist physician, general or plastic surgeon, insofar as these actions are necessary to to realize the main operation and the aftercare
- preoperative consultations (for example at the cardiologist) and postoperative consultations for control, lab and radiology insofar as these operations are necessary to realize the main operation and aftercare
- the care, nutrition and rental of room and bed (ie the room price and the accompanying pre- and postoperative nursing, care and catering)

- the supply of medicines which are directly and directly related to and / or used in the context of the aforesaid procedure or treatment undergone by the patient.

The exemption in the context of hospital care and medical care also lapses for the closely related services and supplies of goods if these are related to or inherent in the aesthetic intervention or treatment that does not meet the conditions for eligibility for reimbursement (reimbursement) in accordance with the regulations regarding compulsory medical care and benefits insurance.

For example, the rental by hospitals and private clinics of television and telephone to patients undergoing VAT or surgery and the provision by hospitals and private clinics of beds and the provision of meals and drinks to escorts of patients undergoing such surgery or treatment, taxed as of 01.01.2016 pursuant to Article 44, § 2, 1 °, a), second paragraph, of the VAT Code.

3. Actions that are performed between healthcare institutions in the context of an agreement with healthcare finality

A. General

The exemption also aims at certain actions that are performed between healthcare institutions in the context of an agreement with healthcare finality. For a detailed explanation of the matter is referred to the circular AAFisc no. 36/2012 (no. ET 123 129) of 27.11.2012 . This circular explains this VAT issue in the context of the exemptions from Articles 44, § 2, 1 °, 44, § 2, 2 °, and 44, § 2, 4 ° of the VAT Code.

Various forms of cooperation have arisen and are emerging in the healthcare sector. In the pursuit of high-quality care with attention to cost control, in order to optimize the coverage of care provision, the collaboration between health care and health care institutions is increasing. These forms of cooperation can be controlled by the government, but sometimes also arise spontaneously at the initiative of the healthcare institutions themselves.

The partnerships between care institutions are a means of offering care to persons in need of multidisciplinary or interdisciplinary care in which the well-being of the person in need of care is central. The cooperation between healthcare institutions aims to bring different competences together in one healthcare institution that provides these adapted care to the person in need of care.

In the context of such partnerships, which aim to provide a full care performance to a person in need of care, care institutions perform mutual services and deliveries of goods which they pass on to each other at cost price. In principle, there is only one healthcare provider in the relationship with the person in need of care.

In the healthcare sector, one can distinguish five different types of partnerships.

In principle, the first four partnerships were inspired by a care definition.

a. Type I cooperation

This collaboration takes place within the framework of a legally formalized sustainable partnership created specifically for this purpose by the government.

The collaboration takes place within specifically designed legal entities.

These are the associations of hospitals (Royal Decree of 25.04.1997 specifying the association of hospitals and the special standards that they must meet, BS 18.06.1997), the hospital groups (Royal Decree of 30.01.1989 establishing additional standards for the recognition of hospitals and hospital services as well as for a more detailed description of hospital groups and the special standards with which they must comply, BS 21.02.1989) and mergers of hospitals (Royal Decree of 31.05.1989 specifying the merger of hospitals and of the special standards with which it must comply, BS 05.07.1989).

b. Cooperation type II

Certain experiments regarding cooperation between healthcare institutions with a view to the realization of a specific healthcare program and project are recognized and / or financed by the government. It can also involve temporary collaborations.

c. Collaboration type III

Some collaborations between different care institutions for the realization of a care project are provided by the government without these projects or these collaborations being the subject of formal recognition.

d. Cooperation type IV

Some collaborations with healthcare finality arise spontaneously between healthcare institutions, without any intervention or support from the government.

e. Collaboration type V.

Healthcare institutions may also collaborate that do not relate to healthcare.

B. Definitions

In order to understand the circular AAFisc no. 36/2012 (no. ET 123.129) of 27.11.2012 , a number of terms must first be defined.

The institutions referred to in Articles 44, § 2, 1 ° and 44, § 2, 2 ° of the VAT Code (hospitals, clinics, rest homes, childcare centers ...) are considered in the light of these circular 'care institutions'. ' mentioned. The fact that these institutions would in certain cases have the status of a mixed VAT taxable person does not change the definition of the term 'healthcare institution'.

These healthcare institutions provide goods or services to people in need of care. The term 'person in need of care' encompasses all persons who need or make use of the care, care or support provided by the institutions referred to in Article 44, § 2, 1 ° or 44, § 2, 2 °, of the VAT Code. The following are envisaged: the sick, nursing home residents, children cared for in a nursery / infants' home, the disabled, patients ...

'Care personnel' is understood to mean staff who are directly involved in the care of persons in need of care and who carry out activities concerning the diagnosis, treatment, healing, reception, guidance or care of this person in need of care.

C. Application of the exemptions of Article 44, § 2, 1 ° and 44, § 2, 2 ° of the VAT Code to the transactions provided between healthcare institutions

First of all, it should be noted that neither Article 44, § 2, 1 °, nor Article 44, § 2, 2 ° of the VAT Code require that the recipient of the transaction be a person in need of care. The exemption therefore also applies if the customer is another healthcare institution.

Conditions with which an act performed between healthcare institutions must comply in order to benefit from the exemption of the aforementioned articles:

- first condition: the act is performed by a healthcare institution intended for another healthcare institution intended by the aforementioned provisions in Article 44, § 2, 1 ° or 44, § 2, 2 ° of the VAT Code
- second condition: the act must relate directly to a performance that aims to diagnose, treat, cure, receive, guide or care for a person in need of care. The action must therefore be necessary to achieve the aforementioned objective.

  It is not sufficient that the actions are used by the receiving institution in the context of its care function; the action must be necessary to achieve this goal and be aimed directly at diagnosing, treating, healing, receiving, guiding or caring for a person in need of care. Consequently, it will mainly concern services rendered through the care of staff or the provision of specialized medical equipment or infrastructure.

  On the other hand, it is true that activities that cannot in themselves be regarded as a care performance can still benefit from the exemption if they are part of a complex act that does involve the diagnosis, treatment, healing, reception, supervision or care of a person in need of care and therefore has a care quality.
- Third condition: exemption from performance must not lead to distortions of competition in respect of a non-exempt taxable person.

  This third condition is based on Article 134 of Directive 2006/112 / EC. Whether there is a distortion of competition is a matter of fact. When a non-exempt economic operator carries out the same act, there is, in principle, a distortion of competition and the act cannot be exempted.

D. Type I, II and III partnerships

The government-driven forms of cooperation type I, II and III are mainly aimed at improving the quality of care provision. Therefore, it is assumed in the first instance that the actions performed in the context of these collaborations are services which have as their object the diagnosis, treatment, healing, reception, counseling or care of a person in need of care (or part of it) (second condition).

It is also considered that, in view of the context in which these collaborations arise, the non-application of VAT will not lead to distortions of competition with other market participants. However, should it appear that this is the case, so that the third exemption condition is not met, the exemption of the cooperation in question by the central VAT services will be re-examined.

Consequently, it may in principle be assumed that the transactions between healthcare institutions carried out in the context of partnerships of types I, II or III are exempt from VAT.

However, the administration will supervise the improper use of the VAT exemption for transactions that do not form part of one of the aforementioned partnerships. The healthcare institutions must therefore always be in possession of the cooperation agreements entered into by them.

In addition, the administration reserves the right to revert to the aforementioned simplification measure if its application would lead to abuses or if the government foresees, recognizes or directs partnerships aimed at providing actions without care.

Although a taxpayer who supplies goods or services that are exempt under Article 44 of the VAT Code is not obliged to issue an invoice (see Article 53, § 2 of the VAT Code), the administration requires, with a view to a transparent and correct application of the exemption, that a healthcare institution that provides an action to another healthcare

institution within a type I, II or III collaboration, issues an invoice to its contracting partner.

This invoicing must be sufficiently detailed and must, among other things, refer to the circular AAFisc no. 36/2012 (no. ET 123.129) of 27.11.2012 , the partnership, the care program or project in which the collaboration takes place and to the type of cooperation (I, II or III).

E. Type IV partnerships

a. General

For type IV partnerships, all actions between the cooperating institutions must be individually assessed against the three conditions set.

Before verifying whether an act falls under the aforementioned exemption conditions, the act must be properly qualified.

According to settled case-law of the European Court of Justice, when an act consists of a series of elements and transactions, account must be taken of all the circumstances in which the act in question takes place, in order to determine, in particular, whether it concerns two or more separate benefits or one benefit goes and whether, in the latter case, this benefit should be classified as a supply of goods or a service (see, to that effect, Court of Justice of the European Union, Faaborg-Gelting Linien , Case C-231/94, of 02.05.1996, points 12-14 , Court of Justice of the European Union, Levob Insurance and OV Bank, Case C-41/04, 27.10.2005, point 19 andCourt of Justice of the European Union, Judgment Aktiebolaget NN, case C-111/05, 29.03.2007, paragraph 21).

The Court has also ruled that each transaction should in principle be regarded as distinct and independent and that the transaction, which consists economically of a single supply, should not be artificially disassembled, as otherwise the proper functioning of the VAT system would be affected . It is therefore important, first of all, to determine what are the defining features of the transaction in question in order to determine whether the taxable person provides several distinct services or a single service to his customer.

There is a single performance if two or more elements or acts that the taxpayer provides to his customer are so closely linked that they objectively constitute one economic, non-separable performance, which it would be artificial to disassemble (Court of Justice of the European Union, Judgment Levob Insurance and OV Bank, Case C-41/04, 27.10.2005, paragraphs 20 and 22 and Court of Justice of the European Union, Judgment Aktiebolaget NN, Case C-111 / 05, 29.03.2007, points 22 and 23).

Furthermore, an act must be considered to be additional to a main action if it is not an end in itself for the customer, but a means of making the main action of the service provider / supplier as attractive as possible (see, inter alia, Court of Justice of the European Union, Judgment in Aktiebolaget NN, Case C-111/05, 29.03.2007, paragraph 28). Where applicable, the additional act will share the fiscal fate of the main act.

Example:

A hospital A makes (in a non-exclusive manner) a medical scanner available to hospital B. In addition to the costs of making the scanner available, hospital A also charges the costs associated with this provision for the use of linen, cleaning and administrative support. hospital B. These additional costs will in principle follow the fiscal fate of the main operation (= provision of scanner).

b. Examples of exempt transactions under Article 44, § 2, 1 ° or 2 ° of the VAT Code

As mentioned before, for type IV partnerships, all actions between the cooperating healthcare institutions must be individually assessed against the three exemption conditions.

The scope of the exemption conditions is clarified by means of a few examples.

Care services

When a person / patient of institution B is cared for / treated / supervised by institution A, the costs that A passes on to B in connection with the care, treatment or supervision of that person / patient are exempt from VAT.

This applies to:

- A patient from care institution B (for example, a sheltered living initiative) receives day support in the activity center of care institution A. The costs of this support that care institution A charges to care institution B are exempt from VAT.
- Healthcare institution B takes care of a person with a disability. For very specific therapy (for example, hydrotherapy, hypotherapy ...), care institution B calls on care institution A. The costs that A charges for this to care institution B are exempt from VAT.
- An institution for care for the disabled takes care of the care for a person with a disability. In this context she appeals to another healthcare institution. The costs charged by the latter care institution in connection with the care of a person to the institution for care for the disabled are exempt from VAT.
- A psychiatric hospital relocates a department to a general hospital in order to realize an integrated care offering of general hospital care and psychiatric hospital care. The costs related to the care of the patients, which are charged by the general hospital to the psychiatric hospital, are exempt from VAT.
- An institution for the disabled care A collects patients from another institution for the disabled care B and deploys specialized guidance staff. The costs charged by institution A to institution B are exempt from VAT.

- Carrying out RX admissions by a hospital is an act that is always exempt from VAT, regardless of whether this is done for residents of a care center or for other patients.

The provision of goods or infrastructure

The provision of a scanner by hospital A to hospital B is exempt if hospital B (customer) does not have an exclusive right to use this scanner. Hospital A must therefore also be able to use this scanner.

However, if hospital A grants an exclusive right of use to hospital B without A being able to use it, this provision must be taxed with VAT. After all, in this case competition is entered into with other market participants who lease or rent out such equipment. The latter posting is therefore not exempt.

The same reasoning applies to the provision of horses in the context of hypotherapy by an institution for the disabled care A to an institution for the disabled care B. If both institutions can use these horses in the context of therapy for people with a disability, the costs are that institution. A charges this to institution B exempt from VAT.

The same reasoning can be applied for the provision of an infrastructure for hydrotherapy by hospital A to hospital B.

The provision of personnel

If the act relates to the posting of personnel, the second aforementioned condition is met when it concerns the posting of healthcare personnel who, by means of an employment contract, are affiliated with a healthcare institution as intended by Article 44, § 2, 1 ° or 44, § 2, 2 °, of the VAT Code and in which the purpose of this provision is to make a diagnosis, treatment, cure, reception, guidance or care of a person in need of care.

Examples can be cited:

A healthcare institution A makes a nurse available to a healthcare institution B. If the administrative staff of institution A will take care of all necessary administrative tasks related to the provision of the nurse, the administrative costs charged in this case are also exempt from VAT. when the provision of the nurse (= main performance) meets the above conditions to exempt this provision of VAT.

- A day care center calls on a child team from a Center for Mental Health Care for specialized support when accompanying a child. The costs charged to the day care center by the Center for Mental Health Care are exempt from VAT.
- A residential care center uses a team of a Center for Mental Health Care that specializes in elderly care for the care of its residents. The costs charged by the latter center to the residential care center are exempt from VAT if the provision of the care staff themselves is exempt.
- The provision of the hospital pharmacist from hospital A to hospital B in the context of the organization of a standby duty in order to guarantee continuity of care is exempted. If during the standby duty, for the treatment of a patient of hospital B, a medicine is supplied to hospital B from the stock of the hospital pharmacy of hospital A, this supply is also exempt.

The provision of personnel other than healthcare personnel is subject to VAT. Thus, the provision of ICT staff, administrative staff, accountant, maintenance staff, driver, technical staff ... is subject to VAT, unless the provision of such persons is only incidental to an exempt principal performance.

For type IV partnerships, the healthcare institution must prove that the activities provided are exempt. The healthcare institutions must therefore always be in possession of the cooperation agreements entered into by them.

c. Examples of taxed actions

Providing meals or washing linen

A care institution A that provides meals to care institution B or washes the linen for this institution competes with other taxpayers who perform similar activities (for example, a laundry, a caterer) and who cannot benefit from the exemption. Consequently, the condition of distortion of competition is not fulfilled, so that those transactions are subject to VAT. This is the case, for example, when a healthcare institution has an excess kitchen and supplies meals to another hospital.

However, the costs for providing meals or washing linen that care institution A charges to care institution B are exempt if these supplies or services are used by a person in need of care institution B who is temporarily provided in care institution A. In this case, these services or deliveries form part of a benefit exempted from the VAT Code on the basis of 44, § 2, 1 ° or 44, § 2, 2 °.

The supply of medicines by a hospital pharmacy to a healthcare institution that is not a hospital.

If a healthcare institution, other than a hospital, calls on a hospital pharmacy to supply a medicine, there will be a distortion of competition with ordinary public pharmacies. Consequently, this supply of medicines should be subject to VAT.

Transport services

When care institution A carries out the transport of patients from care institution B and it is limited to providing the means of transport with driver, this transaction is subject to VAT. Nor is the condition of distortion of competition fulfilled in this case.

If specialized transport personnel are also deployed for this transport, it concerns a service for the reception and support of patients that clearly has a care definition and the exemption from Article 44, § 2, 1 ° or 44, § 2, 2 ° of the VAT Stapled.

Diverse

The services of the accountant of care institution A, which also takes care of the accounting of care institution B, must be charged with VAT when they are charged on by A to B. After all, this is not about the provision of health workers, nor is the condition of distortion of competition met.

The same applies to the services of the handyman / gardener who is employed at care institution A, but, if necessary, is deployed at care institution B.

However, as a result of an exempt act from care institution A to care institution B, the intervention of technical personnel is necessary for the correct adjustment, maintenance or repair of the medical equipment that is made available or that is used for B patients provided service. If these interventions by technical personnel are passed on to the care institution B together with the exempt transaction, they are regarded as part of the exempt transaction concerned and are therefore not subject to VAT.

The funeral of a person who has not died in the hospital can also be performed by an undertaker. This transaction is subject to VAT for reasons of distortion of competition.

F. Type V partnerships

This form of cooperation does not have a care definition and therefore never meets the conditions set for enjoying the exemptions intended by Articles 44, § 2, 1 ° and 44, § 2, 2 ° of the VAT Code.

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Section 7 - Transport of sick or injured persons with specially equipped means of transport (Article 44, § 2, 1 °, b) of the VAT Code)

In accordance with Article 44, § 2, 1 °, b) of the VAT Code, the transport of sick or injured persons with specially equipped means of transport (such as an ambulance, a MUG helicopter...) is exempt from VAT (circular AAFisc 2020 / C / 66 (No. ET129.928 / 2 of 11.05.2020).

The paid transport must in this case **cumulatively** meet the following criteria:

- the vehicle is adapted to transport people sitting (in a wheelchair) and lying (on a carrying breech)
- the vehicle is equipped with an oxygen supply device

  the transport takes place in the presence of a doctor, nurse or an accompanying person (possibly the driver) holding a 'care provider-ambulance' certificate (urgent patient transport) or, in the case of non-urgent transport, of a recognized ambulance non-urgent patient transport
- the transport of the persons takes place for reasons of care or diagnosis.

The transport of disabled people can be exempted under this provision under the same conditions.

If necessary, Article 44, § 2, 2 ° of the VAT Code can also be applied. After all, the transport of persons with reduced mobility (sick, injured, disabled) is regarded as a service intended in the aforementioned provision. Insofar as the condition for recognition is met, the exemption referred to applies in principle. For the application of this exemption, there are no additional conditions with regard to transport (equipment, presence of attendant...) (see Section 9, below).

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Section 8 - Certain supplies (Article 44, § 2, 1 ° *ter* of the VAT Code)

The supplies of human organs (including human skin), human blood and breast milk are also exempt from tax under Article 44, § 2, 1 ° *ter* of the VAT Code. This article is based on Article 132 (1) (d) of Directive 2006/112 / EC. The concepts in this article are autonomous concepts of Union law.

This exemption does not apply to supplies of plasma derived from human blood where this plasma is not intended for direct therapeutic use but only for the manufacture of medicinal products (Court of Justice of the European Union, TG ft D. m. v Finanzamt Kassel II - Hofgeismar , Case C-412/15, 05.10.2016).

This exemption only concerns the **delivery** of these goods. The exemption also applies to the transport of those goods where that transport is charged by the supplier to the person to whom the good is supplied, whether or not this is done under a separate debit note or under a separate contract (see Article 26 (2) of the VAT Code).

On the other hand, this exemption does not apply to a self-employed activity of transporting human organs and samples taken from humans, for example for hospitals and laboratories (Court of Justice of the European Union, Judgment of the Belgian State v Nathalie De Fruytier , case C-237 / 09, 03.06.2010 and Court of Justice of the European Union, Judgment Belgian State v Nathalie De Fruytier , case C-334/14, 02.07.2015). The same applies, *mutatis mutandis* , to other services provided by a taxable person other than the supplier of human organs, human blood and breast milk (for example, blood collection, storage).

Attention is drawn to the fact that in the cases referred to in the previous paragraph a different exemption may apply (Article 44, § 1, 1 ° and 2 ° of the VAT Code).

It is noted that the import and intra-Community acquisition of the same goods are exempt from tax under Article 40, § 1, 1 °, a) of the VAT Code.

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Section 9 - Services related to social work and social security (Article 44, § 2, 2 ° of the VAT Code)

Under Article 44, § 2, 2 ° of the VAT Code, the services and supplies of goods that are closely related to social work, social security and the protection of children and young people are exempt from tax. performed by bodies governed by public law or by other organizations recognized by the competent authority as social institutions.

The term 'institution' envisages both natural and legal persons.

By 'organizations recognized by the competent authority as being of a social nature' are meant:

- or institutions with formal recognition, in cases where formal recognition is provided by the competent federal, regional or regional government
- or institutions whose services and closely related supplies of goods are performed in accordance with the regulations in force for those institutions (decision no. ET 94.156 of 25.07.2005).

Such recognition can be shown, for example, by a decision by the government, the fact that the organization is awarded a subsidy ...

Services closely related to social work are aimed at providing services of general interest in the social sector to, inter alia, the needy, entitled to the services in question, based on social solidarity (Judgment of the Constitutional Court No. 56/2013 of 25.04.2013).

The following are exempted under Article 44, § 2, 2 ° of the VAT Code:

- the provision of language training in the social sector on the condition that these services are provided to specific target groups and within the framework of an explicit statutory regulation, insofar as that service is of course not already exempted under Article 44, § 2, 4 ° of the VAT - Code (see Section 11, Title 3, Section E, subsection a, below). These are, for example, language training provided by commercial companies to immigrants in connection with a compulsory integration course or jobseekers in the context of a retraining or retraining course imposed on them (decision no. ET 125.077 / 2 of 11.07.2014)
- the transport of persons with reduced mobility (sick, injured, disabled) (see also Article 44, § 2, 1 °, b) of the VAT Code - Section 7, above)
- the actions performed by youth houses in the context of their social purpose. The operation of a drinking establishment by a youth house does not hinder the application of this exemption insofar as certain conditions are cumulatively met (decision no. ET 128.632 of 05.11.2015)
- the actions taken by the local service centers in the context of their social purpose. The operation of a beverage or dining establishment by a local service center does not hinder the application of this exemption if the annual turnover realized under this scheme does not exceed 80,000 euros (decision no. ET 130.608 of 23.09.2016).

Article 44, § 2, 2 ° of the VAT Code explicitly mentions a number of social institutions that benefit from the exemption:

- the institutions that aim at elderly care
- childcare centers, infants' homes and institutions whose main objective is the supervision of young people and the care for their maintenance, upbringing and leisure activities
- the home help institutions
- the centers for life and family questions
- the health insurance funds and the national unions of health insurance funds
- the psycho- medical-social centers and the centers for student guidance
- the institutions that aim at care for the disabled

- the institutions whose object is the guidance, guidance or reception of persons experiencing material or moral difficulties

  the institutions referred to in the Royal Decree of 17.12.2003 on the subsidization of institutions that provide specialized support for citizens involved in legal proceedings
- the external services recognized by the Royal Decree of 27.03.1998 on external services for prevention and protection at work and the common internal services that meet the conditions of the Royal Decree of 27.10.2009 on the establishment of a common internal service for prevention and protection at work.

This list is not exhaustive.

A number of institutions are discussed in more detail below.

1. The institutions that aim at elderly care

The exemption with regard to institutions that have the object of care for the elderly is bound by its recognition by the competent authority. Since the granting of this recognition is based on the fulfillment of the conditions determined by the competent authority, which also include the social aspects of the care for the elderly provided by the institutions concerned, the private law institutions that aim at care for the elderly, provided that they recognized as such by the competent authority and apply prices approved by the Minister of Economic Affairs for the purposes of VAT, deemed to act under social conditions comparable to those applicable to public-law bodies.

Consequently, private-law bodies that meet the above conditions, regardless of the legal form in which they are established, are also exempt from tax under Article 44, § 2, 2 ° of the VAT Code.

It is also the case that the new tendencies emerging in care for the elderly strive to promote the integration of the elderly in the community. For this reason, care for the elderly will now not only be limited to the care of the elderly in rest homes, but a number of other options are now also available that the elderly can use, such as service apartment buildings or housing complexes with services and service centers.

The exemption of Article 44, § 2, 2 ° of the VAT Code applies to all services offered to residents (services to be provided or insured, optional services to be offered) and applicable only for the services provided to residents.

On the other hand, it does not apply to services provided to persons who do not reside in the service apartment buildings.

However, when these services are also provided to elderly people who do not reside in the service apartment buildings, they can benefit from the exemption from Article 44, § 2, 2 ° of the VAT Code on home help services. Can therefore benefit from the exemption, the provision of meals (in the refectory of the service apartment buildings or in the elderly at home), the washing of personal household linen of elderly people who do not stay in the service apartment buildings, and help in the household at home with elderly people who are not in the service apartment buildings.

In principle, only the already recognized homes could obtain the exemption. In view of the possible duration of the recognition procedure, the administration assumes that relevant institutions that have applied for recognition and fulfill the conditions to obtain them may provisionally invoke the exemption under Article 44, § 2, 2 ° of the VAT Code. . When a retirement home is recognized, the right to exemption becomes final (decision no. ET 9.271 of 27.03.1972).

However, if the exemption was claimed, but the recognition was ultimately refused or if the prices applied were not approved by the Minister of Economic Affairs, the exemption expires on the date of the decision to refuse the institution and the fees in principle, the transactions carried out by the institution are subject to tax. This also applies when, pursuant to a ministerial decision to close, a retirement home is deprived of the recognition it had obtained. However, in cases where there is fraud or any bad faith on the part of the applicant for the relevant recognition, the application of the aforementioned exemption from Article 44, § 2, 2 ° of the VAT Code will always lapse retroactively.

If, in exceptional cases, the institution concerned does not or no longer fulfills the aforementioned conditions, the exemption of Article 44, § 2, 2 ° of the VAT Code does not apply to it. The actions taken by the institution in question follow their own regulations both with regard to the applicable VAT rate and with regard to any applicable exemption (for example, medical benefits).

It is accepted that the operation of a beverage or dining establishment may also be exempt from tax, provided that such operation is incidental to the exempt acts carried out by an institution which has the object of care for the elderly and the following conditions are **cumulatively** met:

- the operation of the drinking or eating establishment is carried out by a taxpayer whose actions are envisaged in Article 44, § 2, 2 ° of the VAT Code (institutions whose object is elderly care)
- the beverage or dining establishment is operated on the site of the establishment where the exempt transactions as referred to in the first point above are carried out (hereinafter referred to as the establishment concerned)
- the exempt transactions envisaged in the first point form a major part of the transactions carried out by the establishment concerned. This implies that the total amount, per calendar year, of the exempt transactions referred to in that first point is greater than the total amount of the other transactions performed by that establishment, being both the taxed and other exempt transactions (including the drinking or eating establishment))
- in principle, the drinking or dining establishment is only accessible to persons who are also customers of the aforementioned exempt services (residents), their visitors, as well as to staff working in the establishment concerned. This condition is in any case met if the beverage or dining establishment is not accessible outside the opening hours of the establishment and is not directly accessible from the outside (in other words, one must first enter the aforementioned establishment before accessing the beverage - or eatery). However, the fulfillment of this condition can also be demonstrated by other factual elements.
- receipts from the operation of the beverage or eating establishment do not exceed 10% of the turnover of the exempt transactions referred to in the first point of the establishment concerned.

A one-off exceeding of this threshold by 10% - up to a maximum of 11% - of the turnover of the exempt transactions of the establishment concerned referred to in the first point per period of five consecutive calendar years is not taken into account for the application of this condition.

Neither the nature of the meals provided nor the fact that the establishment concerned also performs taxable activities are of interest from now on (decision no. ET 130.298 of 12.09.2016).

2. Childcare centers, infants' homes and institutions whose main objective is to supervise young people and to take care of their maintenance, upbringing and leisure activities

A. Childcare centers and infants' homes

In accordance with administrative decisions, this exemption extends to persons or institutions called "repositories", "orphanages" or "day care centers" which provide meals for children of less than 12 years of age for a fee, in principle throughout the year. or taken into custody and recognized by or acting under the control of either 'Child and Family' or ' l'Office de la Naissance et de l'Enfance ' or 'Dienst für Kind undFamily'. Persons who keep only children of family members of less than 12 years of age permanently with them, although recognition is not required in that case, may also benefit from the aforementioned exemption (decision no. ET 11.448 of 02.03.1973 , decision no. ET 29.067 of 15.02 1979 , Parliamentary Question No. 488 by Mr Yves Leterme , Member of Parliament of 24 October 2000).

In view of the possible duration of the recognition procedure, the administration assumes that relevant institutions that have applied for recognition and fulfill the conditions to obtain them may provisionally invoke the exemption under Article 44, § 2, 2 ° of the VAT Code. . Where the exemption has been claimed but the recognition has ultimately been refused, the exemption lapses on the date the refusal decision is notified to the institution and, in principle, the transactions performed by the institution are subject to tax from that date. However, in cases where there is fraud or any bad faith on the part of the applicant for the relevant recognition, the application of the aforementioned exemption of Article 44, § 2, 2 ° of the VAT Code lapses with retroactive effect.

The envisaged exemption applies both to the supply of goods and to the provision of services closely related to the exempt activity. Thus, the provision of meals and beverages to be consumed on site is exempt, the stay, care, monitoring as well as the provision of the nursing material (e.g. diapers) of the children during their stay in the infant home.

Persons or institutions that only take care of children during the holiday periods are not covered by the exemption, regardless of whether or not these children are under the age of twelve. Those persons or institutions could possibly benefit from the exemption provided for in Article 44, § 2, 2 ° of the VAT Code with regard to institutions recognized by the competent authority, which, by virtue of their articles of association, have the primary purpose of supervising about young people and the care for their maintenance, upbringing and leisure activities. However, for the application of the latter provision it is required that the institution receives subsidies from the government that has recognized them (decision no. ET 11.448 of 02.03.1973).

B. Youth institutions

Here are meant the institutions whose main purpose is to supervise young people and to take care of their maintenance, upbringing and leisure activities.

For the purposes of that provision, a youth institution shall only be considered as recognized for those activities which are taken into account by the competent authority for the calculation of the subsidies it distributes, as well as for the supplies of goods that the youth institution carries out in the framework itself of such exempt activities. Local branches of the youth movements who do not obtain their subsidies directly, but through their umbrella organization, are also exempt from VAT under this provision (written parliamentary question No. 277 by Mr MP Jef Van den Bergh of 08.01.2010).

Recognition can come from various competent government agencies and aims at, among other things, youth homes, youth clubs, youth hostels ... Youth hostels, youth shirts and holiday homes for youth are therefore exempt when they are affiliated with the Flemish Youth Hostel Center, the Centrale Wallonne des Auberges de la Jeunesse , the Center for Youth Tourism or the Center belge du tourisme des jeunes , and past those centers to receive subsidies from the competent authority.

In view of the possible duration of the recognition procedure, the administration assumes that relevant institutions that have applied for recognition and fulfill the conditions to obtain them may provisionally invoke the exemption under Article 44, § 2, 2 ° of the VAT Code. . If the exemption was claimed, but the recognition was ultimately refused, the exemption lapses on the date of the decision to refuse to serve the institution, and the information provided byin principle, the transactions carried out by the institution are subject to tax. However, in cases where there is fraud or any bad faith on the part of the applicant for the relevant recognition, the application of the aforementioned exemption of Article 44, § 2, 2 ° of the VAT Code lapses with retroactive effect.

The exemption of Article 44, § 2, 2 ° of the VAT Code applies not only to the services provided to children and adolescents during their stay in holiday centers, but also to the additional services provided to the parents of the children are provided on the occasion of their visit to the children (decision no. ET 1.599 of 02.12.1970).

The exemption also applies to the reception organizations for foreign students and trainees recognized by the Development Cooperation Office, depending on the Federal Public Service Foreign Affairs and Foreign Trade, for those activities that are eligible for the payment of subsidies (and for the supplies of goods closely related to it carried out in

the course of that work).

The exemption also applies to services provided by the institutions recognized by the Federal Public Service Justice in accordance with the Royal Decree of 29.04.1969 laying down the general conditions for recognition referred to in Article 66 of the Act of 08.04.1965 on youth protection (homes that provide shelter for young people who depend on the juvenile court). When the institution is recognized by the Federal Public Service Justice, the tax exemption applies to the services that the institution provides to all young people in iteven if a certain number of them are not under the supervision of the juvenile court. In view of the duration of the recognition procedure, the administration further assumes that the institutions that have applied for recognition and fulfill the conditions for obtaining it may provisionally invoke the exemption. However, this exemption may only be applied to the extent that the services are provided to minors who have already been placed in the institution concerned by the juvenile court under the law of 08.04.1965. When the exemption was rightly claimed, but recognition was ultimately refused,decision no. ET 4,773 of 10.10.1973).

3. The home help institutions

Home help should be understood to include both actual domestic help provided by third parties and assistance to the elderly and any other services provided by home help services.

Therefore, these include:

- the actual family help in the household performed by a third party (domestic help)
- the services called ' *babysitting* ' relating to the surveillance of children at home. The exemption applies not only to the benefits of the persons who provide the surveillance, but also to the benefits of the institutions which undertake to provide the services of those persons to the parents (decision No T. 4.240 of 30.07 1971)
- the services provided by convalescent homes specialized in the reception of persons after their stay in a hospital or recovering from an illness, who are recognized as such by the health insurance funds (decision no. ET 45.685 of 30.06.1988). These convalescent homes are distinguished from holiday homes by, among other things, the security of medical assistance, the regulation of admission requirements, the limitation of the length of stay and the total or partial intervention by the health insurance funds.
- the service rendered by non-profit organizations whose activities consist of assisting and guiding the elderly, singles and invalids in order to enable them to maintain a degree of independence, to lead a normal social life and to enable them to long as possible home to live . The services provided by this guidance (st) ers imposed on persons who request it, will include the provision of messages to guide them or transport them to the doctor or family, the home delivery of medicines available, for example, temporary immobility, and performing simple household tasks (dishes, hanging curtains, replacing lamps ...) (decision no. ET 84.569 of 07.10.1996)
- the performance of sign language interpreters, writing interpreters and oral interpreters assisting deaf or hearing impaired persons (decision No ET 127709 of 15.06.2015) (see Section 15, Title 1, Section B)
- the performance of social interpreters and social translators acting in Flanders on behalf of an STVD (Social Interpreting and Translation Service) and in Brussels and Wallonia within the framework of the services organized by SeTIS Bruxelles and SeTIS Wallon (Service de Traduction et d'Interprétariat and Social environment); these service providers assist non-Dutch speakers in performing administrative, legal and social acts in their contacts with schools, public services, hospitals or similar institutions (decision no. ET 126.978 of 27.11.2014)
- the services that are compensated by the issue of service checks intended by the law of 20.07.2001 (Belgian Official Gazette of 11.08.2001) promoting neighborhood services and jobs (decision no. ET 105.675 of 30.09.2003).

4. The psycho- medical-social centers and the centers for student guidance

In the Flemish Community, the pupil guidance centers referred to in Article 44, § 2, 2 °, second paragraph, sixth indent of the VAT Code are the pupil guidance authorities in both primary and secondary education (decree concerning the centers for student guidance from 01.12.1998). In the French Community, centers psycho-médico-sociaux offer such student counseling (the law of 01.04.1960 on PMS centers, the Royal Decree of 13.08.1962 regulating the PMS centers, the decree of 14.07.2006 on assignments , programs and activity reports from the PMS centers).

Such centers help students with learning and studying, school career guidance, mental and social problems and preventive health care. Parents, children, teachers and managements can contact a team of doctors, nurses, psychologists, educators and social workers free of charge.

In the German-speaking Community, the psycho- medical-social centers were merged in 2014 with other support services into a center for the healthy development of children and young people, called Kaleido DG (Special Decree of 20.01.2014 establishing a center for healthy development of children and young people, Decree of 31.03.2014 on the Center for the Healthy Development of Children and Young People) (Circular 2018 / C / 6 (No. ET 130.758), marginal 15).

5. The institutions whose object is the guidance, guidance or reception of persons who are experiencing material or moral difficulties

Article 44, § 2, 2 °, of the VAT Code exempts, inter alia, the institutions whose object is the guidance, guidance or reception of persons who are in material or moral difficulties. Persons who are eligible for this assistance include: homeless, drug addicts, alcoholics ...

Are also exempt from tax the services provided by lawyers who cooperate with 'the Mental Illness ', insofar as they have been appointed by the Justice of the Peace (decision no. ET 126.564 of 18.07.2014 , marginal 52 and 53) and the services of lawyers or , where appropriate, other persons (e.g. bailiffs) acting as:

- debt mediator : in its judgment No 56/2013, the Constitutional Court confirmed that collective debt settlement services as envisaged by Article 1675 of the Judicial Code are 'closely related to social work services' and that, when provided by lawyers, ministerial officials and judicial officers, including bailiffs, are performed by 'an organization recognized by the competent authority as a social institution'. The Court thus confirmed that the services provided by a lawyer or a bailiff in the context of the aforementioned collective debt settlement to both in Article 44, § 2, 2 °, of the conditions laid down in the VAT Code, and are therefore exempt from VAT. (Judgment of the Constitutional Court no. 56/2013 of 25.04.2013 , decision no. ET 126.564 of 18.07.2014, marginal 54 and circular 2018 / C / 30 (no. ET 133.130) of 07.03.2018)
- temporary administrator: Article 488 *bis* of the Civil Code, to provide the legislator protection to adult persons who have become totally or partially incapacitated because of their physical or mental health condition to manage their property. The aforementioned article provides for a procedure of representation or assistance for these persons by a provisional administrator for the management of their assets. The lawyers and bailiffs as provisional administrator services provided are exempt from VAT where they are appointed by a court under article 488 *bis* of the Civil Code (Circular 2018 / C / 30 (no. ET 133 130) of 03.07.2018 and decision no. ET 126.564 of 18.07.2014, marginal 33 and 34) .
- guardian or guardian *ad hoc* : insofar as the lawyer holds a judicial mandate and is appointed by a justice of the peace (circular AAFisc no. 47/2013 (no. ET 124.411) of 20.11.2013, marginal 31 to 35 , decision no. ET 126.564 of 18.07.2014, marginal 54).

6. Specialized guidance for citizens involved in legal proceedings

The institutions referred to in the Royal Decree of 17.12.2003 on the subsidization of institutions that provide specialized guidance for citizens involved in legal proceedings are exempted.

These are the institutions that have the task of contributing to the re- socialization and reintegration in the offender's society by giving him back his social sense of justice, rather than isolating and isolating him from his family, his working environment and his social environment. (decision no. ET 94.156 of 25.07.2005).

7. Services for prevention and protection at work

Are, inter alia, intended by the tenth indent of Article 44, § 2, 2 ° of the VAT Code, the external services recognized by the Royal Decree of 27.03.1998 on external services for prevention and protection at work, taken to implementation of the law of 04.08.1996 on the well-being of employees in the performance of their work (decision no. ET 94.156 of 25.07.2005).

The Joint Internal Services for Prevention and Protection at Work (GIDPBW), which have been set up via a separate entity (with or without legal personality), are also expressly mentioned in the non-exhaustive list in Article 44, § 2, 2 ° of the VAT Code. These were also previously intended for administrative interpretation. After all, instead of using the aforementioned external service, an employer or a group of employers, together with others, may be authorized to set up a GIDPBW through a separate entity. A GIDPBW must meet the conditions of the Royal Decree of 27.10.2009on the establishment of a common internal service for prevention and protection at work, pursuant to Article 38, § 1, of the aforementioned Law of 04.08.1996 (Circular 2017 / C / 48 (No ET 132.180) of 14.07.2017).

A GIDPBW set up through a separate entity and the aforementioned external service provide services of the same nature (risk management, medical supervision...) in the light of the law of 04.08.1996. Both play an important role in the safety, health and general well-being of the employee (for example, his well-being at work with regard to, among other things, psychosocial problems caused by work).

It is also possible for a taxpayer to establish an Internal Service for Prevention and Protection at Work within his company. It goes without saying that such an internal service carries out transactions which, in the absence of a contractual relationship, fall outside the scope of VAT.

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Section 10 - Services of sports establishments and establishments for physical education (Article 44, § 2, 3 ° of the VAT Code)

Article 44, § 2, 3 ° of the VAT Code exempts the services provided by operators of sports establishments and physical education establishments to persons who engage in physical development or sports, when those operators and establishments are non-profit institutions and use the revenue from the exempt activities only to cover their costs. This Article transposes Article 132 (1) (m) of Council Directive 2006/112 / EC of 28 November 2006 on the common system of value added tax.

The granting, against payment, of the right to access or use a sports establishment is a service described in the Code (Article 18, § 1, second paragraph, 12 °, of the VAT Code) . That service is therefore subject to tax.

However, the service is exempt from tax if the following three conditions are fulfilled together:

- the service must relate to the practice of the sport itself and be provided to persons who actively participate in sport
- the operator must be a non-profit-making institution
- the revenue from the operation should be used only to cover its costs.

Article 44, § 2, 3 ° of the VAT Code so mean all establishments where an activity which is carried by a nature that it promotes physical development, such as gyms, swimming pools, riding schools, sports fields, tennis courts, golf courses ...

Recently, the Court of Justice of the European Union has ruled in a bridge case on what should be understood by the concept of sport (Court of Justice of the European Union, Judgment The English Bridge Union, Case C-90/16, 26.10 .2017). Thus, the Court ruled that the term 'sport' within the meaning of Article 132 (1) (m) of Directive 2006/112 / EC refers to an activity characterized by a non-negligible physical component. Competition bridge does indeed require the use of logic, memory, strategy or lateral thinking and is an activity that benefits themental and physical health of those who regularly play match bridge. However, the fact that an activity promotes physical and mental health is not sufficient in itself to conclude that that activity is to be considered 'sport' within the meaning of Article 132 (1) (m) of Directive 2006/112 / EC . The fact that this activity is performed in a competition does not change this. Consequently, competition bridge, which is characterized by a negligible physical component, does not fall under the concept of 'sport' in this provision.

The administration previously accepted that the aforementioned exemption also applied to services provided by a non-profit association to its members in connection with the practice and promotion of chess.

In view of recent case law, the administration will adjust its position with effect from 01.01.2019 in the sense that only activities characterized by a non-negligible physical component fall within the concept of sport. As a result, chess, cards, gaming and other similar activities can no longer be exempt from VAT. However, the application of the exemption in the past will not be reversed (circular 2018 / C / 84 (no. ET 133.172) of 29.06.2018).

The exemption is limited to the services related to the practice of the sport itself, which are provided by operators to persons engaged in physical education or sport, including the provision of sports equipment or articles for that purpose. (decision no. ET 24.946 of 09.03.1978) or even a horse in a riding school .

Therefore, the exemption does not apply to the accommodation and maintenance of horses, which are entrusted by the owners to the operator of a driving school for monitoring and maintenance (decision No ET 100.722 of 22.10.2001). Nor does the exemption apply to services provided by a non-profit association which promote the promotion of dog sports and encourage the breeding and keeping of dogs (Decision No ET 33.044 of 23.03.1981 , Oral Parliamentary Question No 5.515 of the Mr. Willem-Frederik Schiltz from 13.07.2011).

'Operator of a sports establishment' means in particular any sports association that enables its members to practice a particular sport by providing equipment, providing management ..., regardless of whether or not that association has a fixed infrastructure. This is the case for a cycling tourist club, a walking club, and the like, which include an organization that directs, provides equipment..., to do cycling or walking in a group on the road (decision no. ET 29.112 of 28.03. 1980). For example, the exemption may also applyif, of course, the other conditions are met, at a water sports association that gives its members the opportunity to practice sailing or water skiing and ensures their training (for example, sailing lessons, certification courses). However, the exemption does not go so far as to cover mooring and infrastructure for motor yachts, including salvage (Parliamentary Question No 264 by Mr Volks Representative Koen Bultinck of 13.03.2000).

As regards the other services provided by the operators of those establishments (for example, the organization of sporting events for which they charge entrance fees, the granting of the right to access the establishment for a fee to persons other than those who participate in sport, or the provision of food and drinks for consumption on the spot), as a rule, no claim can be made to the exemption referred to in Article 44, § 2, 3 ° of the VAT Code.

However, it is accepted that the revenues obtained by the operator from the granting of the right of access to the establishment are not taxable as regards VAT, provided that it is a relatively small amount compared to the aggregate exempt revenues.

It is also accepted that the operation of a drink or eating establishment may be exempt from tax, provided that such operation is incidental to the exempt activities carried out by an operator of a sports establishment and the following conditions are **cumulatively** fulfilled:

- the drinking or eating establishment is operated by a taxpayer whose actions are envisaged in Article 44, § 2, 3 ° of the VAT Code (sports establishments and establishments for physical education)
- the beverage or dining establishment is operated on the site of the establishment where the exempt transactions as referred to in the first point above are carried out (hereinafter referred to as the establishment concerned)
- the exempt transactions envisaged in the first point form a major part of the transactions carried out by the establishment concerned. This implies that the total amount, per calendar year, of the exempt transactions referred to in that first point is greater than the total amount of the other transactions performed by that establishment, being both the taxed and other exempt transactions (including the drinking or eating establishment))
- in principle, the drinking or eating establishment is only accessible to persons who are also customers of the aforementioned exempt services (athletes), their visitors, as well as to staff working in the establishment concerned. This condition is in any case met if the beverage or dining establishment is not accessible outside the opening hours of the establishment and is not directly accessible from the outside (in other words, one must first enter the aforementioned establishment before accessing the beverage or eatery). However, the fulfillment of this condition can also be demonstrated by other factual elements.
- receipts from the operation of the beverage or eating establishment do not exceed 10% of the turnover of the exempt transactions referred to in the first point of the establishment concerned.

A one-off exceeding of this threshold by 10% - up to a maximum of 11% - of the turnover of the exempt transactions of the establishment concerned referred to in the first point per period of five consecutive calendar years is not taken into account for the application of this condition.

Neither the nature of the meals provided nor the fact that the establishment concerned also performs taxable activities are of interest from now on (decision no. ET 130.298 of 12.09.2016).

When the operation of the restaurant or café is licensed to a third party, the latter always has the status of taxable person with a right of deduction for that activity and must submit his activities to the tax. On the other hand, the administration accepts that the act granting the concession to that third party is not taxable if it does not carry out any other activity which is subject to tax.

Finally it gets onnoted that in the context of persons engaging in sport, services are also provided to legal persons and unincorporated associations, insofar as these services are closely linked to the practice of sport and are indispensable to their performance, they are provided by institutions non-profit and the actual recipients of these services are those who practice sports. In other words, services provided in the context of sports that are practiced in a group or in organizational structures set up by sports clubs are also eligible for the exemption referred to in Article 44, § 2, 3 ° of the VAT Code. (Court of Justice of the European Union, Canterbury Hockey Club, Case C-253/07, 16.10.2008, No. 31).

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Section 11 - Education (Article 44, § 2, 4 ° of the VAT Code)

1. History

Since 01.01.2014, the new article 44, § 2, 4 ° of the Code exempts:

(a) school or university education, including the education of children and young people, and vocational training or retraining, including the provision of closely related services and supplies of goods such as the provision of accommodation, food and drink and of the exempted education uses didactic material, by bodies governed by public law or by other organizations that are designated as bodies with similar purposes for this purpose, insofar as the aforementioned bodies do not systematically aim to make a profit and any profits are not distributed, but are used for the maintenance or improvement of the aforesaid services;

(b) lessons taught privately by teachers and relating to school or university education ' .

This exemption is the transposition into Belgian law of Articles 132 (1) (i) and (j) and 133 (1) (a) of Directive 2006/112 / EC.

This amended article 44, § 2, 4 °, of the VAT Code aims to respond to the comments that were included in the reasoned opinion of the European Commission of 17.02.1993 in which the Belgian State was notified of the limit the scope of the exemption in accordance with the provisions of the aforementioned Directive 2006/112 / EC. After all, at that time, any institution that provided education was considered to be an VAT exempt institution without any prior special authorization being made compulsory by or by the Minister of Finance.

The scope of this exemption was initially already limited , by letter No 25/1993 of 24.12.1993 , to legal persons governed by public law and non-profit-making bodies governed by private law which use revenue from the exempt activity only to cover the cost of that activity. On the other hand, trading companies or companies with commercial or even non-profit-making enterprises whose accounts would show a profit-making objective were excluded from the exemption.

However, the Council of State has annulled the aforementioned notification (Judgment of the Council of State No. 145.138, of 30.05.2005). The Council has ruled in law that the relevant notification could not introduce any additional restriction which was not included in the law (Article 44, § 2, 4 ° of the VAT Code) without violating Article 172, second paragraph, of the Constitution.

The new Article 44, § 2, 4 °, of the VAT Code aims at a better transposition of the Community provisions and aims to comply with the constitutional rules emphasized by the Council of State.

The scope of this exemption is set out and explained in circular AAFisc No. 50/2013 (No. ET 124.537) of 29.11.2013 .

2. Nature of the education provided

The education exemption should be interpreted restrictively and only covers the following three categories.

A. School and university education, including education for children and young people

In its traditional sense, the provision of education means the systematic transfer of knowledge to individuals or groups who collect this knowledge under the guidance of a teacher or teacher.

More generally intended by Article 44, § 2, 4 °, a) of the VAT Code, education that consists of giving lessons, as a rule during a period corresponding to a school or academic year, taking into account of a pedagogical program and the organization of exams with a view to the delivery of a document (diploma, certificate, certificate, certificate). These are in particular regulated education, including pre-primary, primary, secondary, university and university education, special education, adult education ... The education provided by a music academy, a dance academy and the like is also intended to be met the aforementioned conditions and the services provided in this context are not purely recreational (seeCourt of Justice of the European Union, Ingenieurbüro Eulitz GbR Thomas und Marion Eulitz v Finanzamt Dresden I, Case C-473/08, 28.01.2010 , marginal 29 and following and Court of Justice of the European Union, Judgment A & G Fahrschul-Akademie GmbH v Finanzamt Wolfenbüttel , Case C-449/17, from 14.03.2019, marginal 22).

Actions on tutoring and more general services, which consist in teaching students learning methods that enable them to learn in a sustainable manner the material taught to them by the aforementioned educational institutions in the context of these lessons.

Due to the evolution of teaching methods, the above applies irrespective of the way in which the education is provided and this insofar as it takes place under the actual supervision of a teacher or teacher. Thus, not only the traditional forms of education consisting of teaching are envisaged, but also distance learning, written education, study cycles and the like.

B. Professional training and retraining

For the purposes of Article 44, § 2, 4 °, a) of the VAT Code, vocational training and retraining is the instruction that directly aims at learning a profession or a profession, as well as the additional training provided in that context. , retraining or continuing education.

Taking into account the special nature of this vocational training and retraining, the administration therefore does not require that the said instruction be provided during a period corresponding to a school or academic year. Thus, the exemption on education can be applied irrespective of its duration and insofar as relevant training is provided during a period necessary to effectively learn a profession or acquire the training, retraining or retraining in question during its duration. .

For example, the teaching provided by professional associations - often called seminars in daily practice - the duration of which is necessary to acquire additional specialization or so-called 'updating' in connection with the profession already practiced is regarded as further training or continuing education even if the teaching is not available exclusively to persons already effectively engaged in the profession in connection with which the training or retraining is provided.

Regarding the fact that such training and retraining should no longer be accessible only to persons already effectively pursuing the profession in connection with which they are provided, the administration has requested the application of this new position only from 01.01.2015 since such vocational training and - retraining is usually offered per calendar year.

It goes without saying that vocational training and retraining services have always been subject to tax since 01.01.2014 when they are provided by a commercial or commercial company or by a non-profit-making company, the accounting of which, however, systematically provides a profit-making objective. and where the profit is actually distributed among the members (decision no. ET 126.591 of 25.07.2014).

The aforementioned courses are also regarded as additional training exempt from VAT:

- training the care staff of a rest home by a nurse specialized in the care of persons with a mental disorder who is affiliated with a psychiatric hospital
- the training provided by a Center for Mental Health Care, with its team specializing in aged care, to employees of a residential care center
- the training provided by a computer scientist from care institution A to the staff of care institution B on the use of the electronic patient file.

When care institution A and care institution B organize training for their staff together, the costs that are mutually charged in this context are also exempt from VAT on the basis of the aforementioned provision (circular AAFisc no. 36/2012 (no. ET123.129) from 27.11.2012 , marginal 28).

C. Lessons taught privately by teachers

Pursuant to Article 44, § 2, 4 °, b) of the VAT Code, lessons given privately by teachers and relating to school or university education are also exempt from tax.

In principle, it should concern lessons that relate to school and university education, but it follows from the case law of the Court of Justice of the European Union that the term 'lessons that relate to school or university education' also includes other activities. the aim is then to provide school and university education in the proper sense and this on condition that these activities mainly take place in the context of the transfer of knowledge and skills between a teacher or teacher and pupils or students and with regard to school or university education (Court of Justice of the European Union, Judgment Ingenieurbüro Eulitz GbR Thomas und Marion Eulitz v Finanzamt Dresden I, case C-473/08, 28.01.2010).

3. Scope of the exemption for educational performance envisaged by Article 44, § 2, 4 °, a) of the VAT Code

A. Intended institutions

The following services are eligible for exemption from Article 44, § 2, 4 °, a) of the VAT Code only by the relevant services provided by public sector bodies or by other organizations that are designated as bodies with similar purposes for this purpose. insofar as the aforementioned bodies do not systematically aim to make a profit and any profits are not distributed but are used for the maintenance or improvement of the teaching provided.

Consequently, this exemption applies only where school or university education, vocational training or retraining is provided by public sector entities or by non-profit-making bodies governed by private law which use revenue from the exempted activity only to cover the cost of that activity. efficacy.

In that regard , the Court of Justice of the European Union has ruled in law that in classifying an institution as 'non-profit making', all activities of that institution must be taken into account. Among other things, the statutory objective pursued by the institution must be taken into account. Once it has been established that the institutions concerned do not systematically seek to make a profit, this qualification is no longer influenced by whether or not profits are made regularly, insofar as any profit is not distributed among its members but is used for the maintenance or improving the teaching provided (Court of Justice of the European Union, Kennemer Golf & County JudgmentClub v Secretary of State for Finance, Case C-174/00, 21.03.2002).

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 Stef Goris of 12.06.2006).

Taking into account the foregoing, therefore, both commercial and non-profit companies and non-profit companies, the accounting of which would, however, systematically show a profit objective and divide the profit concerned among members, include the application of the exemption. excluded in the provisions of Article 44, § 2, 4 °, a) of the VAT Code. Therefore, the classes and training offered by a commercial or commercial company are generally excluded from the exemption irrespective of the name under which they are offered (eg seminars, follow-up...).

Finally, it follows from the provisions of the new Article 44, § 2, 4 °, a) of the VAT Code that the exemption only relates to acts performed by public sector bodies or by other organizations that, for this purpose, are bodies with similar purposes are considered '. The administration assumes that any organization that performs the aforementioned activities and does not systematically aim to make a profit and thus does not distribute any profits but uses them for the maintenance or improvement of the aforementioned acts, is regarded as a body with a similar purpose. . It should also be noted that the acts envisaged by the provisions of Article 132 of Directive 2006/112 / EC, the aforementioned,Court of Justice of the European Union, Judgment of the Regional Training Center North-Kennemerland / West-Friesland (Horizon College) v. State Secretary for Finance, Case C-434/05, 14.06.2007 , paragraph 14)

B. Services and supplies of goods closely related to education

In addition to the actual education, institutions whose educational performance is intended by the provisions of Article 44, § 2, 4 °, a) of the VAT Code also perform various other supplies of goods and services in the context of their regular activity. Relevant supplies and services range from the transportation of students to the provision of accommodation, food and drink to students and teaching staff. All those activities that are usually provided by educational institutions are also exempt from tax under Article 44, § 2, 4 °, a) of the aforementioned Code, insofar as they are closely related to exempt education.

These services and supplies of goods can only be regarded as 'closely related' to the relevant exempted educational achievements if they are actually provided as an ancillary benefit to that exempted education that constitutes the main achievement (see Court of Justice of the European Union, Judgment of the Regional Training Center North-Kennemerland Foundation. V West-Friesland (Horizon College) v State Secretary for Finance, Case C-434/05, 14.06.2007 , paragraph 28).

The provision of those services and the supply of goods must therefore not be an end in itself, but merely a means of ensuring that the principal performance, being the tax-exempted person pursuant to Article 44, § 2, 4 °, a) of the VAT Code. educational performance is carried out under optimal conditions, without losing sight of the fact that such activities may in principle only be performed by or between organizations whose activities are intended by the aforementioned article.

However, the administration assumes that such transactions are also exempt from tax if they are performed by one or more separate legal persons for budgetary or organizational reasons (for example, for the award of subsidies), and thus for other than purely fiscal reasons. which were set up exclusively for that purpose by an educational institution the benefits of which are exempt from tax in accordance with the aforementioned Article 44, § 2, 4 °, a).

The administration assumes that this is met when pupils, members of the teaching staff or members in charge of the day-to-day management of the educational educational institution concerned participate actively in the management of this entity. It goes without saying that such legal entities should not systematically aim to make a profit and not distribute their profits, but use them to maintain or improve their activities.

The situation envisaged here is thus, for example, that of a school or university that entrusts the management of the accommodation (student rooms, student rooms, etc.) of its pupils to such an entity that was set up for that purpose.

Under no circumstances may the transactions carried out by the aforementioned entities, which must of course be indispensable for the performance of the relevant exempted educational performance, be in direct competition with those of commercial undertakings whose transactions are subject to VAT.

The following transactions, which are performed by an institution whose educational performance is exempt from tax in accordance with the provisions of the aforementioned Article 44, § 2, 4 °, a), are in principle also exempt from tax:

- the sale to pupils and teachers of didactic material such as handbooks, books, brochures, manuals and the like insofar as these are directly related to the exempt education provided to them
- the sale of pupils' works if those works have been produced in accordance with the respective provisions of the Flemish Community Decree on Education of 13.07.2001 (BS 27.11.2001) and of the Royal Decree of 12.02.1976 laying down the conditions under which the objects or services produced by an educational institution can be alienated or rented (BS 08.04.1976) and with due observance of the provisions implementing the aforementioned decree and royal decree.

It follows that educational institutions whose educational performance is exempt from tax in accordance with Article 44, § 2, 4 °, a) of the VAT Code must, as a rule, confine themselves to the sale, in non-commercial circumstances, of the work of their students. More generally, the application of the aforementioned exemption should be refused for any trade exploitation by an educational institution, even if it uses the services of its students on an ancillary basis. Is meant for example a restaurant **business** is **operated** by a school for hoteliers and is open to the public.

For the sake of completeness, it is clarified that the Court of Justice of the European Union has ruled that the activities in which the students of an educational institution provide restaurant services in the context of their training and for a fee to third parties can be classified as 'closely related' to the exempt principal service, education, as well as being exempt from value added tax, **where these services are essential to their training and are not intended to provide additional income to this institution by providing services in direct competition with commercial enterprises subject to VAT** (see Court of Justice of the European Union, Commissioners for Her Majesty's Revenue & Customs v Brockenhurst College, Case C-699/15, 04.05.2017). The fact that these services are not intended to provide additional income to the educational institution by providing services in direct competition with commercial enterprises subject to VAT may be evidenced by the fact that the public consists only of people who have previously registered for the database of the educational institution, the training restaurant is only accessible after reservation and on condition that it is fully booked (otherwise reservations will be canceled), the price paid does not cover the cost of the meal...).

The administration also accepts that the acts performed by the so-called ' mini-companies ' or 'training companies', which are part of some schools of secondary education, which perform educational activities that, in accordance with Article 44, § 2, 4 °, a), exempt from the VAT Code, were established with the aim of familiarizing students with the concrete aspects of business (marketing, production, purchase, sales, financial transactions, planning, costing, accounting...) the tax is exempt if the following cumulative conditions are met:

- these mini-companies or training companies are simulations of a sole proprietorship or a company, which are set up by the students, possibly under the guidance of small and medium-sized organizations
- these mini-enterprises or apprenticeships undergo changes each school year with regard to both the composition and the nature of the activity, which is otherwise relatively limited and therefore does not give rise to any form of distortion of competition
- the objective is to provide students with practical training, under the supervision and supervision of the competent teachers, on the basis of theoretical knowledge.

In addition, some exempt institutions sometimes organize lectures that are directly or indirectly related to the teaching provided (opening session at the start of the new grade, lectures reserved for the parents of the students, pedagogical lectures...). The organization of such nominations, which are closely related to their exempt activity, do not change the status of a taxable person without the right to deduct those institutions.

In addition, reference is made to the provisions of Article 44, § 2, 12 °, of the VAT Code, according to which the supplies of goods and the services performed in connection with activities organized to obtain financial support are organized by organizations whose educational achievements in accordance with the aforementioned Article 44, § 2, 4 °, a), are exempt from tax, also exempt from tax, insofar as these activities are organized exclusively for the benefit of the organizations concerned and their pupils. This exemption therefore only applies to occasional transactions carried out in order to obtain financial support in respect of the aforementioned main exempt activity.circular 2017 / C / 23 (No. ET 131.306) of 19.04.2017 and Section 19).

In the present case, therefore, this concerns the revenue from the organization of a prom, prom, school theater, waffle and cake sales, etc., which are generally organized annually.

C. Bond of subordination

When physical persons who teach other than as wage-earning or wage-earning 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 subject matter to be taught, the timetable, the remuneration, the internal regulations, the administration accepts that the persons concerned do not act as self-employed persons in the sense of Article 4 of the aforementioned Code so that no taxable transaction takes place in their relationship. This applies irrespective of whether the physical person 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 aforementioned physical person, if acting in the circumstances referred to in Article 4 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.

D. Cases of non-tax liability

Teaching that is given outside normal school contexts in the context of popular development, such as adult development work, social and cultural education and development work for special target groups and problems, can generally not be regarded as teaching that is exempt from VAT.

The aforementioned social and cultural training work can be provided both in an association and in institutions which, if they are recognized for the purpose of education by the Minister competent for Culture, are subsidized by the government.

As the operating costs of these associations and institutions are, as a rule, covered by grants and, where applicable, by a small contribution paid by the participants, these associations and institutions do not act under the conditions of Article 2 of the VAT Code and they should therefore not be identified for VAT since they do not have the status of taxable person for the activity thus pursued.

E. Special points for attention

a. Language teaching

As of 01.01.2014 (decision no. ET 125.077 of 02.12.2013), language teaching services are generally only exempt from tax in accordance with the provisions of Article 44, § 2, 4 °, a) of the VAT Code if these are classified as school or university education, or as vocational training or retraining (see Section 11, Title 2, Sections A and B) and insofar as the organization offering such teaching does not systematically aim to make a profit and any profits are not distributed but are used to maintain or improve these services (see Section 11, Title 3, Section A).

Thus, the language teaching services are subject to tax, whether they are classified as school or university education or as vocational training or retraining when they are provided by a commercial or commercial undertaking or a non-profit undertaking. of which, however, the accounts show a systematic profit motive and the relevant profit is distributed among the members.

Before 01/09/2014, the institutions providing services for the purpose of language teaching were able to invoke the administrative tolerance under which the language teaching services were exempt from tax, irrespective of the legal form of the service provider. This tolerance applied to all acts performed by a taxable person who provided linguistic services, irrespective of the status of the customer.

In addition, Mr. Minister has decided that with regard to the provision of language education in the social sector, the exemption of Article 44, § 2, 2 ° of the VAT Code applies, provided that these services are provided to specific target groups and in the context of of an explicit statutory regulation, insofar as that service is of course not already exempted pursuant to Article 44, § 2, 4 ° of the VAT Code (see Section 9).

These are, for example, language training provided by commercial companies to immigrants in connection with a compulsory integration course or jobseekers in the context of a retraining or retraining course imposed on them (decision no. ET 125.077 / 2 of 11.07.2014) .

b. Sports education settings

The teaching provided, for example, by riding stables and more generally by institutions providing sports training, cannot, in general, be regarded as school education.

The services relating to sports education are only exempt from tax pursuant to Article 44, § 2, 4 °, a) of the VAT Code if they qualify as vocational training or retraining (see Section 11, Section 2, heading B) and insofar as this is not systematically aimed at making a profit and any profits are not distributed but are used for the maintenance or improvement of the aforementioned services (see Section 11, Title 3, section A).

However, if the relevant sports education services do not meet the aforementioned conditions, and are thus not considered as vocational training or retraining, the said services may qualify for the exemption provided for in Article 44, § 2, 3 °, of the VAT Code that applies to an operator of a physical education institution or a non-profit sports establishment and whose income from the exempt activity is used exclusively to cover its costs. This exemption applies both to the granting of the right of access to such an establishment and to the services provided by its operator, including those relating to the teaching of a sport, in so far as these services be provided to persons who come to participate in sports or physical development in the institution concerned.

c. Driving schools

The services provided by driving schools for the driving of motor vehicles for road traffic, which have been recognized for that purpose by the competent regional authorities, may include obtaining the driving license for vehicles of category C (trucks), vehicles of category D (buses) and vehicles of category G (agricultural vehicles) are classified as vocational training or retraining within the meaning of Article 44, § 2, 4 °, a) of the VAT Code (see Section 11, Title 2, section B) and are thus of the tax exempt insofar as these driving schools do not systematically aim to make a profit and any profits are not distributed but are used for the maintenance or improvement of the aforementioned services (see Section, Title 3, section A).

Therefore, the lessons and training provided by driving schools for driving motor vehicles for road traffic are excluded from the application of the aforementioned exemption insofar as they are provided by a trading company or company with commercial purposes or by a non-profit company but whose accounts, however, would appear to be a profit objective in a systematic manner, whereby the profit concerned is distributed among the members.

For the sake of completeness, it should also be noted that the Court of Justice of the European Union, in its judgment in case C-449/17, rightly stated that the term 'school or university education' within the meaning of Article 132 (1) (i)) and j), of Council Directive 2006/112 / EC of 28.11.2006, of which Article 44, § 2, 4 °, a) of the VAT Code does not generally relate to transposition into Belgian law driving instruction provided by a driving school such as that at issue in the main proceedings (Court of Justice of the European Union, Judgment A & G Fahrschul-Akademie GmbH v Finanzamt Wolfenbüttel , Case C-449/17, 14.03.2019).

d. Professional pilot training

Professional pilot training provided by a flying school recognized for that purpose by the Directorate-General for Aviation of the Federal Public Service Mobility is considered to be professional training or retraining within the meaning of Article 44, § 2, 4 °, a) of the VAT Code (see Section 11, Title 2, section B) and is thus exempt from tax insofar as the flying school does not systematically aim to make a profit and any profits are not distributed but are used for the maintenance or improvement of the aforementioned training (see Section, Title 3, Section A).

Therefore, the services provided by such a recognized flying school in the context of professional pilot training are always excluded from the application of the aforementioned exemption, and thus subject to tax, when they are provided by a commercial or commercial undertaking or undertaking by a not-for-profit company, but the accounts of which would, however, systematically show a profit motive and where the relevant profit would be distributed among the members.

4. Scope of the exemption for educational performance envisaged by Article 44, § 2, 4 °, b) of the VAT Code

A. Intended persons

For the exemption stipulated in Article 44, § 2, 4 °, b) of the VAT Code, only classes taught by teachers and relating to school or university education are eligible.

The term "teacher" should be interpreted in the sense that it has in colloquial language. It is thus the term 'teacher' understood someone to rule school education provides and transmits thus a way of knowledge to learners that they assimilate it may, they are also called teacher (es) lera (a) r (es) or teacher (e) (see Van Dale - Le Robert). In that regard , the Court of Justice of the European Union observes that the exemption under Article 132 (1) (j) of Directive 2006/112 / EC expressly refers to the profession of 'teacher' and, as such, to the private individual exercising that profession (Court of Justice of the European Union, Judgment J. Gregg and M. Gregg v Commissioners of Customs and Excise , Case C-216/97, 07.09.1999).

In view of the foregoing, the exemption of Article 44, § 2, 4 °, b) of the VAT Code only aims at the actions performed by a natural person and thus not the lessons given by a legal person (e.g. EBVBA , bvba, nv, vzw ...) (decision no. ET 125.405 of 18.02.2014).

B. Education provided privately

With regard to the scope of the term 'private individual' within the meaning of Article 44, § 2, 4 °, b) of the VAT Code, the Court of Justice of the European Union has ruled in law that the services intended by Article 132 (1) (j) of Directive 2006/112 / EC, aforementioned, of which Article 44, § 2, 4 °, b) of the aforementioned Code constitutes the transposition into Belgian law, these teachers are those for their own account and do it on your own responsibility.

Providing such performances under own responsibility means that the teacher bears the fee risk if the lessons or courses cannot continue due to circumstances. In addition, there is in principle a link between the actual content of these lessons or courses and the qualifications of the teacher.

In addition, the Court states that the wording of the aforementioned article does not preclude, in that regard, that these lessons are given to several persons at the same time, and that the condition that the lessons are given privately does not necessarily require the existence of a direct contractual relationship between those who the lessons are given and the teacher who gives them. It goes without saying that such a contractual relationship usually exists with persons other than those who are taught, such as the parents of the pupils or students (Court of Justice of the European Union, Werner Haderer v Finanzamt Wilmersdorf , case C-445/05, 14.06.2007 , points 28 et seq.).

By way of example, it applies that the services provided on a self-employed basis by repetitioners are exempt from tax only in accordance with the provisions of Article 44, § 2, 4 °, b) of the aforementioned Code if the following conditions are cumulatively met:

- the lessons given by the aforementioned repetitor must relate to school or university education (see Section 11, title 2, section A)
- the repetitor gives relevant lessons at his own expense and on his own responsibility and thus bears the fee risk if the lessons in question cannot be continued due to circumstances
- the repetitor should be regarded as a 'teacher' as defined above.

Therefore, the services provided by self-employed repeaters who do not meet the above conditions are always subject to value added tax.

The foregoing applies mutatis mutandis to self-employed tutoring services and, more generally, to those that provide students with learning methods that enable them to participate in the aforementioned school and familiarize yourself with the subject matter taught in university education in a sustainable manner.

5. Diverse topics

A. Subcontracting for educational services within the meaning of Article 44, § 2, 4 °, a) of the VAT Code

In the published decision no. ET 110.943 of 30.03.2006 , the administration took the position that the exemption of Article 44, § 2, 4 ° (old) of the VAT Code does not only apply to the relationship between the educational institution and the persons who receive education, but also in the relationship between the educational institution and the company or, more generally, all third parties that the former relies on to provide that education.

However, the scope of this decision is not compatible with the provisions of circular AAFisc No. 50/2013 (No. ET 124.537) of 29.11.2013 , as a result of which the aforementioned decision No. ET 110.943 in accordance with marginal 52 of this circular is effective as from of 01.01.2014 was discontinued.

The possible application of Article 44, § 2, 4 °, a) of the VAT Code in the relationship between an educational institution that provides exempt education and companies that it uses must always be assessed against the principles set out by the Court. of Justice of the European Union (see Court of Justice of the European Union, Judgment of the Regional Training Center North-Kennemerland / West-Friesland Foundation (Horizon College) v. State Secretary for Finance, Case C-434/05, 14.06.2007).

The concept of 'services and supplies of goods closely related to education' within the meaning of the aforementioned exemption has already been explained in detail above (see Section 11, Title 3, Section B and circular AAFisc No. 50/2013 (No. ET 124.537) of 29.11. 2013 , marginal 20 to 26). In the first place, it aims at the additional actions performed by the educational institutions themselves as an ancillary benefit to exempted education. Are also exempt from tax under certain conditions, the activities closely related to education that are performed by a third party, provided that the respective legal entity was set up exclusively for that purpose by an exempt educational institution (see circular AAFiscno. 50/2013 (No. ET124,537) dated 29.11.2013 , marginal 22).

In view of the above, it cannot in principle be excluded that the exemption of Article 44, § 2, 4 °, a) of the VAT Code may also apply in a particular case in the relationship between the educational institution and its subcontractor. However, this is a matter of fact that must be assessed on the basis of all the factual elements inherent in the situation in question.

B. Reduced rate of 6% for school construction

Pursuant to the provisions of the new section XL Table A of the Annex to Royal Decree 20 of 20.07.1970 determining the rates of value added tax and classifying the goods and services at those rates (BS 15.12 .2015), the following transactions are subject to the reduced VAT rate of 6% from 01.01.2016 :

'1 ° the supply of buildings intended for school or university education that are exempted under Article 44, § 2, 4 °, a) of the Code, as well as the establishments, transfers and re-transfers of real rights to such goods that are not exempt from tax in accordance with Article 44, § 3, 1 ° of the Code;

2 ° the supply of buildings intended for psycho- medical-social centers and centers for student guidance, which are exempted on the basis of Article 44, § 2, 2 °, second paragraph, sixth indent, of the Code, as well as establishments, transfers and re-transfers of real rights to such goods that are not exempt from tax in accordance with Article 44, § 3, 1 ° of the Code;

3 ° the work in immovable state within the meaning of Article 19, § 2, second paragraph, of the Code, excluding cleaning, and the other actions referred to in section XXXI, § 3, 3 ° to 6 °, with regard to to the buildings mentioned under 1 ° and 2 °;

4 ° the real estate financing lease or real estate lease referred to in Article 44, § 3, 2 °, b) of the Code, which relates to the buildings referred to in the provisions under 1 ° and 2 °. '

For a detailed explanation regarding the application of this reduced rate, reference is made to the published circular 2018 / C / 6 (no. ET 130.758) of 18.01.2018 as well as to 'Book II: Determination of the taxable basis and the applicable rate - Chapter VII: Tax rates, Section 4, Title 17 '.

C. School photos

In its published decision no. ET 128.163 of 02.09.2015, the administration explains the VAT treatment in respect of the numerous educational institutions, whose educational performance is exempt from tax in accordance with the provisions of Article 44, § 2, 4 °, a), of the VAT Code, which organize a photo session once a year in their premises to which they grant access to a photographer.

With this decision, previously published decision no. ET 110.941 of 27.03.2006 was completely canceled.

The agreement concluded between the photographer and that educational institution often provides favorable conditions for that institution such as receiving a percentage of the sales to the parents and, in certain cases, handing over photos to the management and staff.

On the other hand, it regularly appears from the facts that:

- the photographer puts the photos up for sale to the parents of the pupils through the intermediary of the educational institution
- the photographer determines the selling price to the parents
- even if the name of the photographer does not appear on the packaging bags, he acts at his own risk towards the parents as the educational institution does not undertake any obligation towards the parents or towards himself

- the class teacher is only limited to handing out the photos to the students, with indication of the rates specified by the photographer. When the student hands over either the amount of the purchased photos or the refused photos, a global settlement will be made to the photographer - with the allocation of the agreed discount. The difference is transferred to the photographer.

With regard to the applicable VAT regime and taking into account the special circumstances, the administration assumes that the nature of **the act performed by the educational institution can** , depending on the agreement and its implementation, take **three different qualifications** . However, the factual circumstances are decisive.

In any case, the photographer makes a supply of goods, the taxable amount of which depends on the exact nature of the act performed by the educational institution.

a. The educational institution is an ordinary buyer - seller

If it is clear from the facts that, with the application of a profit margin, the educational institution sells the photos in its own name and for its own account to the parents of the pupils and, in particular, bears the sales risk, it will supply goods in the context of an economic activity subject to VAT.

For the institutions envisaged by Article 44, § 2, 4 °, a) of the VAT Code, this act, which takes place in connection with the educational activity, can be regarded as purely occasional with the sole purpose of obtaining an exceptional financial support for the educational purpose of those non-profit institutions. In the absence of any promotional or advertising activities, these acts do not constitute a separate economic activity likely to distort competition. Consequently, those transactions are exempted in accordance with Article 44, § 2, 12 °, of the VAT Code (see also circular 2017 / C / 23 (no. ET 131.306) of 19.04.2017 and Section 19).

The photographer delivers the photos to the educational institution.

VAT is calculated at the normal VAT rate (currently 21%) on the price paid by that institution and not on the totality of the sums to be paid by the households (Article 26 of the VAT Code).

b. The educational institution acts as a commission agent

If it is clear from the facts that the educational institution acts as an active commercial intermediary, in particular as a paid custodian, it acts as a sales agent who acts in its own name but on behalf of the client, being the photographer. This implies that the following conditions have been met simultaneously:

- there is no direct legal relationship between the parents and the photographer for whose account the educational institution acts as commissioner
- there is a legal link between, on the one hand, the educational institution and the parents and, on the other, that institution and the photographer.

Pursuant to the legal fiction of Article 13, § 1 of the VAT Code, there are two successive deliveries of goods. With regard to VAT, this means that the educational institution is deemed to have sold the photos to the parents themselves and is also deemed to have bought those photos from the photographer.

In the relationship between the photographer and the educational institution, the commission is not included in the taxable amount (Article 29, § 1 of the VAT Code). The VAT is therefore calculated, applying the normal VAT rate (currently 21%), on the sales price of the photos paid by the school and not on the totality of the sums to be paid by the families.

The taxable amount in the relationship between the educational institution and the parents is determined in accordance with the normal VAT rules in Article 26 of the VAT Code. Consequently, VAT is in principle calculated on the price paid by the parents.

However, the supply of photos by the institutions intended in Article 44, § 2, 4 °, a) of the VAT Code is exempt from VAT when applying Article 44, § 2, 12 ° of that Code (see subsection a, above, circular 2017 / C / 23 (No. ET 131.306) of 19.04.2017 and Section 19).

c. The educational institution provides a global service to the photographer, including its agent

If the actual circumstances as intended under subsections a and b above are not met , it can be assumed that the school establishment provides a global service, which in particular consists of granting the right to take photos within its premises, its performance as agent (on behalf of and for the account of the photographer), the management of the photo sales and more specifically a work or order intended by Articles 18, § 1, second paragraph, 1 ° or 3 °, of the VAT Code. This service is provided, for consideration, in principle subject to VAT and is levied on the amounts withheld as compensation.

However, for the institutions referred to in Article 44, § 2, 4 °, a) of the VAT Code, this act is exempt from VAT when applying Article 44, § 2, 12 ° of that Code (see subsection a, above, circular 2017 / C / 23 (no. ET 131.306) of 19.04.2017 and Section 19)

The consideration for the delivery of the photos by the photographer to the parents consists of the part of the price paid by the educational institution as well as the amount that the photographer has donated to that institution (this amount represents the commission costs for the photographer which form part of the taxable amount in accordance with Article 26 of the VAT Code). This supply is subject to the normal VAT rate (currently 21%) and VAT is charged on the total price paid by the parents.

Taking into account the foregoing, the free delivery of photos by the photographer to the educational institution must be regarded as a supply of goods for consideration. This delivery is subject to the normal VAT rate (currently 21%). The taxable amount is calculated on the normal value of the photos, depending on the consumer price as determined by the photographer (Articles 32 and 33, § 3 of the VAT Code).

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Section 12 - Services regarding educational choice and family information (Article 44, § 2, 5 ° of the VAT Code)

Article 44, § 2, 5 °, of the VAT Code, exempts the education and family information services as well as the closely related supplies of goods from VAT.

This exemption may, inter alia, apply to services provided by:

- psychologists
- orthopedic educators
- dieticians
- speech therapists
- family mediators.

1. Psychologist

As regards educational choice, the exemption applies to the services normally provided by psychologists in the field of psychopedagogy , by analogy with the services provided by their colleagues in psycho- medical-social centers and centers for student counseling (centers which are otherwise exempt in accordance with Article 44, § 2, 2 ° of the VAT Code).

However, the concept of 'family information' requires clarification. Irrespective of the reasons why these psychologists are consulted and regardless of the method of consultation used, the services provided by psychologists can benefit from the exemption intended by the aforementioned Article 44, § 2, 5 °, insofar as these services pursue the same objectives as the centers for life and family questions in the field of psychological help, the acts of which are exempted by Article 44, § 2, 2 ° of the VAT Code (decision no. ET 114.414 of 16.04.2008).

Reasons for consulting a psychologist may include:

- personal difficulties (feeling bad, feeling anxious ...)
- the relationship between parents and children
- relationship problems
- family mediation.

Regarding the method of consultation used, it may concern individual conversations, conversations with the partner, family therapy, short therapies, systemic therapies ...

This position is in line with the principle of neutrality inherent in the common VAT system. This principle precludes operators who perform the same operations from being treated differently in the field of VAT. With this position, the administration expresses its will, in the current state of legislation, to comply with European case law that exempts all human health care, including psychotherapeutic treatments by qualified psychologists (Court of Justice of the European Union, Judgment Christoph- Dornier - Stiftung für Klinische Psychologie v Finanzamt Gießen , case C-45/01, van 06.11.2003).

It is also pointed out that in order to claim the exemption intended by the aforementioned Article 44, § 2, 5 °, psychologists must also have the required professional title and be registered on the list of the committee of psychologists (see the Law of 08.11.1993 protecting the title of psychologist).

On the other hand, the exemption of Article 44, § 2, 5 ° of the VAT Code does not apply to:

- acts related to work psychology and with regard to recruitment (evaluation, selection, integration ...), work performance, occupational diseases, work groups (rules, conflicts ...), personnel management (motivation, management ...), work integration and - re- integration ... (see, however, the services provided under the conditions required for the application of Article 44, § 2, 2 ° of the VAT Code)
- acts performed by marriage agencies.

With regard to the services provided by a psychotherapist, the following applies (circular AAFisc 2020 / C / 73 (no. ET137.384) of 26.05.2020).

Psychotherapy is a form of treatment in health care in which a coherent whole of psychological resources (interventions) is used in a consistent and systematic manner, which is rooted within a psychological scientific frame of reference and where interdisciplinary cooperation is required. Psychotherapy is therefore not considered a separate health care profession.

Who may exercise psychotherapy and under what conditions is regulated in the coordinated law of 10.05.2015 on the exercise of the health care professions (article 68/2/1 et seq.).

Psychotherapy may be carried out by doctors, recognized clinical psychologists and recognized clinical remedial educationalists. Both latter groups will only be exempted once they have received their recognition.

Furthermore, psychotherapy can also be practiced by three additional categories of persons with acquired.

It was decided that these persons with acquired rights could apply the exemption as soon as the implementing decrees have been issued on the basis of which the clinical psychologists and orthopedagogists can apply for recognition.

The conditions under which psychology, special education and psychotherapy can be practiced are stated in the coordinated law of 10.05.2015. However, these persons with acquired rights must **themselves provide proof** that they are allowed to perform such services under the regulations that apply to them (eg submission of certificates that they have followed a training / internship that allows them to provide psychotherapy services).

Since the implementing decisions establishing the criteria for the recognition of these professions were issued on 26.04.2019 and entered into force on 01.01.2020, **clinical psychologists** and **remedial educationalists** can now be recognized and the services they provide are exempt from VAT (as soon as the condition of recognition is of course met). From that date, the services relating to psychotherapy performed by **persons with acquired rights** can also be exempted.

P ersonen already practiced psychotherapy on 01/09/2016, but which do not qualify for an acquired right, the exemption can not enjoy because people in question are not deemed to meet the minimum quality requirements provided by the FPS.

It should be noted that when a doctor provides psychotherapy services, the exemption referred to in Article 44, § 1, 1 ° of the VAT Code applies.

2. Orthopedic educators

Practicing clinical orthopedagogics is understood to mean, in a scientific frame of reference for clinical orthopedagogics, the usual performance of autonomous activities that prevent, research and detect problems related to the upbringing, behavior, development or training of persons and the treatment or guidance of those persons.

The conditions under which orthopedagogy may be exercised are stated in the coordinated law of 10.05.2015 on the exercise of health care professions.

Pursuant to Article 68/2, § 2 of this Act, the Royal Decree of 26.04.2019 establishing the criteria for the recognition of clinical remedial educationalists, as well as traineeship supervisors and traineeship services, was issued. Since this Implementing Decree entered into force on 01.01.2020, clinical orthopedagogues can now be recognized and the services rendered by them are exempt from VAT (as soon as the condition for recognition by a clinical remedial educationalist is met) (decision no. ET 130.812 from 23.11.2016 ; circular AAFisc No. 2020 / C / 73 (No. ET137.384) from 26.05.2020). For completeness sake it on pointed out that the exemption does not apply to acts related to work psychology.

3. Dietitians

In accordance with Article 44 , § 1, 3 °, of the VAT Code, the services provided in the exercise of their regular activity by practitioners of a recognized and regulated paramedical profession in respect of their services of a paramedical nature are exempt from tax. in the nomenclature of medical benefits in respect of compulsory sickness and invalidity insurance.

On the basis of the foregoing, only the dietetic treatments provided by accredited dieticians of diabetics with diabetes pass and of diabetics and patients with renal insufficiency that are included in a care program, as well as the services provided by accredited dietician- diabetes educators for the education of diabetic patients, are exempt from VAT on the basis of of Article 44, § 1, 3 °, of the VAT Code. This exemption applies regardless of the number of treatments that are reimbursed by the NIHDI.

The Minister of Finance has decided that the dietary treatments not referred to above - whether or not prescribed by a doctor - that are provided by a recognized dietitian and that consist of providing individual information and advice in connection with slimming treatments or slimming programs are exempt from VAT if family information services within the meaning of Article 44, § 2, 5 °, of the VAT Code (oral parliamentary question No. 7.720 by Mr Representative Benoît Dispa of 12.01.2016).

The other dietetic treatments (such as, for example, advice in the event of malnutrition) provided by a recognized dietician fall under the aforementioned exemption.

This exemption applies from 01.01.2016 (decision no. ET 127.206 / 2 of 29.04.2016).

4. Speech therapists

In accordance with Article 44 , § 1, 3 °, of the VAT Code, the services provided in the exercise of their regular activity by practitioners of a recognized and regulated paramedical profession in respect of their services of a paramedical nature are exempt from tax. in the nomenclature of medical benefits in respect of compulsory sickness and invalidity insurance.

The intervention of the medical care insurance in benefits provided by recognized speech therapists is regulated by Article 36 of the Annex to the Royal Decree of 14.09.1984 establishing the nomenclature of medical benefits in respect of compulsory insurance for medical care and benefits. Only the services provided by recognized speech therapists that appear in this nomenclature are exempt from VAT in accordance with the provisions of Article 44, § 1, 3 ° of the VAT Code, regardless of the number of services that are reimbursed by the INAMI.

The Minister of Finance has decided that the speech therapy treatments not referred to above - whether or not prescribed by a doctor - that are provided by a recognized speech therapist and that consist of holding individual or collective sessions are exempt from value added tax as services of family information within the meaning of Article 44 , § 2, 5 ° of the VAT Code.

This exemption applies from 01.01.2016 and is limited to the aforementioned speech therapy (decision no. ET 130.538 of 20.07.2016).

5. Mediator in family matters

The activity of a family mediator consists of intervening in resolving family disputes, mainly, but not exclusively, in the context of a divorce or divorce. This activity includes, in particular, looking for the causes of the conflict, trying to reconcile the positions of the parties and reaching an amicable agreement between the parties (for example, regarding their future relationship, exercising their parental rights, the sharing of common property, and more generally with everything that could have been at the origin of the conflict), which could stimulate the conclusion, if necessary, of a more formal agreement between the parties.

Family mediators who meet certain conditions can be recognized (see Articles 1726 and 1727 of the Judicial Code). In that case, the mediation agreements containing the precise commitments of each party may be submitted to the competent court for approval.

Taking into account the foregoing, family mediation services, whether or not provided by recognized service providers, fall under family information and therefore enjoy the exemption provided for in Article 44, § 2, 5 ° of the VAT Code (decision no. ET 111,653 of 22/09/2006).

The services rendered by a lawyer as a recognized or non-recognized family mediator are exempt from VAT on the basis of this provision, insofar as he holds a judicial mandate and is appointed by a judge (circular AAFisc No. 47/2013 (No. ET 124.411) of 20.11.2013, marginal 36 and decision No. ET 126.564 of 18.07.2014, marginal 54).

The foregoing also applies to the services provided by a bailiff as a recognized or non-recognized family mediator (circular 2018 / C / 30 (no. ET 133.130) of 07.03.2018).

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

Section 13 - Rental of books and magazines, of music scores, gramophone records, magnetic tapes, slides and other such objects of a cultural nature, and the services of libraries and reading rooms (Article 44, § 2, 6 ° of the VAT Code)

Article 44, § 2, 6 ° of the VAT Code exempts' *the rental of books and magazines, music scores, gramophone records, magnetic tapes, slides and other such objects of a cultural nature, and the services provided to readers by libraries and reading rooms, where the service provider is a non-profit-making institution and uses the revenue from the exempt activities only to cover its costs and the supply of goods closely related to those transactions* . '

1. Rental of books and magazines, music scores, gramophone records, magnetic tapes, slides and other similar objects of a cultural nature

The transactions referred to here are those of rental as referred to in Article 18, § 1, second paragraph, 4 °, of the VAT Code.

However, the exemption of Article 44, § 2, 6 ° of the VAT Code only applies if the following conditions are met:

- the service provider must be a non-profit institution
- the revenue from that activity is used exclusively to cover operating costs.

Under the above-mentioned conditions, the exemption applies in the following cases:

- the rental of works of art (paintings, drawings, photos...) (decision no. ET 29.719 of 08.05.1979)

- the agreement whereby a score and libretto holder exclusively engages - for a fee - the enjoyment of those goods to another person (decision no. ET 21.601 of 04.12.1975)
- the cultural centers and cultural homes enjoy the exemption provided for in Article 44, § 2, 6 ° of the VAT Code for the rental of books, publications, plates and magnetic tapes, which they permit. These rules apply regardless of whether or not the aforementioned cultural centers or cultural homes are recognized by the competent ministries (decision no. ET 19.398 of 29.11.1974).

The exemption of Article 44, § 2, 6 ° of the VAT Code does not apply, among other things:

- when, on the other hand, a person grants to another person the right to perform a theatrical or other work in the audience, against payment of a fee. This action amounts to a transfer or a concession of an intellectual right. This is also the case when the transferor or the grantor makes material that is necessary for the performance to the concessionaire. This transfer or concession is not exempt from tax on the basis of Article 44, § 2, 6 ° of the VAT Code, nor on the basis of Article 44, § 3, 3 ° of the VAT Code that only the contract for expenditure (decision no. ET 21.601 of 04.12.1975).
- on the rental of television sets (Written Parliamentary Question No 114 by Mr Roland Gillet, Member of Parliament of 31 March 1971).

2. Libraries and reading rooms services

'Library' means the establishment whose main activity is to make books and other documents available to the reader, either in the establishment itself or through actual rental. It goes without saying that newspaper kiosks, including in stations, are not libraries.

Reading room means the place where books are rented.

The services provided to readers by libraries and reading rooms are exempt from tax when the service provider is a non-profit institution (see Title 3 below) and uses the revenue from the exempt work only to cover the costs of it.

Under the same provision, the supply of goods by the aforementioned libraries and reading rooms closely related to the exempt services is also exempt from tax.

Thus, sales by a library or reading room of books or periodical publications rented to readers are also exempt from tax.

3. Non-profit institution

A. Algemene principles

As indicated above, the transactions referred to in Article 44, § 2, 6 ° of the VAT Code are exempt from tax only if they are performed by non-profit-making institutions.

The notion of non-profit making institution was clarified by the Court of Justice of the European Union in its Kennemer Golf & Country Club, Case C-174/00, 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 as a whole is not profitable if it is not the object of making a profit for 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.

In addition, the Court has ruled that ' *the initial classification of the institution does not alter the fact that it subsequently has surpluses, even if it systematically pursues or realizes them, provided that these surpluses are not distributed among the members as profit* '.

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 amount to prohibiting these institutions from closing their financial year with a positive balance and preventing them from creating reserves which they can use to maintain or improve their exempt transactions (decision no. ET 129.288 of 19.01.2016 and decision No. ET104.780 of 27.11.2003).

Taking into account the foregoing and since the relevant legal provisions exclude the possibility of providing a material advantage to their members or founders, the institutions may take the form of a non-profit association, an international non-profit association, a public utility foundation and a public benefit foundation. private foundation *a priori* enjoy the exemption provided for in Article 44, § 2, 6 ° of the VAT Code. It goes without saying that this exemption cannot be applied if, in spite of everything, it appears that a material advantage is granted to the members or founders.

On the other hand, a cooperative society recognized as a social enterprise cannot, in principle, be regarded as a non-profit institution because, in accordance with Article 8: 5 of the Companies and Associations Code, it may distribute a limited capital advantage to its shareholders, even if the benefit granted may not exceed then the interest rate

determined by the King in implementation of the law of 20 July 1955 establishing a National Council for Cooperative Social Enterprise and Agricultural Enterprise, applied to the actual paid-up amount of the shares.

However, such a company is within the scope of the exemption referred to in Article 44, § 2, 6 ° of the VAT Code if all the other conditions are met and the shareholders waive each other in accordance with the Articles of Association.

capital advantage and thus of any distribution of profit to their advantage and this is also evident from the facts.

Moreover, the fact that an institution receives operating subsidies does not in itself affect the application of the aforementioned exemption.

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 Stef Goris of 12.06.2006).

When a non-profit institution, the revenues of which serve only to cover operating costs, accedes to a VAT unit, the conditions of non-profit-making must be fulfilled in respect of each of the members of the VAT unit as they are the application of VAT constitutes only one taxable person (see circular AOIF No. 42/2007 (No. ET 111.702) of 09.11.2007 and 'Bookwork VI: Specific topics - Chapter 16: Specific topics, Section 5: The VAT unit')

B. Autonomous municipal and provincial companies

With regard more specifically to autonomous municipal companies, it can be noted that according to the then Minister competent for the Modernization of Finance and the Fight against tax fraud attached to the Minister of Finance, the tax liability with the right to deduct input tax cannot be granted under the normal rules. are contested for autonomous municipal companies that have not taken the form of an nv or a bvba and that have an establishment as intended by Article 44, § 2, 3 ° of the VAT Code (*mutatis mutandis* also applicable to Article 44, § 2, 6 ° of the VAT Code), which the articles of association show that they have a profit motive and that they aim to distribute profit (oral parliamentary question No. 519 by Mr People's Representative Jan Peeters of 11 December 2007).

The Minister of Finance has further clarified in this regard that autonomous municipal companies that have not taken the form of a public limited company or an SPRL and that develop activities whose exemption depends on the lack of profit, fall outside the scope of the relevant exemption when their articles of association foresee that any profits will be distributed to members and that this will actually happen (written parliamentary question no 842 by Ms deputy representative Valérie Warzée-Caverenne of 02.04.2014).

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 investigating whether the statutory provisions are purely theoretical and, if necessary, decide that the aforementioned exemption still applies. .

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 should be taken into account (Written Parliamentary Question No. 481 by Mr People's Representative Benoît Dispa of 16.07.2015).

In that regard, given the close link between the autonomous municipal company and the municipality, the operating grants made available by the municipality to the autonomous municipal company 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. It is sufficient for it to be determinable (Court of Justice of the European Union, Office des produits wallons , Case C-184/00, 22.11.2001, paragraphs 11-13).

Finally, 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.

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 possible to compare purely 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.

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, no exceptional income is taken into account (eg income from real estate and financial transactions). The profit / loss position should be structural and independent of any incidental income or expense events.

The foregoing applies *mutatis mutandis* to autonomous provincial companies.

This issue is discussed in detail in 'Book I: Tax liability and taxable transactions - Chapter 1: The taxpayer, Section 6, title 3' and in decision no. ET 129.288 of 19.01.2016 , which is further explained by Mr. Minister in his answer to Oral Parliamentary Question No. 1,955 by Mr People's Representative Luk Van Biesen of 06.12.2017 .

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

Section 14 - Operation of museums, monuments, natural monuments, botanical gardens and zoos (Article 44, § 2, 7 ° of the VAT Code)

1. Scope

Article 44, § 2, 7 °, of the VAT Code exempts' *the related services and supplies of goods that are provided by the operator to visitors with regard to guided or non-guided visits to museums, monuments, natural monuments, botanical gardens and zoos, where that operator is a non-profit-making body and uses the revenue from the exempt activities only to cover its costs. "*

The fact that the institution operates the sites referred to in that provision for only one season, even for a limited duration, does not affect the application of the exemption in any way (decision No ET 104.825 of 09.04.2003).

The exploitation of museums, monuments, natural monuments, botanical gardens and zoos can give rise to all kinds of supplies and services described in the VAT Code:

- granting the right of access to the establishment (Article 18, § 1, second paragraph, 12 °, of the VAT Code)
- the organization of a sound and light show (Article 18 § 1, second paragraph, 12 °, of the VAT Code)
- providing food and drinks for consumption on the spot (Article 18, § 1, second paragraph, 11 °, of the VAT Code)
- the sale of brochures, books, slides, souvenirs ...

The services referred to in Article 44, § 2, 7 ° of the VAT Code and the closely related supplies of goods are exempt from tax if the following conditions are fulfilled together:

- the services and the closely related deliveries of goods must be provided to the visitor
- those services and the goods must be closely linked to the visit (1)
- the operator is a non-profit institution (see Title 3 below)
- the operator uses the revenue from the exempt activities only to cover its costs
- the cultural institution visited must be: a museum, a monument, a natural monument, a botanical garden or a zoo.

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(1) It should be noted that if the operator puts on a spectacle himself and asks the spectators for entrance fees, he then performs a service as referred to in the VAT Code, whereby he obtains the status of taxable person if he regularly performs that activity and Article 44, § 2, 9 °, or Article 44, § 2, 12 °, of the VAT Code does not apply.

For example, the grant by a museum of the right to reproduce works of art that it owns may be regarded as an act inherent in the exploitation of the museum (decision No ET 4.670 of 23.09.1971).

2. Operation of a drinking or eating establishment

The provision of food and drinks for consumption on the spot is a service referred to in Article 18, § 1, second paragraph, 11 °, of the VAT Code, which is subject to tax on the part of those who regulate it independently and independently, carried out for consideration in Belgium. It is irrelevant in this regard whether the operator of that drink or eatery acts for profit or not.

In principle, such exploitation is intrinsically foreign to the objectives envisaged by the provisions of Article 44, § 2, of the VAT Code.

Nevertheless, it is accepted by decision no. ET 130.298 of 12.09.2016 that the operation of a beverage or food establishment can also be exempted from the tax, provided that this operation is incidental to the exemptions carried out by operators of museums, monuments, natural monuments, botanical gardens and zoos. actions and the following conditions are cumulatively met:

- the drinking or eating establishment is operated by a taxable person whose actions are intended by Article 44, § 2, 7 ° of the VAT Code, in particular operators of museums, monuments, natural monuments, botanical gardens and / or zoos whose activities exempted under that provision
- the beverage or dining establishment is operated on the site of the establishment where the exempt transactions as referred to in the first bullet point are carried out (hereinafter referred to as the establishment concerned)
- the exempt transactions envisaged in the first bullet point form a major part of the transactions carried out by the establishment concerned. This implies that the total amount, per calendar year, of the exempt transactions envisaged in that first bullet point is greater than the total amount of the other transactions carried out by that establishment, being both the taxed and other exempt transactions (including the drinking or dining establishment))
- in principle, the drinking or eating establishment is only accessible to persons who are also customers of the aforementioned exempt services (for example visitors), as well as to the staff working in the establishment concerned. This condition is in any case met if the drinking or eating establishment is not accessible outside the opening hours of the establishment and is not directly accessible from the outside (in other words, one must first enter the aforementioned establishment before accessing the beverage or eatery). However, the fulfillment of this condition can also be demonstrated by other factual elements
- receipts from the operation of the beverage or eating establishment do not exceed 10% of the turnover of the exempt transactions of the establishment concerned envisaged in the first bullet.

A one-off crossing of this threshold by 10% - up to a maximum of 11% - of the turnover of the exempt transactions of the establishment concerned envisaged in the first bullet list for a period of five consecutive calendar years is not taken into account for the application of this condition.

Neither the nature of the meals provided, nor the fact that the establishment concerned also performs taxable activities are of interest from now on.

The foregoing does not, however, affect the provisions of Article 44, § 2, 12 °, of the VAT Code, under which VAT is exempted from the supply of goods and services, performed in connection with activities to obtain financial aid with regard to the acts referred to in Article 44, § 2, 1 °, a), 2 ° to 4 °, a), 6 °, 7 °, 9 ° and 11 ° of the VAT Code are organized by and exclusively for the benefit of those who perform these actions or for the benefit of a good cause. Nevertheless, it is noted that the provisions of Article 44, § 2, 12 °, of the VAT Code only aim at exceptional revenues from activities that may not constitute a commercial activity that could lead to competition. This includes the organization of an annual food festival, an annual cake sale….

This decision entered into force on 01.01.2017. It replaces the concession contained in the reply of the then Mr Minister of Finance to Written Parliamentary Question No. 1,094 by Mr MP Yves Leterme of 26.08.2002 .

If one of the aforementioned conditions is no longer met, the tolerance will lapse from the following calendar year.

If the exploitation of the beverage or eating establishment is conceded to a third party, this third party must subject his activities to VAT in accordance with the normal rules .

3. Non-profit institution

A. Algemene principles

As indicated above, the transactions referred to in Article 44, § 2, 7 ° of the VAT Code are exempt from tax only if they are performed by non-profit-making institutions.

The notion of non-profit making institution was clarified by the Court of Justice of the European Union in its Kennemer Golf & Country Club, Case C-174/00, 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 as a whole is not profitable if it is not the object of making a profit for 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.

In addition, the Court has ruled that ' *the initial classification of the institution does not alter the fact that it subsequently has surpluses, even if it systematically pursues or realizes them, provided that these surpluses are not distributed among the members as profit* '.

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 amount to prohibiting these institutions from closing their financial year with a positive balance and preventing them from creating reserves which they can use to maintain or improve their exempt transactions (decision no. ET 129.288 of 19.01.2016 and decision no. ET 104.780 of 27.11.2003).

Taking into account the above and since the relevant legal provisions

To exclude the possibility of providing a material advantage to their members or founders, institutions in the form of a non-profit association, an international non-profit association, a public utility foundation and a private foundation may benefit from the exemption provided for in Article 44 *a priori.* , § 2, 7 ° of the VAT Code. It goes without saying that this

exemption cannot be applied if, in spite of everything, it appears that a material advantage is granted to the members or founders.

On the other hand, a cooperative society recognized as a social enterprise cannot, in principle, be regarded as a non-profit institution because, in accordance with Article 8: 5 of the Companies and Associations Code, it may distribute a limited capital advantage to its shareholders, even if the benefit granted may not exceed then the interest rate determined by the King in implementation of the law of 20.07.1955 establishing a National Council for Cooperative, Social Entrepreneurship and Agricultural Enterprise, is applied to the actual paid-up amount of the shares.

However, such a company is within the scope of the exemption referred to in Article 44, § 2, 7 ° of the VAT Code if all the other conditions are met and the shareholders waive any capital advantage in accordance with the Articles of Association and thus of any distribution of profit to their advantage and this is also evident from the facts.

Moreover, the fact that an institution receives operating subsidies does not in itself affect the application of the aforementioned exemption.

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 Stef Goris of 12.06.2006).

When a non-profit institution, the revenues of which serve only to cover operating costs, accedes to a VAT unit, the conditions of non-profit-making must be fulfilled in respect of each of the members of the VAT unit as they are the application of VAT constitutes only one taxable person (see circular AOIF No. 42/2007 (No. ET 111.702) of 09.11.2007 and 'Bookwork VI: Specific topics - Chapter 16: Specific topics, Section 5: The VAT unit')

B. Autonomous municipal and provincial companies

With regard more specifically to autonomous municipal companies, it can be noted that, according to the then minister in charge of the Modernization of Finance and the Fight against tax fraud added to the Minister of Finance, the tax liability with the right to deduct input tax cannot be imposed under the normal rules. are contested for autonomous municipal companies that have not taken the form of an nv or a bvba and that have an establishment as intended by Article 44, § 2, 3 ° of the VAT Code (*mutatis mutandis* Article 44, § 2, 7 ° of the VAT Code), which, according to the articles of association, show that they have a profit motive and that their aim is to distribute profit (oral parliamentary question no. 519 by Mr Representative Jan Peeters of 11.12.2007).

Mr. Minister of Finance has further clarified that autonomous municipal companies that do not take the form of an nv or a bvba and that develop activities whose exemption depends on the lack of profit, fall outside the scope of the exemption concerned when their statutes provide that any profits will be distributed to members and that this will actually be done (Written Parliamentary Question No 842 by Ms deputy representative Valérie Warzée-Caverenne of 02.04.2014).

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. .

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 should be taken into account (Written Parliamentary Question No. 481 by Mr People's Representative Benoît Dispa of 16.07.2015).

In that regard, given the close link between the Autonomous Municipal Company and the municipality, the operating subsidies made available by the municipality to the Autonoom Gemeentebedrijf 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 Autonoom Gemeentebedrijf are included in the taxable amount of VAT and are therefore added to the revenue of the autonomous municipal company to determine whether the statutory provisions regarding 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. It is sufficient for it to be determinable (Court of Justice of the European Union, Office des produits wallons , Case C-184/00, 22.11.2001, paragraphs 11-13).

Finally, 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.

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 possible to compare purely 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.

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, no exceptional income is taken into account (eg income from real estate and financial transactions). The profit / loss position should be structural and independent of any incidental income or expense events.

The foregoing applies *mutatis mutandis* to autonomous provincial companies.

This issue is discussed in detail in 'Book I: Tax liability and taxable transactions - Chapter 1: The taxpayer, Section 6, title 3' and in decision no. ET 129.288 of 19.01.2016 , which is further explained by Mr. Minister in his answer to Oral Parliamentary Question No. 1,955 by Mr People's Representative Luk Van Biesen of 06.12.2017 .

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Section 15 - Services of lecturers, artists and professionals (Article 44, § 2, 8 ° of the VAT Code)

Article 44, § 2, 8 ° of the VAT Code exempts' *the services to organizers of nominations provided by nominators acting as such; the services to organizers of spectacles and concerts, to publishers of gramophone records and other sound recorders and to film and other image recorders provided by actors, orchestra leaders, musicians and other artists for the performance of plays, ballets, films, pieces of music, circus , variety or cabaret performances; the services to organizers of sports competitions or sports parties provided by participants in those competitions or parties. "*

The services of nominators, of artists in general and of professional sportsmen, are in principle referred to in Article 18, § 1, second paragraph, 1 °, of the VAT Code, when they are provided for remuneration and the service providers involved act independently.

The exemption referred to in Article 44, § 2, 8 ° of the VAT Code applies to nominees, performers and sportsmen regardless of the legal form under which they act. Therefore, the position of the Administration as set out in marginal 10 and 11 of Declaration No 13/1997 of 19.11.1997 was withdrawn (Decision No ET 108.828 of 30.09.2005 and Information and Communications No 13.04.06 / 1 of 13.04.2006). However, the then Minister of Finance decided not to demand the application of the aforementioned decision for the time being (Information and Communications No 18.07.2006 / 1 of 18.07.2006 ,Written question No. 518 by Ms deputy representative Veerle Wouters of 16.07.2013).

The persons whose services are exempt from tax under Article 44, § 2, 8 ° of the VAT Code, can be divided into three groups:

1. Lecturers

Article 44, § 2, 8 °, first part, of the VAT Code constitutes the conversion:

- of Article 371 (and Annex X, Part 9) of Directive 2006/112 / EC and
- in secondary order of Article 132 (1) (n) of Directive 2006/112 / EC, which allows Member States to exempt certain cultural services and supplies of goods closely related to those provided by public law cultural institutions or by other cultural institutions which recognized by the Member States concerned.

The term 'nominee' means anyone who speaks at a meeting or at a meeting about subjects that can teach the audience.

The services of nominees are only exempt if they are provided to organizers of nominations.

A number of specific cases are discussed in more detail below:

A. Guides

The exemption of Article 44, § 2, 8 °, of the VAT Code also applies to the acts performed by a person acting as a guide, when they are provided to an organizer of guided visits to places, museums, castles, churches, cities ... (decision no. ET 111.432 of 28.08.2006).

B. Simultaneous translation by interpreters in the context of a lecture

The VAT Code does not contain any specific exemption provision for interpreters. Article 44, § 2, 8 ° of the VAT Code exempts the services provided to organizers of nominations by nominators acting as such from VAT. If, as a result of these exempt services from nominators, interpreter services provide simultaneous translation to the organizers of the nominations, they are also exempt under the aforementioned article.

Court hearings, public or not, and judicial hearings, behind closed doors or not, do not fall within the scope of Article 44, § 2, 8 ° of the VAT Code. Thus, the exemption from VAT for the simultaneous translations performed by interpreters during these hearings and judicial hearings cannot be justified under this provision. This point of view applies *mutatis mutandis* to the simultaneous translation by interpreters of police interrogations (see also in this respect decision no. ET 114.552 of 06.05.2010) as well as to tap interpretation, which is the simultaneous translation of tapped telephone conversations.

For the same reason, the intervention of an interpreter at parliamentary or city council meetings cannot benefit from the exemption. Nor does the exemption apply, as was the case in the past, if an interpreter intervenes at conferences held by professional associations and at meetings of directors or shareholders of a company (decision no. ET 124.252 of 30.05.2013 and decision no. ET 124.252 / 2 of 29.07.2013).

Nevertheless, the services of interpreters enjoy the application of the exemption provided for in Article 44, § 2, 2 ° of the VAT Code when the circumstances in which they are performed show that they are, in fact, wholly of the nature of a home help service (see Section 9, Title 3).

For example, the interpretation services provided by **sign interpreters, writing interpreters and oral interpreters for the deaf or hard of hearing are** covered by the exemption for (auditory) care for the disabled within the meaning of Article 44, § 2, 2 ° of the VAT Code (see Section 9 , Title 3), regardless of who is the principal of the interpreter and under what circumstances these services are provided. Nor is it important for the application of this VAT exemption by whom the interpreter is paid, by the deaf or hearing impaired person or by a third party payer. It is of course necessary, but also self-evident, that these interpreting services are provided for the benefit of deaf or hard of hearing people.

Sign language interpreters, writing interpreters and oral interpreters should therefore no longer rely on the application of Article 44, § 2, 8 ° of the VAT Code for the VAT exemption of their interpreting services, and must therefore no longer comply with the conditions of application laid down in this statutory provision (see decision no. ET 127709, of 15.06.2015).

Consequently, the aforementioned decision no. ET 124.252 of 30.05.2013 as from 01.07.2015 no longer relates to the service performance of sign language interpreters, writing interpreters and oral interpreters, since such services are intended by Article 44, § 2, 2 ° of the VAT Code subject to compliance with the conditions of application specified in decision no. ET 127709, of 15.06.2015 .

C. Organization of conferences by certain institutions

In this regard , reference is made to Section 11, Title 3, Section B and Section 16.

2. Artists

Article 44, § 2, 8 °, second part, of the VAT Code constitutes the transposition:

- of Article 371 (and Annex X, Part 9) of Directive 2006/112 / EC and
- in secondary order of Article 132 (1) (n) of Directive 2006/112 / EC, which allows Member States to exempt certain cultural services and supplies of goods closely related to those provided by public law cultural institutions or by other cultural institutions which recognized by the Member States concerned.

The term artists includes actors, orchestral conductors, musicians and other artists for the performance of plays, ballets, films, pieces of music, circus, variety or cabaret performances.

The services of these persons are exempt from tax only when they are provided to organizers of spectacles and concerts, to publishers of gramophone records and other sound recorders and to film and other image recorders. By maker of films should be understood the 'producer', this is, in general, the person who is responsible for the creation of films at the highest level and who is in charge (decision no. ET 24.762 of 08.11.1977) .

Only the performance of performers, that is to say, of persons who actually participate in the performance of drama, musical or choreographic works or circus or musical performances, is exempt from tax. Performer is therefore understood to mean the actor, the orchestra leader, the musician, the singer, the dancer, the extra, the comedian, the variety artist, the circus artist, the presenter and any other person who appears in a role or song of a stage work, a ballet, a film, a relaxation program..., will take place (see note no. 13/1997 of 19.11.1997).

However, for the purposes of this exemption, the following cannot be considered a performing artist, including: decorator, prop, makeup artist, hairdresser, costume designer, wig maker, stage operator, prompter, cameraman, script girl, sound engineer , the sonorizer , the film mechanic, the production manager, the recording manager and the employees of those persons. The same applies to the impresario's and the persons who give their voice in the realization of advertisements for radio and television.

A number of specific cases are discussed in more detail below:

A. Stage managers

However, because of their actual participation in the preparation, finishing and performance of plays or films, directors are considered to be performing artists. In this respect, a film director is defined as the person who, on the instructions of a film producer, performs acts that are exclusively under the direction, such as giving guidelines to actors and the film-technical adaptation of the data (decision no. ET 24.762 of 08.11.1977). This also applies to the assistant of the film director if, through direct cooperation, in the same capacity as the film director, he actively participates in the preparation, development and execution of a cinematographic work (decision no. ET 11.072 of 14.02.1973).

B. Modeshows

The services provided by fashion models on the occasion of fashion shows as well as the performance of speakers at fashion shows are exempt from tax pursuant to Article 44, § 2, 8 ° of the Code (see decision no T. 1.968 / 2 of 28.10.1970 and decision No. ET 4,664 of 17.05.1971).

C. Disc jockey

Likewise, a DJ or ' *disc jockey'* who programs recorded music mixes (regardless of whether the organizer has a say in putting together the *playlist)*), presents and performs on the occasion of a dance evening, party... and where he possibly provides the necessary mood with short readings, quips..., to be regarded as a performing artist for the application of Article 44, § 2, 8 ° of the VAT Code, even when he provides these services for a private person who organizes a private dance evening. The activities of the 'disc jockey', on the other hand, are taxable if he himself acts as organizer of dance or relaxation evenings or if he is limited to renting equipment, without performing himself or participating in the performance of the music (decision no. ET 17.124 of 25.01.1974). However, the delivery of a carrier such as, for example, a CD or a disc with recordings of the disc jockey is always subject to the tax.

D. Performing artist performance and granting rights to the spectacle idea designed by him

It happens that a performing artist enters into an agreement with a spectacle organizer whereby the former undertakes, for a single price, to perform the performances of a performing artist for a particular spectacle and also to grant rights to the idea of this spectacle designed by him.

In that case, the Administration does not contest the interpretation of the parties according to which that agreement as a whole is to be considered as an agreement the object of which is the performance of performers' services (decision No ET 25.031 of 22.01.1977).

E. Performer services to radio and television stations or to production companies

The services provided by performing artists to radio and television stations or to production companies enjoy the exemption referred to in Article 44, § 2, 8 ° of the VAT Code, regardless of whether the programs realized by the radio and television stations or production companies in which the performing performers are open to the public.

Incidentally, in many cases the realizations are recorded and multiplied on image and sound carriers, so that the radio and television stations or production companies can also be regarded as publishers of gramophone records and other sound carriers or as makers of films and other image carriers (decision no. ET 106,882 of 28.06.2004).

F. Social office for artists

In principle, a social agency for artists acting in the capacity of a temporary employment agency, and thus as an employer of performing artists, provides its customers with a service for the provision of personnel within the meaning of Article 18, § 1, second paragraph, 2 °, of the VAT Code that is subject to the standard rate.

However, the administration accepts the interpretation of the parties as if it were a building contract as referred to in Article 18, § 1, second paragraph, 1 °, of the VAT Code. In that case, no VAT is due if the contract of work contract relates to transactions that are exempt from VAT in application of Article 44, § 2, 8 ° of the VAT Code.

If the exemption does not apply (*in the present case,* if a legal person relies on the transitional arrangement to tax his services), the costs listed in section XXIX of table A of the annex to the royal decree of 20.07.1970 establishing the rates of value added tax and to classify the goods and services at those rates , however, the intended services are to benefit from the reduced VAT rate of 6% (written question no. 518 by Ms deputy representative Veerle Wouters of 16/07/2013).

3. Professionals

Professionals are individuals who participate in sports competitions or perform at sports parties.

The services of those persons are only exempted by application of Article 44, § 2, 8 °, third part, of the VAT Code, if they are provided to organizers of sports competitions or sports parties.

For example, the services provided by a professional tennis player to the organizers of sports competitions or sports parties are exempt (decision no. ET 6.822 of 08.07.1971).

When sports practitioners undertake to advertise to that taxable person, in return for the supply, a taxable person supplying their sportswear, sports equipment or other objects, such sportsmembers, as a taxable person, must submit the provision of advertising services to the tax, except where these services are provided by sportsmen and women who are referred to in Article 44, § 2, 8 ° of the VAT Code, in which case those services are exempt from tax under the latter provision. Where the aforesaid sports goods bear the name, trade name or logo of the taxable person concerned in one form or another, the administration assumes that the athletes have a (tacit) commitment to advertise the

aforementioned taxpayer. However, for practical reasons, the administration accepts that the sportsmen and women not referred to in Article 44, § 2, 8 ° of the VAT Code are not registered as taxable persons, if they only have to identify themselves for VAT for the reason of the provision of the advertising services in question. -purposes (decision no. ET 23.594 of 26.04.1977 and decision no. ET 62.466 of 19.10.1988).

4. Note regarding Titles 1 to 3 above

Attention is drawn once again to the fact that the services referred to in Article 44, § 2, 8 ° of the VAT Code are not exempt from VAT if the nominators, performers and professional sportsmen do not provide them to organizers but directly to the audience or spectators provide. In that case, the VAT is therefore due, unless the service as such would be exempted in application of Article 44, § 2, 9 ° of the VAT Code (see Section 16, below).

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

Section 16 - Organization of various performances (Article 44, § 2, 9 ° of the VAT Code).

1. Scope

Article 44, § 2, 9 ° of the VAT Code exempts' *the organization of stage, ballet or film screenings, of exhibitions, concerts or conferences, as well as the supply of goods closely associated with these services by institutions recognized by the competent authority, provided that the income which they derive from their activity is used exclusively to cover the costs thereof* . "

The organization of stage, ballet or film screenings, and of exhibitions, concerts and conferences, is exempt from tax, provided that:

that the organization is based on institutions recognized by the competent authority. Public authorities that are (regionally) competent for culture are considered as competent authorities. Only for this exemption is it assumed that an institution subsidized by the competent authority is considered to be recognized by the latter (Written Parliamentary Question No 1.314 by Mr People's Representative François Dufour of 09.04.1998 , Written Parliamentary Question No 1.093 by Mr Representative Yves Leterme of 26.08.2002 and Written Parliamentary Question No. 3-1.249 by Ms Senator Clotilde Nyssens of 28.07.2004).

- that the revenue from the activity serves only to cover the costs of the organization, which implies that it is a non-profit institution.

The term 'organization' within the meaning of Article 44, § 2, 9 ° of the VAT Code refers to both the organizer of the cultural services referred to (in particular the organizer who grants the right of access and who collects the income). to the institution that ensures the performance of the said services.

According to Article 44, § 2, 9 ° of the VAT Code, the cultural services referred to therein are therefore exempt (the organization *stricto sensu* , as well as the performance of stage, ballet or film performances, of exhibitions, concerts and conferences) which are carried out by institutions recognized by the competent authority and which use the income they derive from this activity solely to cover their costs, regardless of where the production is shown (the institution's own room or elsewhere) and regardless of whether the institution acts as an organizer towards the public or provides services for an organizer.

A. Ongoing recognition procedure

If the association or organization has not yet been recognized by the competent authority, it is assumed that, in view of the duration of the recognition procedure, the associations or organizations that fulfill the conditions to be recognized may, for the time being, invoke the exemption from VAT from the submission of their application for recognition. VAT exemption becomes definitive when recognition is granted.

If, on the other hand, recognition is refused, the exemption lapses on the date on which the decision to refuse was served on the persons concerned. The same applies in case of withdrawal of an originally authorized approval (decision no. ET 19.398 of 29.11.1974).

B. Provision of programs

The provision of programs concerning an exempted presentation is also exempt from VAT as a closely related act with the exempted service (decision no. T. 2.026 of 28.04.1971).

C. Traveling events

The fact that it concerns traveling events does not prevent the application of the exemption to the institution (decision ET 104.825 of 09.04.2003).

2. Operation of a drinking or eating establishment

The provision of food and drinks for consumption on the spot is a service referred to in Article 18, § 1, second paragraph, 11 °, of the VAT Code, which is subject to tax on the part of those who regulate it independently and independently, carried out for consideration in Belgium. It is irrelevant in this regard whether the operator of that drink or eatery acts for profit or not.

In principle, such exploitation is intrinsically foreign to the objectives envisaged by the provisions of Article 44, § 2, of the VAT Code.

Nevertheless, it is accepted by decision no. ET 130.298 of 12.09.2016 that the operation of a beverage or food establishment can also be exempt from tax, provided that this operation is incidental to the organizers of theater, ballet or film shows, exhibitions, concerts Whether conferences performed exempt acts and the following conditions are cumulatively met:

- the pub or restaurant is operated by a taxable person whose actions are exempted by Article 44, § 2, 9 ° of the VAT Code, in particular organizers of stage, ballet or film screenings, exhibitions, concerts or conferences of which the activities are exempted under that provision
- the beverage or dining establishment is operated on the site of the establishment where the exempt transactions as referred to in the first bullet point are carried out (hereinafter referred to as the establishment concerned)
- the exempt transactions envisaged in the first bullet point form a major part of the transactions carried out by the establishment concerned. This implies that the total amount, per calendar year, of the exempt transactions envisaged in that first bullet point is greater than the total amount of the other transactions carried out by that establishment, being both the taxed and other exempt transactions (including the drinking or dining establishment))
- in principle, the drinking or dining establishment is only accessible to persons who are also customers of the aforementioned exempt services (for example, spectators ...), as well as to the staff working in the establishment concerned. This condition is in any case met if the drinking or eating establishment is not accessible outside the opening hours of the establishment and is not directly accessible from the outside (in other words, one must first enter the aforementioned establishment before accessing the beverage or eatery). However, the fulfillment of this condition can also be demonstrated by other factual elements
- receipts from the operation of the beverage or eating establishment do not exceed 10% of the turnover of the exempt transactions of the establishment concerned envisaged in the first bullet.

A one-off crossing of this threshold by 10% - up to a maximum of 11% - of the turnover of the exempt transactions of the establishment concerned envisaged in the first bullet list for a period of five consecutive calendar years is not taken into account for the application of this condition.

Neither the nature of the meals provided, nor the fact that the establishment concerned also performs taxable activities are of interest from now on.

The foregoing does not, however, affect the provisions of Article 44, § 2, 12 °, of the VAT Code, under which VAT is exempted from the supply of goods and services, performed in connection with activities to obtain financial aid with regard to the acts referred to in Article 44, § 2, 1 °, a), 2 ° to 4 °, a), 6 °, 7 °, 9 ° and 11 ° of the VAT Code are organized by and exclusively for the benefit of those who perform these actions or for the benefit of a good cause. Nevertheless, it is noted that the provisions of Article 44, § 2, 12 °, of the VAT Code only aim at exceptional revenues from activities that may not constitute a commercial activity that could lead to competition. This includes the organization of an annual food festival, an annual cake sale….

This decision entered into force on 01.01.2017. It replaces the concession contained in the reply of the then Mr Minister of Finance to Written Parliamentary Question No. 1,094 by Mr MP Yves Leterme of 26.08.2002 .

If one of the aforementioned conditions is no longer met, the tolerance will lapse from the following calendar year.

If the operation of the cafeteria is conceded to a third party, this third party must subject his activities to VAT in accordance with normal rules .

3. Non-profit institution

A. Algemene principles

The transactions referred to in Article 44, § 2, 9 ° of the VAT Code are exempt from tax only if they are performed by non-profit-making institutions.

The notion of non-profit making institution was clarified by the Court of Justice of the European Union in its Kennemer Golf & Country Club, Case C-174/00, 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 as a whole is not profitable if it is not the object of making a profit for 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.

In addition, the Court has ruled that ' *the initial classification of the institution does not alter the fact that it subsequently has surpluses, even if it systematically pursues or realizes them, provided that these surpluses are not distributed among the members as profit* '.

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 amount to prohibiting institutions from closing their financial year with a positive balance and preventing them from creating reserves that they can use to maintain or improve their exempt transactions (decision no. ET 129.288 of 19.01 . 2016 and decision no. ET 104.780 of 27.11.2003).

Taking into account the above and since the relevant legal provisions

To exclude the possibility of providing a material advantage to their members or founders, the

institutions in the form of a non-profit association, an international association

non -profit, a public utility foundation and a private foundation *a priori* enjoy the exemption provided for in Article 44, § 2, 9 ° of the VAT Code. It goes without saying that this exemption cannot be applied if, in spite of everything, it appears that a material advantage is granted to the members or founders.

On the other hand, a cooperative society recognized as a social enterprise cannot, in principle, be considered as a non-profit institution because, in accordance with Article 8: 5 of the Code of

companies and associations may pay a limited capital advantage to its shareholders, even if this advantage granted may not exceed the interest rate determined by the King in implementation of the law of 20.07.1955 establishing a National Council for the Cooperative, Social Entrepreneurship and the Agricultural Company, applied to the actual paid-up amount of the shares.

However, such a company is within the scope of the exemption referred to in Article 44, § 2, 9 ° of the VAT Code if all the other conditions are met and the shareholders waive any capital advantage in accordance with the Articles of Association and thus of any distribution of profit to their advantage and this is also evident from the facts.

Moreover, the fact that an institution receives operating subsidies does not in itself affect the application of the aforementioned exemption.

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 Stef Goris of 12.06.2006).

When a non-profit institution, the revenues of which serve only to cover operating costs, accedes to a VAT unit, the conditions of non-profit-making must be fulfilled in respect of each of the members of the VAT unit as they are the application of VAT constitutes only one taxable person (see circular AOIF No. 42/2007 (No. ET 111.702) of 09.11.2007 and 'Bookwork VI: Specific topics - Chapter 16: Specific topics, Section 5: The VAT unit').

B. Autonomous municipal and provincial companies

With regard more specifically to autonomous municipal companies, it can be noted that according to the then Minister competent for the Modernization of Finance and the Fight against tax fraud attached to the Minister of Finance, the tax liability with the right to deduct input tax cannot be granted under the normal rules. are contested for autonomous municipal companies that have not taken the form of an nv or a bvba and that have an establishment as intended by Article 44, § 2, 3 ° of the VAT Code (*mutatis mutandis* also applicable to Article 44, § 2, 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 People's Representative Jan Peeters of 11 December 2007).

Mr. Minister of Finance has further clarified that Autonomous Municipal Companies that do not take the form of an SA or an SPRL and that develop activities whose exemption depends on the lack of profit, fall outside the scope of the relevant exemption when their articles of association provide that any profits will be distributed to members and that this will actually be done (Written Parliamentary Question No 842 by Ms deputy representative Valérie Warzée-Caverenne of 02.04.2014).

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. .

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 should be taken into account (Written Parliamentary Question No. 481 by Mr People's Representative Benoît Dispa of 16.07.2015).

In that regard, given the close link between the Autonomous Municipal Company and the municipality, the operating subsidies made available by the municipality to the Autonoom Gemeentebedrijf 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 Autonoom Gemeentebedrijf are included in the taxable amount of VAT and are therefore added to the revenue of the autonomous municipal company to determine whether the statutory provisions regarding 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. It is sufficient for it to be determinable (Court of Justice of the European Union, Office des produits wallons , Case C-184/00, 22.11.2001, paragraphs 11-13).

Finally, 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.

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 possible to compare purely 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.

  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, no exceptional income is taken into account (eg income from real estate and financial transactions). The profit / loss position should be structural and independent of any incidental income or expense events.

The foregoing applies *mutatis mutandis* to autonomous provincial companies.

This issue is discussed in detail in 'Book I: Tax liability and taxable transactions - Chapter 1: The taxpayer, Section 6, title 3' and in decision no. ET 129.288 of 19.01.2016 , which is further explained by Mr. Minister in his answer to Oral Parliamentary Question No. 1,955 by Mr People's Representative Luk Van Biesen of 06.12.2017 .

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

Section 17 - Certain posting of personnel (Article 44, § 2, 10 ° of the VAT Code)

The tax is also exempt from the provision of personnel by religious or philosophical institutions for activities exempted under Article 44, § 2, 1 ° (services provided by health care institutions), 2 ° (services aimed at elderly care) and 4 ° , a) (services of education), of the VAT Code, or with a view to the provision of spiritual assistance.

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

Section 18 - Certain services provided by non-profit institutions (Article 44, § 2, 11 ° of the VAT Code)

1. Scope

Article 44, § 2, 11 ° of the VAT Code exempts' *the services and the closely related supplies of goods performed for the benefit and in the common interest of their members, upon payment of a contribution determined under the articles of association, by institutions that do not seek profit and pursue goals of a political, trade union, religious, philosophical, patriotic, philanthropic or civic nature. In order to prevent distortion of competition, the King may make the exemption subject to additional conditions* . "

The exemption applies under the following conditions:

- **the said institutions must not aim to make a profit**

These are non-profit associations and any other non-profit associations or groups (see Title 2 below).

- **these are services and closely related supplies of goods for the benefit and in the common interest of the members**

Private services or supplies for individual members are normally taxable at all times

- **it concerns institutions that pursue objectives of a political, trade union, religious, philosophical, patriotic, philanthropic or civic nature.**

For the purposes of Article 44, § 2, 11 °, of the VAT Code, the terms "philanthropic" and "civic" should be interpreted in the meaning they have in colloquial language (Written Parliamentary Question No. 3-9 of Ms Senator Clotilde Nyssens from 08.08.2003).

Institutions pursuing such purposes may include:

- institutions pursuing trade union objectives, which include worker groups, patron organizations and professional associations whose primary objective is the collective interests of their members - irrespective of whether they are employees, employers, members of the liberal professions or entrepreneurs engaged in a particular economic activity Deploy - represent and represent them to third parties, including government agencies. These are discussed in detail under Title 3, below.

  institutions whose aim is to organize a center for charitable, social and cultural activities for their foreign members who have established themselves in Belgium in order to promote a better relationship between Belgium and the home country of the members and also to establish camaraderie between its members (decision no. ET 29.832 of 30.11.1979)

- institutions with the aim of counseling, reception and reintegration into society of some social groups, such as ex-prisoners and alcoholics (decision no. ET 31.691 of 25.10.1979)
- institutions dealing exclusively with landscape, public green space, outdoor recreation and environmental management issues and providing their members with regular information and advice on this matter, including through a magazine (decision No ET 30.175 of 13.12.1979).

For example, organizations that pursue such purposes are not considered to be associations that:

- promote dog sport and encourage the breeding and keeping of dogs (decision No ET 33.044 / 2 of 23.03.1981) and, in general, any activity related to the animal kingdom
- to give each member the advantage of being able to buy products at a price lower than the price they would have to pay if they had turned directly to the suppliers (group purchases) (decision No T. 6.773 of 21.06.1971).

- **the service must be performed on behalf of the members of the institution**

Members are the natural and legal persons who participated in the establishment of the institution and those who are later adopted by the founders as members.

No distinction should be made between member founders and acceding members.

Nor should a distinction be made according to whether the contribution claimed from the members is determined by the statutes or by the internal rules drawn up for the implementation of the statutes (written parliamentary question no. 346 by Mr Representative Marc Olivier of 12.09.1986). .

- **the service must be performed in the common interest of its members**

This is the case where it gives rise directly to an advantage normally obtained by all the members of the institution, who have pledged to share the total costs thereof.

The services provided by an institution in the personal interest of its members are therefore not exempted (Written Parliamentary Question No. 1.465 by Mr People's Representative André Flahaut of 15.03.1995). In principle, the institution must subject it to tax, insofar as these transactions are not exempt from tax by another provision of Article 44 of the VAT Code (see Section 19).

- **the institution may receive, for that service and the closely related supplies of goods, only a contribution determined under the statutes**

Contribution means the share to which each member is committed to contribute in the expenses that are common to the members.

The contribution is distinguished from the price of a service provision in that the contribution is due for the reason of joining the social contract and it is linked to the capacity of member, while the price is due for a separate contract, different from the social contract. and closed between the association and the member.

However, where the proposed institution, on payment of a single contribution and to a varying degree, offers both its members joint services and individual services on request and directly concern specific problems of certain members (advice, information, detailed advice) , that contribution must generally be broken down in such a way that the exemption provided for in Article 44, § 2, 11 ° of the VAT Code is limited to the part of that contribution that relates to the services of common interest (written Parliamentary Question No 1.465 by Mr People's Representative André Flahaut of 15.03.1995).

However, where the primary objective of an institution pursuing trade union objectives is to defend and represent the collective interests of its members vis-à-vis third parties, individual services are provided in the context of the contribution and as an extension of the trade union activity considered to be incidental to the principal activity of the institution pursuing trade union objectives. Reference is made in this respect to Title 3, section B, subsection b, below (see marginal 6 and 9 of circular AAFisc No. 01/2012 (ET 121.844) of 03.01.2012).

To prevent distortion of competition, the King can make the exemption subject to additional conditions, which have not yet happened.

2. Non-profit institution

As indicated above, the transactions referred to in Article 44, § 2, 11 ° of the VAT Code are exempt from tax only if they are performed by non-profit-making institutions.

The notion of non-profit making institution was clarified by the Court of Justice of the European Union in its Kennemer Golf & Country Club, Case C-174/00, 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 as a whole is not profitable if it is not the object of making a profit for 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.

In addition, the Court has ruled that ' *the initial classification of the institution does not alter the fact that it subsequently has surpluses, even if it systematically pursues or realizes them, provided that these surpluses are not distributed among the members as profit* '.

Taking into account the above and since the relevant legal provisions

To exclude the possibility of providing a material advantage to their members or founders, the

institutions in the form of a non-profit association, an international association

non -profit, a public utility foundation and a private foundation *a priori* enjoy the exemptions provided for in Article 44, § 2, 11 ° of the VAT Code. It goes without saying that this exemption cannot be applied if, in spite of everything, it appears that a material advantage is granted to the members or founders.

On the other hand, a cooperative society recognized as a social enterprise cannot, in principle, be considered as a non-profit institution because, in accordance with Article 8: 5 of the Code of

companies and associations may pay a limited capital advantage to its shareholders, even if this advantage granted may not exceed the interest rate determined by the King in implementation of the law of 20.07.1955 establishing a National Council for the Cooperative, Social Entrepreneurship and the Agricultural Company, applied to the actual paid-up amount of the shares.

However, such a company falls within the scope of the above

exemptions as referred to in Article 44, § 2, 11 °, of the VAT Code if all other conditions are met and the shareholders waive, in accordance with the Articles of Association, any capital gain and thus any distribution of profit to their advantage and this too is clear from the facts.

Moreover, 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 Stef Goris of 12.06.2006).

When a non-profit institution joins a VAT unit, the conditions of non-profit-making must be fulfilled in respect of each of the members of the VAT unit as it constitutes only one taxable person for the purposes of VAT (see circular AOIF No. 42/2007 (No. ET 111.702) of 09.11.2007 and Book VI: Specific topics - Chapter 16: Specific topics, Section 5: The VAT unit ').

3. Trade union organizations

The exemption of Article 44, § 2, 11 °, of the VAT Code with regard to acts performed by institutions pursuing trade union objectives, is discussed in circular AAFisc No. 01/2012 (ET 121.844) of 03.01.2012 .

A. Concept 'Institutions pursuing trade union objectives'

The term 'institutions pursuing trade union aims' is one

autonomous concept from Community law and must therefore be defined at Community level

to become.

Since 01.01.1987, date on which Declaration No. 12 of 29.12.1986 entered into force, and following a reasoned opinion by the Commission of the European Communities addressed to the Belgian State, the exemption is not only granted to employee groups, but applies they also work for patron organizations and professional associations, insofar as they

pursue trade union purposes. This position was confirmed by the Court of Justice of the European Union in the Judgment Institute of the Motor Industry , case C-149/97, of 12.11.1998 .

In this Judgment, the Court ruled that to be classified as an institution with trade union purposes within the meaning of Article 13A (1) (l) of the Sixth VAT Directive (cf. Article 132 (1)) 1 (l) of Directive 2006/112 / EC, aforementioned) it must be an organization whose primary objective is the collective interests of its members, whether they be employees, employers, members of the liberal professions or entrepreneurs who engage in a particular economic activity - represent and represent them to third parties, including public authorities.

B. Scope of the exemption

a. The services and the closely related supplies of goods must be financed by the statutory contributions

For the exemption provided for in Article 44, § 2, 11 ° of the VAT Code to apply, the acts envisaged in this provision must be covered by the payment of contributions determined by the members by virtue of the articles of association.

Therefore, the exemption does not apply to transactions performed for all or part of the members against payment of a price different from the contribution, even if they are trade union activities.

b. They should be performed in the common interest of its members by an institution that does not seek profit and pursues trade union purposes

In the light of the definition given by the Court of Justice to these concepts, it must concern the protection of the collective interests of members and their representation to third parties, including public authorities (as opposed to, for example, a mere presence at a commercial meeting).

Consequently, the collective interests of the members are aimed at, as opposed to their individual interests. When individual services are performed for several members, it is the course not to provide services in the common interest within the meaning of Article 44 § 2, 11 ° of the VAT Code.

The provision of individual services is therefore in principle subject to tax, subject to the case where an institution, such as a patron association , would deal with a specific question from a member as an extension of its 'trade union' assignment for the benefit of all (e.g. in the context of feedback that a federation provides to its members regarding a sectoral collective agreement it has concluded). In that case, the service provided to the member will still enjoy the aforementioned exemption.

As the Court of Justice clarified in the aforementioned judgment, trade union activity must be the primary purpose of the institution for the exemption to apply.

The primary aim of the organizations concerned is therefore decisive in determining whether members' contributions are exempt or fully taxed, except in certain special cases (oral parliamentary question No 16.952 by Mr MP Josy Arens of 24.04.2013). .

Whether or not trade union representation is the primary purpose of an institution must be assessed taking into account all the services provided by the institution. The importance of these services should be assessed in the light of the circumstances specific to each institution and on the basis of a set of elements such as, for example, the status of the members and the objective they aim at upon accession (2), the nature of the services provided to them and the associated costs, the nature of the income, the possible use of subcontractors and the nature of the services provided by them, the nature of the subjects covered and the information communicated, the time that was actually spent on this.

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(2) For example, institutions whose members do not have sufficient infrastructure to solve various management problems themselves (for example, an institution comprising a large number of small companies) in their own undertaking provide in principle more individual services .

Any document prepared on the institution's activities can be used in this regard. Thus, in particular, reports of activities prepared in accordance with the articles of association and documents prepared in accordance with the rules of the internal regulations may provide important information.

Several situations can arise:

- **The primary purpose of the institution is to represent the collective interests of its members and to represent them to third parties**

These may be national or international groups that are representative of a specific sector of activity and are charged with representing and defending all their members within the authorities, in particular with the aim of influencing the policies and decision-making processes of those authorities.

In particular, interventions at the European institutions are envisaged which usually require registration in a register (register of lobbyists). The representation of the members and the defense of their collective interests can also be done on the occasion of public consultations, the European Commission is organizing the preparation of Community texts in order to hear the views of interested parties and to make use of their knowledge matter .

In pursuit of these objectives, it may be necessary to conduct studies, surveys or publications or organize meetings to prepare negotiations with the relevant authorities, to inform members of further developments and achievements Results ...

Such transactions are then considered to be incidental to the principal activity of the institution and are therefore also exempt.

This also applies if, where appropriate, individual services are provided in the context of the contribution and as an extension of the trade union activity. However, the services provided at a price different from the contribution do not fall under the exemption of Article 44, § 2, 11 ° of the VAT Code.

- **The primary purpose of the institution is not to represent its members and to represent their collective interests towards third parties**

This is particularly so when the services provided are mainly aimed at promoting the economic and commercial interests of the members and the institutions provide services to their members, such as advice, information and statistics related to their sector, the organization of training, networking between members, commercial missions, research and development activities, legal services, administrative assistance, advice and assistance in business management, accounting and organization, personnel management, trade fair representation or any other public relations event, the organization of such events or joint publicity campaigns, studies on technical topics ...

It is recalled that, *a fortiori* , the individual services provided under the primary purpose described here are, as a rule, subject to VAT.

The whole of the services provided to Members is subject to VAT, even if the pursuit of this goal is far would mean that the institution also fulfills a mission of union representation. In that case, the exemption provided for in Article 44, § 2, 11 ° of the VAT Code does not apply.

- **Other cases**

Even in exceptional situations, one must also take into account the hypothesis that an institution would pursue different purposes without it being possible to demonstrate that one is more important than the other.

In that case, the institution will therefore in principle have the status of taxable person with partial right to deduct and the contribution collected from the members must be broken down.

Such a situation should be assessed on a case-by-case basis, for example with a flat rate of 50% both for taxation and deduction.

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

Section 19 - Certain supplies of goods and services, performed in connection with activities organized to obtain financial support for exempt institutions (Article 44, § 2, 12 ° of the VAT Code)

Article 44, § 2, 12 °, of the VAT Code exempts' *the services and supplies of goods by entities whose actions in accordance with points 1 °, a), 2 ° to 4 °, a), 6 °, 7 °, 9 ° and 11 ° are exempted, in connection with activities intended to obtain financial support and which are organized exclusively for their own benefit, provided that this exemption cannot lead to distortions of competition. '*

Article 44, § 2, 12 °, of the VAT Code, is the transposition into Belgian law of Article 132 (1) (o) of Directive 2006/112 / EC. Article 132 (1) (o) of Directive 2006/112 / EC exempts from VAT the services and supplies of goods supplied by certain establishments, the transactions of which themselves are exempt under that Directive, where they are carried out in conjunction with activities intended to obtain financial support and which are organized solely for their own benefit, provided that such exemption cannot lead to distortions of competition.

That provision only concerns the institutions whose transactions are included in the exhaustive list provided for in Article 133 of Directive 2006/112 / EC, namely transactions which are exempted in accordance with points b), g), h), i) (l), (m) and (n) of paragraph 1 of Article 132 of Directive 2006/112 / EC.

However, Article 44, § 2, 12 °, OLD, of the VAT Code had a broader scope than that of Article 132 (1) (o) of Directive 2006/112 / EC and concerns situations that not specifically provided for in point (o).

On the one hand, Article 44, § 2, 12 °, OLD, of the VAT Code, after all, referred to point 1 ° of Article 44, § 2 of the VAT Code, without distinguishing between the situations provided under points a). and B). However, point (b) of that provision concerns the transport of sick and injured persons by means of transport specially equipped for that purpose. That point is the transposition of Article 132 (1) (p) of Directive 2006/112 / EC, while that point is not included in the list provided under point (o) of Article 132 (1) of that Directive.

On the other hand, Article 44, § 2, 12 °, OLD, of the VAT Code referred to point 4 ° of Article 44, § 2, of the VAT Code. Article 44, § 2, 4 °, b) of the VAT Code, however, relates to the lessons that are given privately by teachers and that relate to school or university education. That point corresponds to Article 132 (1) (j) of Directive 2006/112 / EC, while it is also not included in the list provided under point (o) of Article 132 (1) of that Directive.

To ensure a more faithful transposition of the Directive 2006/112 / EC, Article 5 of the Law of 30.07.2018 replaces Article 44, § 2, 12 ° of the VAT Code and specifies that the list in that Article is limited, with regard to Article 44, § 2, 1 ° and 4 °, of the VAT Code, to the situations referred to in point a) of the latter two provisions. The transport of sick and injured persons by means of transport specially equipped for this purpose and the lessons given privately by teachers and relating to school or university education are therefore no longer included in the list of Article 44, § 2, 12 °, NEW, of the VAT Code (see circular 2019 / C / 3 of 30.07.2019 regarding the adjustments to the VAT Code by the law of 30.07.2018 (no. ET 133.410), title 5).

The exemption from Article 44, § 2, 12 ° of the VAT Code is explained in detail in circular AAFisc 2017 / C / 23 (no. ET 131.306) of 19.04.2017 .

1. Scope

The exemption of Article 44, § 2, 12 ° of the VAT Code only applies if the following three conditions are cumulatively met:

First condition : the activity of obtaining aid is organized by the institution itself, the transactions of which in the course of its usual activities as a taxable person are exempt from tax in accordance with Article 44, § 2, 1 °, a), 2 ° to 4 ° , a), 6 °, 7 °, 9 ° and 11 ° of the VAT Code. To be considered as the organizer of such an event, this institution must have full responsibility for the organization, in particular as regards the programming, construction and operation of the event, publicity, collection of revenue...

Among other things, the following are intended:

- a hospital or the like (Article 44, § 2, 1 °, a) of the VAT Code)
- an institution for the elderly, for the disabled, for a youth home or any other recognized institution of a social nature (Article 44, § 2, 2 ° of the VAT Code)
- a non-profit sports association (Article 44, § 2, 3 ° of the VAT Code)
- a non-profit educational institution (Article 44, § 2, 4 °, a) of the VAT Code)
- a non-profit library or reading room (Article 44, § 2, 6 ° of the VAT Code)
- an operator of one of the non-profit organizations (museums, monuments, natural monuments ...) referred to in this provision (Article 44, § 2, 7 ° of the VAT Code)
- a recognized organizer of non-profit spectacles (Article 44, § 2, 9 ° of the VAT Code)
- a non-profit institution (Article 44, § 2, 11 °, of the VAT Code) that pursues political, trade union, religious, philosophical, patriotic, philanthropic or civic purposes and provides services and closely related supplies of goods for the benefit and in the common interest of its members and against payment of a contribution determined under the articles of association.

If one of the institutions or operators intended for this purpose also carries out other taxed or exempt transactions, Article 44, § 2, 12 ° of the VAT Code only applies if the event is only organized to obtain support for the intended exempted participants. actions or for charity (see below).

Example:

A sports association in the form of a non-profit association offers its members the opportunity to practice a sport against payment (act exempted pursuant to Article 44, § 2, 3 ° of the VAT Code). The non-profit association also operates a cafeteria (not exempt) that is freely accessible to the public and whose turnover amounts to 15% of the turnover from the exempt activity (see decision no. ET 130.298 of 12.09.2016). The non-profit organization has identified itself as a taxable person for this catering activity.

Once a year, this non-profit organization organizes a food festival (mussels and chips) with a turnover of 45,000 euros. In order for the turnover of the food festival to be exempted on the basis of Article 44, § 2, 12 ° of the VAT Code, it is necessary that the proceeds benefit exclusively from the exempt activities of the association.

Second condition : the activity is not an economic activity of the taxpayer: it is only occasional in nature, is there on designed to provide financial support for the usual exempted activity is organized exclusively for the benefit of the institution itself. By administrative admission, it is accepted that these revenues may also be used for the financial support of 'a good cause' (see oral question no. 3.617 by Mr Representative Servais Verherstraeten of 06.05.2015).

"Charity" (charity work) within the meaning of this provision means any institution, association, fund or natural person who, without commercial intent, is committed to a project or work in the field of health, welfare, culture, nature , environment or international aid. It is not necessary for the beneficiary of the funds collected to receive recognition.

Third condition : the activity must not distort competition with other economic operators engaged in similar activities. It seeks only the extraordinary income resulting from activities that may constitute a separate real economic activity and on it designed to facilitate the achievement of the objectives pursued.

It is a matter of fact. However, the turnover realized as a result of the event is of no importance.

RELATED DOCUMENTS

- This chapter in PDF
- Article 44, W.Btw

CHARACTERISTICS

Title: VAT Comment - Chapter 9: Exemptions under article 44 of the VAT Code (Update on 01.06.2020)

Summary: VAT Comment - Exemptions envisaged by Article 44 of the VAT Code

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Note

It may happen, for example, that a sports club exempted by Article 44, § 2, 3 ° of the VAT Code sets up a separate entity for the organization of events.

In the spirit of Article 44, § 2, 12 °, of the VAT Code, which only aims at exceptional revenues, events that consist of acts that are the object of the institution itself are excluded from the exemption. In that case, the organization of the event must be regarded as an "economic activity" subject to VAT in itself, in addition to the activity exempted in accordance with Article 44, § 2, 3 °, of the VAT Code, in order to ensure the principle of equality in tax matters not to be compromised.

Since the entity is set up to host the events, this is also the purpose of this institution making it an activity subject to VAT.

Only events organized by the sports establishment itself can be exempted on the basis of Article 44 , § 2, 12 ° of the VAT Code. This is because only these institutions are exempted by Article 44, § 2, 3 ° of the VAT Code.

2. Administrative concessions

The administration assumes that there will be no distortion of competition if the charity event or event to receive support is organized no more than four times per calendar year. The organization of an event that lasts a maximum of three consecutive days (for example during the weekend) is considered as one event.

When that event is organized jointly by several taxpayers, this condition must be assessed on the basis of each co-organizer separately.

As soon as more than four events are organized in a calendar year, the institution concerned should contact the competent SME / GO center which, after taking note of its arguments, will assess whether or not there is a distortion of competition. An accidental exceedance is not taken into account.

If the obligation to identify yourself as a taxable person is established, the VAT will apply to the work in question from the first quarter following that excess, for at least one full calendar year.

The taxpayer who wishes to invoke this administrative authorization again at the end of that calendar year must submit a reasoned petition to the competent SME / GO center.

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Section 20 - Supplies of goods and services by taxable persons without a right of deduction (Article 44, § 2, 13 ° of the VAT Code)

Pursuant to Article 44, § 2, 13 °, of the VAT Code, *the supply of goods used exclusively for the purpose of an activity exempted under this Article is exempt from tax if no right of deduction applies to all these goods. is enjoyed; the transfer of a clientele or the granting of rights to a clientele, which relates to an activity exempted under this article; the supply of goods the acquisition or destination of which has been the object of an exclusion from the right to deduct in accordance with Article 45, § 3 of this Code.*

The transactions that are exempted under Article 44, § 2, 13 ° of the VAT Code are discussed below.

With regard to the transfer of a generality of goods or of a business division by a taxable person exempted in accordance with Article 44 of the VAT Code to a mixed taxpayer, reference is made to 'Book VI: Specific Topics - Chapter 16: Specific topics, Section 6, title 6, section A '.

1. The supply of goods used exclusively for the purpose of an activity exempted under this Article if no right of deduction has been enjoyed for these goods

This only concerns deliveries of goods that were used by those who provide services and supply goods which are exempted under Article 44 of the Code and of which the VAT charged on the purchase of those goods could not be deducted.

Examples:

- a zoo referred to in Article 44, § 2, 7 ° of the VAT Code regularly sells obsolete computers. It should be noted that the exemption provided for in Article 44, § 2, 13 ° of the VAT Code specifically applies to goods other than those that are closely related to the provision of exempt services.

- the sale of brochures and postcards related to animals by the aforementioned zoo is covered by the exemption provided for in Article 44, § 2, 7 ° of the VAT Code. The aforementioned exemption from Article 44, § 2, 13 ° of the VAT Code does not apply to taxpayers with a partial right to deduct and who apply the rule of the general ratio for the calculation of the deductible tax (Article 46, § 1 of the VAT Code). Nor does the said exemption apply to financial and insurance institutions, nor to brokers and agents who sell goods that were used for transactions under which they were entitled to a deduction under Article 45, § 1, 4 ° and 5 °, of the VAT Code.

2. The transfer of clientele or the granting of rights to a clientele that relates to an activity exempted under this article

This concerns the transfer of a clientele or the granting of rights to a clientele by a taxable person without the right to deduct.

Example:

An insurance broker who transfers his insurance portfolio and related clients or grants rights to those clients.

In the absence of a specific exemption clause, such transfer of customers or the granting of rights to those customers would normally be taxable due to the fact that the transaction is carried out in the course of an economic activity.

3. The supply of goods the acquisition or destination of which has been the object of an exclusion from the right to deduct in accordance with Article 45, § 3 of the VAT Code

The goods referred to in Article 45, § 3 of the VAT Code, from which the deduction of VAT levied on the purchase is excluded and to which the aforementioned exemption provision applies, are manufactured tobacco , spirits and goods which are charged as reception costs. be classified.

The aforementioned exemption means that taxable persons with a right of deduction do not owe VAT on the sale of the goods mentioned in the previous paragraph if the VAT levied on the purchase of those goods was not deducted.

The exemption provided for in Article 44, § 2, 13 ° of the VAT Code is a technical exemption that aims to avoid double taxation. After all, when goods are used for an activity but the purchase or acquisition does not confer a right to deduct the tax due on them, either because they are used entirely for exempt transactions or because the deduction is not authorized under any other provision taxing its sale would lead to double taxation since the amount to be taxed is taxed with VAT which has not been deducted.

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

Section 21 - Benefits of some independent groups of persons (Article 44, § 2bis of the VAT Code)

1. History

The European Commission has sent a request to the Belgian State for information regarding the application of the regulatory and administrative provisions regarding the exemption for self-employed groups of persons. In particular, it expressed doubts as to the compatibility of Article 44, § 2, 1 ° *bis* , (old) of the VAT Code, Royal Decree 43 of 05.07.1991 with regard to the exemption in the field of taxation the added value with regard to the services provided by independent groups of persons to their members , which implemented the aforementioned article, and the Belgian administrative doctrine regarding the exemption for independent groups with European regulations in this field.

In response to the comments of the European Commission, Belgium has undertaken to amend these provisions in order to bring Belgian law in line with European regulations.

With regard to the application of Article 44, § 2, 1 ° *bis* , (old) of the VAT Code, for the sake of completeness and for information purposes only, reference is made to the Court of Justice of the European Union , Case C-400 / 18, from 20.11.2019 . It concerned a Belgian case that was brought before the Court.

Following the comments of the European Commission, the new Article 44, § *2a* , of the VAT Code was inserted by the law of 26.05.2016 amending the Code of value added tax with regard to the exemption of the services performed to their members by the independent groups of persons (BS 09.06.2016). The scope of this exemption is set out and explained in circular AAFisc No. 31/2016 (No. ET 127.540) of 12.12.2016 . As of 01.07.2016, this article therefore replaced the old article 44, § 2, 1 ° *bis* , of the VAT Code and the Royal Decree implementing it.

The aforementioned circular completely replaces registration 3/1996 of 09.05.1996 . In particular, it is emphasized that Section 2 of this notice, concerning the groupings existing as an undivided division between members, was also abolished with effect from 01.07.2016 on the one hand following the comments of the European Commission already referred to above and on the other hand because such an approach is not compatible with the provisions of the new Article 44, § *2a* of the VAT Code.

The exemption for self-employed groups included in the provisions of the new Article 44, § *2a* of the aforementioned Code only applies if all the exemption conditions contained in that Article are met. These conditions of application can be divided into two main categories, which are the conditions relating to the independent group and its members (see Title 2, below) and the conditions relating to the acts performed by the group (see Title 3, below).

However, as soon as the aforementioned exemption conditions are met, the exemption in Article 44, § *2a* of the VAT Code applies. Its application is thus by no means optional.

Finally, it should be noted that in Belgian administrative practice, independent groups are often referred to by the term ' cost-sharing associations'. As such, the term ' cost-sharing associations' is not used in Council Directive 2006/112 / EC of 28.11.2006 on the common system of value added tax, nor in the Belgian VAT Code. For the sake of uniformity, the term 'independent grouping' is used both in the aforementioned circular AAFisc No. 31/2016 (No. ET 127.540) of 12.12.2016 and hereinafter.

2. Intended independent groups of persons

A. Formation of the independent group

a. Who can be a member of an independent group?

The grouping is **founded by and consists of natural** or **legal persons** (the members).

Each member regularly carries out an **activity** that is **exempt** under **Article 44 of the VAT Code** or for which that member is **not subject to VAT tax** . The exempt transactions or transactions for which the members are not subject to VAT tax must represent a **predominant part** of the activities of the members (see section B, subsection c, below).

Natural persons, legal persons, unincorporated groups, bodies governed by public law, etc. can be members of an independent group. The legal form of the members is of no importance. Nor is it required that members have the status of VAT taxable person in order to be a member of an independent group.

The grouping must consist of at least two members (there is no upper limit).

Establishing an independent group goes further than simply agreeing between people to divide certain costs among themselves.

The purpose of the exemption for certain services provided by a self-employed grouping is to introduce a VAT exemption to prevent the person providing certain services from being subject to payment of VAT when he is forced **to cooperate** with other companies in a **common structure** which carries out certain **activities necessary** for the provision of those services (see Court of Justice of the European Union, Judgment of the Foundation for the Central Supervisory Body for Peer Review, Case C-407/07, 11.12.2008 point 37).

In order for there to be 'a member of a group', it is important that it concerns **sustainable cooperation** . For example, the ad hoc entry or exit of persons in function of their temporary needs is not allowed and may lead to its classification as abuse and to distort competition. The administration will be able to verify the sustainable cooperation on the basis of the (changes to the) **list of members** that independent groups must submit to the service competent in matters of VAT (see Title 6, below). Moreover, it will not be disputed that there is lasting cooperation if the member has **been a** member of the independent group for at least **two years continuously** .

It also follows from the aforementioned objective of establishing an independent group that the members must have **access** to the **cost price calculation** of the independent group with regard to all services it provides to members and non-members as well as to the way in which the costs are distributed among the members. . This is done on the basis of **periodic reporting** by the independent group to its members. This reporting is done at least once per calendar year. Periodic reportingby the independent grouping must be the same for all members. In other words, no different types of periodic reports may be drawn up in function of, for example, the interest of a member as a customer of the group.

An independent group may accept new members after its establishment. These new members should have the same rights and obligations as the founding members, in particular regarding access to cost price calculation, the way in which costs are shared among members and periodic reporting.

b. Legal existence of the independent group

The independent grouping of persons may take **two forms** for the application of the exemption of Article 44, § *2a* of the VAT Code (see Article 44, § *2a* , second paragraph of the aforementioned Code). The independent group can take the form of an association **with legal personality** . However, if the association has **no legal personality** , it must act under its **own name** as a separate association or group **towards its members and towards third parties** .

It is therefore important that there is an autonomous group that is **distinguished** from its members. However, those members must consist of persons who wish to form a group from which the exempt services are provided.

For associations **without legal personality** , this means in particular that the founding members must conclude a **cooperation** agreement that describes in detail the activities and functioning of the group. The agreement specifically states which member is responsible for complying with the VAT obligations in respect of the independent grouping (see Title 6, below) and acting as manager of the grouping.

Such associations must also keep their own accounts, which must be sufficiently substantiated to allow the administration to monitor compliance with the exemption conditions, in particular as regards the distribution of costs. Members must indicate in their agreement the address from which the group will carry out its activity and where all books, writings and documents relating to the group will also be kept. It is also that address that the group will have to give to its suppliers and service providers. Invoices relating to services and supplies of goods that are performed for an independent group without legal personality must be issued in the name and address of that group.

The exemption of Article 44, § *2a* of the VAT Code can be applied **regardless of the legal form** of the independent group. An independent group may therefore also take the form of a trading company (nv, bv, etc.) . This is related to the activities that an independent group may perform. After all, an independent group may develop **two distinct sectors of activity** :

- a **sector 'services'** for which all provisions of Article 44, § *2a* of the VAT Code must be taken into account
- a **sector 'supplies of goods'** that is separate from Article 44, § *2a* of the VAT Code.

Independent groups that provide both services and supplies of goods to an **accounting** conduct that allows to determine whether it meets the conditions for exemption under Article 44 § 2 *bis* , concerns the VAT Code for which the services to members.

The following, as well as the explanation in circular AAFisc No. 31/2016 (No. ET 127.540) of 12.12.2016 is limited to the discussion of the sector 'services'. After all, the normal VAT rules apply to the sector 'supplies of goods'.

When an independent group takes the form of a commercial company, it is noted for the sake of completeness that, in order to be a member of the group, it is not a requirement that that person also be a shareholder of the commercial company.

However, in order to qualify for the exemption under Article 44, § *2a* , of the VAT Code, it is required that the **fee or fee charged to each member represents only the repayment of its share of the joint expenses incurred by the group** . The explanatory memorandum concerning the introduction of the aforementioned article also states that, in order to avoid distortion of competition, it cannot be accepted that the services provided for non-members are provided under conditions other than those for members, in order to make a profit systematically .

This condition is fulfilled when, with regard to the **services** it provides, the group **does not intend to make a profit systematically and where any profits are not distributed or distributed among its members but are used to maintain or improve the services provided to its members** . The foregoing also applies to the services provided to non-members.

If an independent group also provides **supplies of goods** , this should be regarded as a separate sector, separate from the 'services' sector. Deliveries may be made for profit, but the realized gains may not be used, inter alia to prevent distortion of competition, to provide cheaper services to members. However, this profit is directly distributable to the members (although not in the form of 'cheaper' services).

For the sake of completeness, it is once again emphasized that independent groups that provide both services and supplies of goods must keep accounts that allow compliance with the exemption conditions of Article 44, § *2a* of the VAT Code with regard to services to members. .

Depending on its activities, the self-employed group will have the status of an exempt VAT taxable person without a right to deduct or a mixed VAT taxable person with a partial right to deduct (see Title 5, below).

B. Conditions relating to the activities of the members

a. General

It concerns the condition stated under Article 44, § *2a* , first paragraph, 1 °, of the VAT Code: ' *the members of the group regularly carry out an activity that is exempt under this article or for which they are not be taxable. The exempt transactions or transactions for which the members are not taxable represent a major part of the activity of the members* ' .

The independent group must satisfy itself that the condition regarding the capacity and activity of the members is met. After all, it is responsible for the correct application of the exemption to the services it provides to its members.

Since the introduction of the new Article 44, § *2a* of the VAT Code, it is no longer required that the members of the group perform the same type of activity, or belong to the same financial, economic, professional or social group.

b. An activity that is exempt under Article 44 of the VAT Code or for which the members are not subject to VAT tax and that is carried out regularly

A member must engage in an activity that is exempt under Article 44 of the VAT Code (3) or for which he is a non-VAT taxable person (for example, transactions 'outside the scope of VAT' such as those of a passive holding company or acts of public bodies that they perform as a 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 the aforementioned Article 6).

(3) If a member has opted for the taxation of an activity that is in principle exempt (see also Article 44, § 3, 8 ° of the VAT Code and notice no. 18/1979 of 26.10.1979), that activity becomes , pursuant to the option, not classified as an exempt activity within the meaning of Article 44, § 2bis of the VAT Code.

A **regular activity** presupposes a sequence of actions, which does not mean that these operations can be performed with more or less long intervals. What matters is that they take place with a certain regularity (see 'Book I: Tax liability and taxable transactions - Chapter 1: The taxpayer - Section 3, title 4').

c. The exempt transactions or transactions for which the members are not subject to VAT tax must represent a major part of the activities of the members

The exempt transactions or transactions for which the members are not taxable must be regularly performed and represent a **major part** of the activity of the members. Those conditions apply **to each member** of the group (for example, it is not permitted for a particular member to perform only taxable transactions) and should therefore not be assessed at the level of the independent group as a whole. However, the independent group remains responsible for the correct application of the VAT exemption intended by Article 44, § *2a* of the VAT Code.

It is therefore not necessary that the members of an independent group only exempt transactions or transactions for which they are not subject to VAT tax. They may also perform taxable acts.

The total, calculated per calendar year, from the actions of a member under Article 45, § 1, 1 ° to 3 ° of the VAT Code entitled to grant deduction, should **less than 50% of its total annual sales** amount to . This is assessed at the end of the calendar year and is calculated per member.

The calculation of the above threshold is based on the following fraction (4):

- **Numerator** : total amount, determined per calendar year, of the transactions that grant a right of deduction in accordance with Article 45, § 1, 1 ° up to and including 3 ° of the VAT Code.
- **Denominator** : the total annual turnover consists of the sum of the following elements:
  - total amount , determined per calendar year, of the transactions that, in accordance with Article 45, § 1, 1 ° to 3 °, of the VAT Code give a right to deduct (being, the amount of the counter)
  - total amount , determined per calendar year, of taxable transactions that do not confer a right to deduct (for example, transactions that are exempt in accordance with Article 44 of the VAT Code)
  - receipts , other than those referred to above, which are directly attributable to a specific activity (even if outside the scope of VAT) of the Member.

(4) The method of calculating this break applies only in the context of the relevant application condition of Article 44, § 2bis of the VAT Code.

General operating grants that are not directly attributable to a member's concrete activity (for example, operating grants a member receives to cover their general operating expenses) are not included in the break. Fees received by a government that are directly attributable to a specific activity must be included in the break (for example: the fee for parking spaces on the public market or for parking on the public road, etc.).

Dividends are included in the denominator of the fraction as they are directly attributable to a member's specific activity, which is to invest in shares.

However, for the purpose of calculating the annual turnover, no account is taken of the proceeds from the disposal of assets used by the member for his activity.

If the result of the fraction is 50% or more, the member can in principle no longer be regarded as a member of the independent group. However, the administration provides for a **tolerance** (see below).

If it turns out that the grouping has wrongfully applied the exemption from Article 44, § *2a* of the VAT Code because a member (or several members) exceeds or has exceeded (exceeded or exceeded) the 50% threshold, a regularization of the VAT that was wrongly not levied from the services that the group has provided for that member (those members). In that case, it must be assumed that the services that the group has provided for that member (s) were not intended by Article 44, § *2a* , of the VAT Code. The regularization with regard to the services provided to that member (those members) relates to the services provided from 1 January of the year in which the member no longer meets the conditions.

If it turns out that a member exceeds the 50% threshold without being able to invoke the **tolerance** , the grouping will have to take the necessary measures to still qualify for the application of the exemption in Article 44, § *2a.* , of the VAT Code. If necessary, the member will have to leave the group.

An excluded member will only be able to re-join the independent group from the calendar year following that in which the conditions set out in Article 44, § *2a* of the VAT Code are once again met .

The aforementioned **tolerance for threshold crossing** means the following:

- **when, in year X, the result of the above-mentioned fraction is at least 50%, but does not exceed 60%** : the exemption **is then** retained for year X and may in principle also be applied for year X + 1 (for the services the group provides to that member)
- **when, in year X + 1, the result of the aforementioned fraction for a second time is successively at least 50% but does not exceed 60%** : the exemption is retained for year X + 1 but expires from year X + 2 (the member must leave the grouping and will be treated as a third from year X + 2)

- **if the result of the fraction is more than 60% in a given year** : in that case the exemption is retained for the year of exceeding, but expires from year X + 1 (the member must leave the grouping and become from year X + 1 treated as a third).

However, this tolerance only applies if the self-employed group imposes an obligation on each member to draw up an annual **document** in which the member, based on numerical data, **the total amount, determined per calendar year, of the acts performed in accordance with Article 45, § 1, 1 ° up to and including 3 ° of the VAT Code grant a right to deduct** (numerator of the aforementioned fraction) and communicate its **total annual turnover** (denominator of the aforementioned fraction). This document must also be kept by the independent group. In addition, the facts must show that the group acted accordingly and in good faith .

The aforementioned administrative tolerance **CANNOT** be invoked when an independent group acts in bad faith and / or cannot submit an annual document from its members in which the latter report the total amount, determined per calendar year, of the acts performed in accordance with Article 45, § 1, 1 ° up to and including 3 °, of the VAT Code grant the right to deduct and their total annual turnover.

C. Condition relating to the activities of the independent group

It concerns the condition stated under Article 44, § *2a* , first paragraph, 2 °, of the VAT Code: *'(...) If the group also carries out activities on behalf of non-members, the acts carried out on its members represent a predominant part of the activity of the group .'*

As already mentioned, an independent group may develop **two distinct sectors of activity** :

- a **sector 'services'** for which all provisions of Article 44, § *2a* of the VAT Code must be taken into account , and
- a **'supplies' sector** that is separate from Article 44, § *2a* of the VAT Code.

The condition of Article 44, § *2a* , first paragraph, 2 ° of the VAT Code means that the total amount, determined per calendar year, of the **services exempted under Article 44, § *2a* of the aforementioned Code, more than 50% of the total amount** of the group's 'services' sector.

This condition is consistent with the objective of the exemption in the VAT Directive to avoid distortions of competition. Without this condition, it is likely that there is a real danger that the exemption will lead to distortions of competition in the short term or in the future for the benefit of members and to the detriment of other economic operators, which should be avoided.

Moreover, if the predominant part of the group's activities concerned acts that are not intended by Article 44, § *2a* of the VAT Code, the realization of such activities would not be compatible with the objective for which such grouping can be established. .

When 50% or more of the total amount of the group's services consists of the provision of services not intended by Article 44, § *2a* of the VAT Code, the self-employed grouping falls outside the scope of Article 44, § 2 *bis* , of said Code. **Its entire activity must then be subject to VAT under normal rules.**

In those cases, the independent grouping is no longer envisaged by the exemption of Article 44, § *2a* of the VAT Code. If the group has not taken the necessary measures to qualify for this exemption, has wrongfully applied that exemption or the tolerance for threshold crossing below, the VAT that was incorrectly not levied from the services for its members has to be regularized.

An independent group will only be able to invoke the application of Article 44, § *2a* of the VAT Code again from the calendar year following that in which the conditions set out in Article 44, § *2a* of the aforementioned Code are once again met .

The above-mentioned threshold is calculated on the basis of the total amount, determined per calendar year, of the transactions from the sector 'services'.

The assessment is made at the end of the calendar year. The **fraction for the threshold calculation** consists of (5):

- **Numerator** : the total amount, determined per calendar year, of the transactions that are exempted pursuant to Article 44, § *2a* of the VAT Code.
- **Denominator** : the total amount, determined per calendar year, of the transactions from the activity sector 'services'. This amount consists of the sum of the following elements:
  - the total amount of transactions exempted under Article 44 of the VAT Code (including those intended by Article 44, § *2a* of the VAT Code) and which are provided to members and non-members
  - the total amount (excluding VAT) of the services provided to members and non-members who are entitled to deduct.

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(5) The method of calculating this break applies only in the context of the relevant application condition of Article 44, § 2bis of the VAT Code.

Moreover, price subsidies received must be taken into account. These follow the same scheme as the service to which they relate and must therefore also be included in the fraction (depending on the circumstances: in the numerator and in the denominator or only in the denominator).

To qualify for the exemption under Article 44, § *2a* of the VAT Code, this break must be more than 50%.

If the above-mentioned fraction gives a result equal to or less than 50%, the condition of Article 44, § *2a* , first paragraph, 2 °, of the VAT Code is not met . In that case, the independent group can no longer rely on the relevant VAT exemption from the calendar year following the exceedance.

However, the administration provides for a **tolerance** as follows:

- **when, in year X, the result of the aforementioned break is at least 40%** : in that case the exemption is maintained in year X and X + 1
- **when, in year X + 1, the result of the above-mentioned fraction for a second consecutive time is at least 40%** : the exemption is maintained in year X and X + 1 but it expires from year X + 2.

However, when the result of the above-mentioned fraction is less than 40%, then the self-contained grouping falls from the subsequent year, outside the scope of Article 44, § 2 *bis* , from the VAT Code. In other words, **if the fraction with respect to year X is less than 40%, the exemption is retained for year X, but it expires immediately from year X + 1** .

3. Intended actions of the independent group

If an independent group can qualify for the application of Article 44, § *2a* of the VAT Code, it must be checked **for each service - considered separately** - whether the exemption conditions are met.

If one of the exemption conditions is not met, the service is taxed (subject to the possible application of another VAT exemption). From now on, an independent group may provide taxable services to its members (if the exemption conditions are not met) and to third parties (see Title 4, below).

An independent group may also develop a second and separate activity sector for the supply of goods. Independent groups that provide both services and supplies of goods must keep accounts that enable compliance with the exemption conditions of Article 44, § *2a* of the VAT Code with regard to services to members. The 'supplies of goods' activity sector is subject to normal VAT rules.

A. Services

The exemption only covers services to the exclusion of the supply of goods unless the issue of a good is necessary and clearly incidental in the context of the service.

In particular, the exemption does not apply to the joint purchase by the members, via the grouping, of goods charged as such by the grouping to the members (eg purchase of fuel, office equipment...).

B. Services provided to members of the group

Only the services which the group provides **to its members** may be exempt from tax, if all the conditions are met. However, the group can also provide services for third parties. In that case, these services will be subject to tax under normal rules. The same applies to services that the group provides to its members, but which do not meet the exemption conditions.

The services provided by a member of the group for the other members of the group or for the group itself do not fall within the scope of Article 44, § *2a* of the VAT Code. After all, in order to qualify for the exemption from Article 44, § *2a* of the aforementioned Code, it is required that the services are provided by the independent group.

C. Nature and destination of the services

Only the services that are directly required for the exempt activity of the members or for the activity for which the members are not taxable, are eligible for the exemption (see Article 44, § *2a* , first paragraph, 2 °, of the VAT Code).

'Services that are directly needed' should be understood to mean those services that are specifically related to the exempt or non-taxable activities of the members and that are an indispensable input for the provision of those activities.

The Explanatory Memorandum provides that the **provision of food and drink to the staff of the members** and **services performed for the private purposes of the members are** not classified as 'services that are immediately needed'. Consequently, these services are not covered by the VAT exemption in Article 44, § *2a* of the VAT Code.

In principle, all other services that an independent group provides to its members are eligible for the exemption under Article 44, § *2a* of the VAT Code, provided that the application of this exemption does not lead to distortions of competition.

If a group provides services for a member which are **partly intended for the member's exempt or non-taxable activity and partly for the taxed activity** , the whole service is subject to tax under normal rules, unless the part which is intended for the exempt or untaxed activity is charged separately, in which case that part of the tax is exempt. This separate payment may be made via the same invoice, provided that the part of the service that is intended for the exempt or non-taxable activity is appropriately stated and with reference to circular AAFisc No. 31/2016 (No. ET 127.540) of 12.12.2016 .

These are services that are used both for a member's exempt or non-taxable activity and for a member's taxable activity.

For example: guarding services for a museum that performs acts that are exempt under Article 44, § 2, 7 ° of the VAT Code on the one hand, and taxed activities (cafeteria operation that does not meet the conditions to be exempt) on the other hand when the guard services relate to on the entire museum complex. These surveillance services should in principle be subject to VAT . If the group charges separately the part of the security services that is intended for the museum's exempt activity, that part can still benefit from the exemption of Article 44, § *2a* of the VAT Code.

The group and the member concerned must apply an appropriate allocation key in function of the importance of the member's various activities and the service provided by the group.

In any event, if a service is used exclusively for the taxable activity of a member, the exemption under Article 44, § *2a* of the VAT Code does not apply.

Taking into account the case law of the Court of Justice of the European Union, the self-employed group is not obliged to provide the same services to all its members (see Court of Justice of the European Union, Judgment of the Central Guidelines for peer review, case C -407/07, from 11.12.2008).

In addition, when the grouping provides the same service to all its members, the scope of the service may vary according to the needs of each member concerned. The independent group only claims repayment per member of each share in the joint expenses, which may differ depending on the importance of the service provided per member.

D. Condition related to the requested fee or fee for the services provided to members

The main characteristic of the independent group is the sharing of costs that are borne by the members. It concerns the condition stated under Article 44, § *2a* , first paragraph, 3 °, of the VAT Code: ' *the fee or fee charged to each member represents only the repayment of his share in the joint expenses incurred by the group* ' .

In order for the services the group provides to its members to benefit from the VAT exemption, it is necessary that the fee or fee charged to each member represents **only the reimbursement of its share** of the joint expenditure incurred by the group.

With regard to the **services** provided by an independent grouping, this condition of application of Article 44, § *2a* of the VAT Code is met if the grouping does not aim to make a profit systematically in respect of its activity sector 'services' and whereby any profits are not distributed or distributed among its members but are used to maintain or improve the services provided to its members. Taking into account the provisions of the aforementioned explanatory memorandum, this condition also applies to the services provided to non-members.

Distribution among members of the expenses incurred by the group, including VAT charged on the goods and services supplied to the latter, may be effected:

- or by claiming from each member the appropriate reimbursement of expenditure incurred in respect of the services rendered to that member
- or when it is not possible to make a correct calculation, by making the most accurate estimate of the expenditure to be borne by each member. In that case, the share of each member in the expenditure can be determined on the basis of previously agreed relevant criteria such as, for example, the time spent, the turnover of the members, etc.

The foregoing does not, however, preclude the group from regularly requesting advances from the latter for settlement with its members.

Certain groups request an annual membership fee from their members, but do not charge any other fees. If the membership fee is not in accordance with the expenses incurred by the group, the group will have to make the necessary corrections to its members. If this does not happen and it turns out that the membership fee does not correspond to the expenses incurred by the group, the services of the group fall outside the scope of Article 44, § *2a* of the VAT Code.

The independent group must be able to demonstrate that this condition is met by means of accurate, detailed and transparent accounts.

It should also be noted that all members of an independent group must also have access to the cost price calculation of the independent group with regard to all services it provides to its members and non-members. This is done on the basis of periodic reporting by the independent group to its members (see Title 2, section A, subsection a, above). This reporting is done at least once per calendar year.

With regard to this condition of the exemption for self-employed groups of persons, reference is also made to Oral Parliamentary Question No. 25,274 by Mr Representative Eric Van Rompuy of 13.06.2018 . This parliamentary question concerns the settlement of losses of an independent group as well as the interaction between the sector 'Services' and the sector 'Supplies' of such a group.

E. Distortion of competition

This concerns the condition stated under Article 44, § *2a* , first paragraph, 4 °, of the VAT Code: ' *the exemption does not lead to distortion of competition* '.

To avoid distortion of competition:

- Article 44, § *2a* of the VAT Code stipulates that the exemption only applies if the majority of the group's activities concern acts that the group performs for members
- clarifies the aforementioned explanatory memorandum that a group can only benefit from the exemption if it does not systematically aim to make a profit when providing services to non-members (the same applies to the taxed services provided to members).

An independent group's main purpose is to establish long-term cooperation between the members of the group. For example, the *ad hoc* entry or exit of members in function of their temporary needs is not permitted (see Title 2, section A, subsection a., Above). After all, this could indicate a commercial customer-service provider relationship that in principle has a market-distorting effect.

The exemption cannot apply if, because of the nature of the acts performed, the manner in which and the context in which those acts are carried out, there is distortion of competition.

The concept of 'distortion of competition' refers not only to actual competition, but also to potential competition, insofar as this is real and not purely hypothetical.

Moreover, the distortion of competition must be more than insignificant.

The administration will assess the distortion of competition condition on a case-by-case basis in the light of the case law of the Court of Justice of the European Union. The distortion of competition can, of course, be brought up by the administration itself, for example as a result of **fiscal supervision** .

In this regard, it should be noted that the acceptance of a notice of commencement or of change of activity by any group wishing to invoke this exemption does not entail the approval of the administration with regard to the conditions of application of the exemption under Article 44. , § *2a* of the VAT Code.

Where an economic operator feels disadvantaged by the application of the VAT exemption in respect of an independent group due to the nature of the transactions carried out by the independent grouping and is therefore affected by distortions of competition, he may **complain**submit it to the central services of the General Administration of Taxation. This complaint must be motivated, state the identity of the independent group concerned and the identity of the injured economic operator (if the complaint is lodged by a representative). The administration guarantees the anonymity of the injured economic operator vis-à-vis the independent group concerned. The VAT exemption can only be withdrawn after examining the file where the parties concerned are heard individually by the administration.

The administration will investigate this complaint even if the independent group has a previous decision by the administration in which it has expressed a favorable opinion on the application of Article 44, § *2a* of the VAT Code.

The withdrawal of the exemption due to distortions of competition may, however, be applied retroactively, taking into account the information in the file.

Depending on the factual circumstances, the withdrawal of the exemption may relate to part or all of the activity of the independent group.

F. Documents to be distributed

The **burden of proof** regarding the application of the VAT exemption rests with the independent group.

It must therefore be able to demonstrate, among other things, through accurate, detailed and transparent accounts, that the exemption conditions have been met.

Regarding the taxed services provided to members, the normal VAT rules apply to the issue of invoices and documents.

If a group provides services to a member which are partly intended for the member's exempt or untaxed activity and partly for the taxed activity, the whole service is taxed under normal rules, unless the part intended for the exempt or untaxed activity is charged separately, in which case that part of the tax is exempt (see section C above). This separate payment may be made via the same invoice, provided that the part of the service that is intended for the exempt or non-taxable activity is appropriately stated and with reference to circular AAFisc No. 31/2016 (No. ET 127.540) of 12.12.2016 .

The part of the service intended for the Member's taxable activity must be invoiced in accordance with normal VAT rules. The member can only deduct the VAT charged on that invoice to the extent that it concerns a VAT-conforming invoice. For rules on the exercise of the right of deduction in respect of members, reference is made to Title 5, Section A, below.

For the services **exempted** by the grouping for its members in accordance with Article 44, § *2a* of the VAT Code , a **detailed statement** must be drawn up and sent to the members at least once a year . This statement **may not mention any VAT amount** (so no separate statement for the VAT that is charged as a cost).

If an independent group also provides taxable services to its members, it may not postpone the invoicing of those services to the aforementioned statement regarding the exempt services. After all, the normal VAT rules apply to the taxed activities of the independent group.

It is reiterated that the members must also have access to the cost price calculation of the independent group with regard to all services it provides to members and non-members. This is done on the basis of periodic reporting by the independent group to its members. The periodic reporting by the independent grouping must be the same for all members. In other words, no different types of periodic reports may be drawn up in function of, for example, the interest of a member as a customer of the group.

4. Services provided to third parties

A. Services

In any event, the services that the group provides for third parties do not fall within the scope of Article 44, § *2a* of the VAT Code and are therefore subject to VAT under normal rules. Contrary to the past (application of Article 44, § 2, 1 ° *bis* , (old)) of the VAT Code, an independent group may now also provide services to third parties without losing the VAT exemption for the services it provides for its members (subject to compliance with the exemption conditions).

B. Condition regarding the requested compensation or fee

In order to avoid distortions of competition, it cannot be accepted that the services provided for non-members are provided under conditions other than those for members.

With regard to the services provided by an independent grouping, that application condition of Article 44, § *2a* of the VAT Code is met if the grouping does not aim to make a profit systematically in respect of its activity sector 'services' and whereby any profits are not distributed or distributed among its members but are used to maintain or improve the services provided to its members. This condition also applies to the services provided to non-members.

The grouping must maintain accurate, detailed and transparent accounts in order to allow the administration to verify that this condition is met.

C. Documents to be distributed

Regarding the taxed services provided to third parties, the normal VAT rules apply to the issue of invoices and documents.

5. Right to deduct input tax

A. On behalf of the members

a. The member is a VAT taxable person without a right of deduction or does not have the status of VAT taxable person

The services that the grouping provides to the member and that meet the conditions of Article 44, § *2a* of the VAT Code are exempt from VAT. Therefore, no VAT is charged on the fee or fee charged by the group for those services.

The services that the group provides for that member and that do not meet the exemption conditions are subject to VAT under the normal VAT rules (unless any other VAT exemption applies). The VAT charged on the requested fee or fee cannot be deducted by the member.

b. The member is a VAT taxable person with a partial right to deduct

The services that the grouping provides to the member and that meet the conditions of Article 44, § *2a* of the VAT Code are exempt from VAT. Therefore, no VAT is charged on the fee or fee charged by the group for those services. The VAT included in the fee charged by the group (VAT charged as cost) may never be deducted. Even if a member exercises his right to deduct according to the general ratio number referred to in Article 46, § 1 of the VAT Code, the VAT charged as a cost may **not** be deducted.

The services that the group provides for that member and that do not meet the exemption conditions are subject to VAT under the normal VAT rules (unless any other VAT exemption applies). The member exercises his right to deduct according to the sector for which the group's service is intended and taking into account the deduction system applicable to him (the rule of general ratio or the system of actual use).

Example:

A member has the status of mixed VAT taxable person with partial right to deduct. The member exercises his right to deduct according to the general ratio number as intended by Article 46, § 1 of the VAT Code.

The group provides that member with a service that is partly intended for the member's exempt activity and partly for its taxed activity. The independent group does not separately charge the part of the service that is intended for the member's exempt activity. In that case, the service is in principle fully taxed (see Title 3, section C, above). The member

exercises his right to deduct by applying his general ratio to the VAT charged.

If the group charges separately the portion of the service intended for that member's exempt activity, then the administration shall assume that the VAT charged on that portion of the service relating to that member's taxed activity is fully deducted can be brought. The foregoing applies only to the extent that the split payment has been done correctly.

B. Under the grouping

A group that only provides exempt services has the status of a taxable person without a right of deduction.

When a group provides both taxed and exempt services, it has the status of a mixed VAT taxable person with partial right to deduct. An independent group may also engage in a second activity sector for the supply of goods (see, inter alia, Title 2, section A, subsection b, above).

The acts provided by third parties to the independent group so that the latter in turn can provide acts to its members (or third parties) must **be invoiced directly to the independent group** . Under the exemption, service providers and suppliers of an independent group may, in principle, never invoice directly to a member of the group.

However, it is permitted for a supplier or service provider to invoice to a member (for example for economies of scale) and to charge the latter for the service or supply of goods to the independent group. However, the ordinary VAT rules apply to this payment statement.

As mentioned above, a group without legal personality must act under its own name. The invoice must be issued in the name of the group and at the address of the group (see Title 2, section A, subsection b, above).

a. The independent group only has an activity sector 'services'

When a self-employed group provides both exempt and taxed services, it may not fully deduct the VAT charged on its professional expenses.

Two methods of deduction are set out in Article 46 of the VAT Code.

In principle, the mixed taxpayer applies the rule of the 'general ratio number', determined in Article 46, § 1 of the VAT Code. The tax on the goods and services used for its economic activity is deducted in proportion to the amount of the break caused by the amount of the transactions for which deduction is permitted (numerator of the break) and the total amount of the transactions from its economic activity (denominator of the fraction).

By way of derogation from that rule, the administration may, at its request, authorize the taxable person to exercise the right of deduction taking into account the actual use of the goods and services received or part thereof. It can oblige it to act in this way if the deduction in proportion to the break leads to inequality in the levying of the tax (Article 46, § 2 of the VAT Code).

For additional information, reference is made to 'Book III: Right to deduct input tax - Chapter 11: Right to deduct'.

b. In addition to an activity sector 'services', the independent group also develops an activity sector 'supplies of goods'

During the parliamentary work that preceded the adoption of the VAT Code, the Minister of Finance stated that the administration should use the powers provided for in Article 46, § 2 of the VAT Code as often as possible. are registered.

When an independent group has both an activity sector 'services' and an activity sector 'supplies of goods', the group must apply **the system of actual use** for the calculation of the right to deduct input tax (Article 46, § 2 of the VAT Code).

However, the administration accepts that, as regards the **'services' activity sector** , the right to deduct input tax can be applied on the basis of a special ratio calculated in the same way as the general ratio envisaged by Article 46, § 1 of the VAT Code if the taxpayer opts for this. Nevertheless, the administration reserves the right to impose normal rules on the application of actual use if the application of the special ratio would lead to an inequality in taxation.

With regard to the right to deduct VAT charged on costs not specifically attributable to a specific sector of activity, a special ratio should be determined, where appropriate, in joint consultation with the head of service responsible for VAT.

6. Notification obligation

The following obligations must be complied with by each independent group, regardless of whether they engage in taxed activities or not. These obligations rest on the independent group and not on its members.

The purpose of the declaration or information obligation is to prevent any distortion of competition and discrimination and to enable better control of these groups and their members. These obligations also aim to ensure proper taxation and to prevent tax evasion. In addition, all independent groups of persons must at all times be transparent to the administration as regards their members.

For example, every independent group of persons is obliged at the start of its activity to report this to the competent VAT department under which it reports within the month following the start of this activity. This group is also obliged to submit, within the same period, a list of its members to that service and the nature of their activity.

In addition, in the event of a member joining or leaving, or changing the activity of the group or one of its members, each group is also obliged to inform the service competent for VAT under which it is reporting within the month that follows. on the aforementioned event.

Finally, in the event of cessation of its activities, each group is obliged to inform the authority competent for VAT under which it is reporting within the month following this event.

The aforementioned obligations are included in 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, 25ter, § 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 tax about the added value .

For the sake of completeness, for a detailed explanation of the aforementioned declaration or information obligation, reference is made to marginal 80 to 89 of the aforementioned circular AAFisc No. 31/2016 (No. ET 127.540) of 12.12.2016 . However, it is noted that these information obligations do not result in the approval of the administration with regard to the conditions of application of the exemption of Article 44, § *2a* of the VAT Code.

7. Details

A. Personnel of the independent group

a. The independent group may recruit personnel

Where the self-employed group has **legal personality** (or has the right to recruit under social law), the personnel necessary for the operation of the group should be recruited directly by the group and placed on its payroll.

The grouping should group the costs related to the personnel and then distribute them among its members. This cost distribution is also covered by the VAT exemption in Article 44, § *2a* of the VAT Code, but only to the extent that the personnel is used to provide activities intended by Article 44, § *2a* of the aforementioned Code.

These costs include all salary costs related to personnel (including indirect salary costs such as the provision of a company car, laptop, etc.).

If a member of the group makes personnel available to the group, the normal VAT rules apply.

b. The independent group may not recruit staff

Where, for reasons of social legislation governing social law, the group is not allowed to recruit staff (which in principle is the case for groups **without legal personality)** , the activities performed by the group on behalf of its members must be carried out by **common staff** .

In this context, 'joint personnel' should be understood to mean:

- personnel recruited by a member but on behalf of all members
- existing own staff of a member engaged as joint staff in the group.

The common commitment of staff should be evident from the **cooperation agreement** signed by all members.

The posting of staff by a member to an independent group that is not allowed to recruit staff under social legislation is in principle subject to the ordinary VAT rules. Nevertheless, the administration accepts that such posting should not be subject to VAT to the extent that the personnel are deployed for the activities of the independent group that are exempted under Article 44, § *2a* of the VAT Code. Since these groups cannot recruit staff directly, the administration assumes that the joint staff has in fact been recruited by a member on behalf of and for the self-employed group.

This tolerance does not apply to the posting of personnel by a non-member to the group, nor to the posting of personnel by a member to another member of the group.

The grouping should group the costs related to common staff and then distribute them among its members. This cost distribution is also covered by the VAT exemption in Article 44, § *2a* of the VAT Code, but only to the extent that the personnel is used to provide activities intended by Article 44, § *2a* of the aforementioned Code.

For a detailed explanation in this regard , reference is made to marginal numbers 95 to 98 of the aforementioned circular AAFisc No. 31/2016 (No. ET 127.540) of 12.12.2016 .

B. The sharing or bringing in of infrastructure necessary for the activities of the grouping

When a member of an independent group makes part of its infrastructure available to the independent group, the normal VAT rules should be applied.

C. Interaction of VAT unit and independent grouping

For a detailed explanation of the figure of the VAT unit within the meaning of Article 4, § 2 of the VAT Code, reference is made to 'Book I: Tax liability and taxable transactions - Chapter 1: The taxable person - Section 12'. .

The aforementioned article states that ' *The King may, in the cases and according to the rules that He determines, persons established in Belgium who are legally independent, but are closely connected financially, economically and organisationally for the purposes of this Code as one taxable person* . "

This article 4, § 2 of the VAT Code was implemented by Royal Decree 55 of 09.03.2007 regarding the scheme for taxable persons who form a VAT unit .

Under the ordinary rules, the VAT unit must be regarded as a taxable person with the same rights and obligations as any other taxable person, to which, mutatis mutandis, all provisions of the VAT Code and the decisions taken in implementation thereof apply.

From its inception and throughout its existence, the VAT unit replaces its members for all their rights and obligations as provided for in the VAT Code and the accompanying implementing decrees.

The question arises to what extent the system of the VAT unit is compatible with the exemption from VAT under Article 44, § *2a* of the VAT Code for independent groups.

a. Can an independent group become a member of a VAT group?

If an independent group becomes a member of a VAT unit, the latter will replace all its members - including the independent group - for all their rights and obligations as provided for in the VAT, upon joining the VAT unit. - Code and associated implementing decrees.

Under the VAT fiction of the VAT unit, the self-employed grouping ceases to exist as a separate taxable person.

This means that the VAT unit acts as a service provider and no longer the independent group.

The conditions for the application of Article 44, § *2a* of the VAT Code must therefore be met in respect of the VAT unit as a whole and not solely in respect of the member-independent grouping. Pursuant to the principles of the VAT unit, it is only the VAT unit that could in that case act as an independent grouping of persons.

b. Can a VAT unit become a member of an independent group?

A VAT unit can become a member of an independent group. However, the conditions for the application of Article 44, § *2a* of the VAT Code with regard to membership of an independent grouping must be fulfilled in respect of the VAT unit as a whole. If those conditions are not met, the VAT unit cannot be a member of an independent group within the meaning of Article 44, § *2a* of the VAT Code.

Pursuant to the VAT fiction of the VAT unit, it is **not permitted** for one or more members of a VAT unit to become **individual members** of the independent group concerned.

For the sake of completeness, it is noted that if the independent grouping concerned provides services directly to a member of the VAT unit within the meaning of Article 44, § *2a* of the VAT Code, these services are deemed to have been provided to the VAT unit.

c. Can a member of an independent group become a member of a VAT group?

Pursuant to the VAT fiction of the VAT unit, the VAT unit replaces its members for all their rights and obligations as provided for in the VAT Code and its implementing decrees and the member of the VAT unit is no longer designated as a separate taxpayer.

If a taxable member of an independent group within the meaning of Article 44, § *2a* of the VAT Code thus also wishes to become a member of a VAT unit, this means that this paragraph is no longer regarded as a separate taxable person. .

Thus, a member of an independent group can only become a member of a VAT unit if the conditions relating to the membership of the independent group concerned within the meaning of Article 44, § *2a* of the VAT Code have been met in accordance with the VAT unit as a whole.

d. Can an independent group and all its members join the same VAT unit?

If all the conditions for joining a VAT unit are met, an independent group with all its members can join a VAT unit.

However, the exemption of Article 44, § *2a* of the VAT Code no longer applies, since the transactions carried out between the members of a VAT unit constitute internal transactions outside the scope of VAT.

D. Can an independent group within the meaning of Article 44, § 2bis of the VAT Code be a member of another independent group within the meaning of that Article?

Insofar as two independent groups are established in Belgium, the administration accepts the application of the exemption in Article 44, § 2b *is* of the VAT Code in respect of services provided by an independent group to a member which itself acts as an independent group of persons in accordance with Article 44, paragraph 2 *bis* of the VAT Code and the extent of all that article and in circular AAFisc no. 31/2016 (no. ET 127 540) of 12.12.2016 recorded applicable conditions are met.

However, attention is drawn to the fact that this particular situation should in no way distort competition (see Title 3, Section E, above).

E. Partnerships in the (para) medical sector

The circular 2019 / C / 46 of 04.06.2019 'FAQ on the VAT concerning practical applications of partnerships in the (para) medical sector' (ET 134.875) contains *'Frequently Asked Questions'* regarding partnerships in the (para) medical sector. It aims to clarify the provisions of Circular AAFisc No. 31/2016 (No. ET 127.540) of 12.12.2016 in the light of some application cases that partnerships in the (para) medical sector often encounter.

This circular discusses, among other things, the VAT treatment of:

- practitioners of a (para) medical profession who set up an association that only 'pools' costs without 'pooling' the income.
- associations in which only the costs are pooled, but in which these are wholly or partly financed by the receipts of the global medical file of the patients to whom the (para) medical professionals (members of the association) are entitled (CMD reimbursements). The GMD fees are not shared among themselves. At the final settlement, the GMD fees for which he is entitled are deducted for each medical professional from the fee to be paid by the medical professional for the services of the partnership.
- practitioners of a (para) medical profession who set up an association that 'pools' both costs and income, whereby the income is transferred to the (para) medical practitioner-entitled person after deduction of the costs incurred.
- practitioners of a (para) medical profession who set up an association with legal personality in which both income and costs are pooled and in which the income is transferred to the (para) medical practitioner-entitled person after deduction of the costs incurred. A distinction is made between a situation in which the receipts (certificates) state the company number of the (para) medical professional or that of the association.
- a (para) medical practice has several equipped practice areas, a common waiting room and a common entrance. The (para) medical practitioner, owner (or tenant) of the practice, makes the other practice rooms available to other (para) medical professionals. The other (para) medical professionals (who issue receipts (certificates) themselves) pay a fixed monthly fee to the (para) medical professional who makes the infrastructure available to them.

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

Section 22 - The delivery of immovable property by its nature (Article 44, § 3, 1 °, of the VAT Code)

1. Transfer of ownership, and more generally, transfer of the power to own a property as an owner

A. Exceptions

Movable or immovable physical property may be the subject of a taxable supply.

Article 135, § 1, j) and k) of Council Directive 2006/112 / EC of 28.11.2006 on the common system of VAT provides for an exemption from VAT for the supply of certain immovable property.

These provisions distinguish between old buildings and new buildings in that the sale of an old building is in principle exempt from VAT. The *ratio legis* of those provisions must be sought in the fact that the sale of an old building hardly creates any added value . The sale of a building after it has been delivered for the first time to an end consumer, which indicates the end of the production process namely no significant added value and should therefore in principle be exempt from tax (Court of Justice of the European Union, KPS, Case C-308/16, 16.11.2017, paragraph 31 and KH, Case C- 71/18 dated 04.09.2019, points 56 and 57).

These Community rules have been transposed in Belgium into Article 44, § 3, 1 ° of the VAT Code, which **exempts** the supply of immovable property by its nature, subject to the exceptions mentioned in section B of this title.

B. Exclusions from the fundamental exemption

The delivery of (parts of) buildings are **exceptionally excluded** from the aforementioned exemption if their alienation is effected no later than 31 December of the second year following the year of the first occupation or first occupation of that building or part of that building (hereinafter referred to as new building or new part of a building).

The following terms should be understood:

- building or part of a building: any structure that is permanently connected to the ground
- native land: the site for which permission has been granted for it to build to and transmitted by the same person at the same time the building to which it belongs (Article 1, § 9, first paragraph, of the VAT Code).

In order to be subject to tax, these supplies must be made by a person who is a taxable person.

The three categories of taxpayers involved should be distinguished as follows:

- First category: the person who has the status of taxable person by operation of law because of the regular alienation of new buildings or parts of new buildings (Article 44, § 3, 1 °, a), first indent, of the VAT Code.

  This person is referred to in Article 12, § 2 of the Code and is the debtor of the VAT with every delivery of a new building or part of a new building and of the associated terrain, without having the possibility to opt for application of the exemption or tax.

  For example, a construction promoter or developer and, more generally, a professional real estate seller, sells 24 newly designated apartments in a building he has erected or acquired with tax payment.

- Second category: the person who by operation of law has the status of taxable person with or without deduction for an economic activity other than that of a professional real estate seller and **formally opts** for the application of VAT in the incidental sale of a new building or part of a building that he has used in the exercise of his economic activity (Article 44, § 3, 1 °, a), third indent, of the VAT Code).

  For example, a psychotherapist sells the still new building in which he has practiced his practice. The fact that the economic activity is exempt from VAT is irrelevant in this situation.

- Third category: the person who, other than in the exercise of an economic activity, happens to sell a new building or part of a new building and **formally opts** for the status of taxable person and, consequently, for the application of VAT (Article 44, § 3 , 1 °, a), second indent, of the VAT Code).

  Consequently, both non-taxable persons (for example private persons, public institutions as referred to in Article 6 (1) of the VAT Code) and taxpayers with or without a right of deduction are referred to here, but only if the relevant act under the latter belongs to the private sphere or more generally, that act is performed for purposes other than that of economic activity. These persons are called 'accidental taxable persons' (Article 8, § 1 of the VAT Code).

  For example, a dentist sells his private home (which is still considered new).

C. List of supplies which are exempt from VAT

Are therefore exempt from tax, supplies of:

- land, other than the corresponding lands within the meaning of Article 1, § 9, first paragraph, 2 °, of the VAT Code: the land that has not been prepared for construction and the lands that have been made ready for construction only (for example: private lots sold to private individuals in the as part of an allotment), as described in decision no. ET 124.513 of 23.12.2013 , marginal 2.1.
- (parts of) buildings, other than new (parts of) buildings
- new (parts of) buildings, outside the tax conditions referred to in the second and third category of heading B of this title, ie by persons who have not formally opted for the application of the tax.

2. Transfer of a business right, other than the property right, that grants a right of use to a property

A. Basic exemption

The Belgian legislator has made use of the possibility provided for in Article 15, § 2, b) of Directive 2006/112 / EC, aforementioned, to regard a real right conferring a right of use on immovable property to its owner as a physically good. The transfer (or even establishment) of the right in rem may therefore be the subject of a taxable supply.

Are in any case **exempt** from tax the establishment, transfer or re-transfer of real rights within the meaning of Article 9, second paragraph, 2 °, of the VAT Code, which relate to immovable property by nature (usufruct, building, ground lease ...). Nevertheless, the same exceptions are provided for as those mentioned in Title 1, section B of this section.

B. Exclusions from the principle exemption

By way of **exception** , the aforementioned exemption, establishment, transfer or re-transfer of the real rights described in section A of this title are **excluded** from (parts of) buildings and the associated grounds referred to in Article 1, § 9, first paragraph. , of the VAT Code, if they:

- be carried out by 31 December of the second year following the year of the first putting into service or the first taking of the goods
- were carried out under the conditions of tax liability of the person establishing the right in rem, the transferor or the transferor of those rights.

The three categories of taxable persons concerned are the same as those listed in Title 1 of this Section.

- First category: the person who is legally a taxable person, as referred to in Article 12, § 2 of the VAT Code, who, within the aforementioned period, establishes one of the aforementioned rights in rem on a building or part of a building that he has been established, has it established or has been paid with tax, or that within the same period such a right in rem which has been established for his benefit or has been transferred to him with payment of the tax, transfers or retransfer (Article 44, § 3, 1 °, b), first indent, of the VAT Code).
- Second category: the person who is legally a taxable person, whose economic activity is not referred to in Article 12, §2 of the VAT Code, if he has **formally opted for the application of VAT** at the establishment, within the aforementioned term of one of the aforementioned rights in rem on a (part of) a building that he has erected, have erected or obtained with payment of tax, or in the event of transfer or retransfer, within the aforementioned period, of such a right that is his income was established or transferred to him with payment of the tax (Article 44, § 3, 1 °, b), third indent, of the VAT Code).
- Third category: the 'accidental' taxable person **through option** , as referred to in Article 8, §§ 2 or 3 of the VAT Code (Article 44, §3, 1 °, b), second indent, of the VAT Code).

C. VAT-exempt supplies of rights in rem on a property list

Are therefore exempt from tax, the establishment, transfer and re-transfer of real rights within the meaning of Article 9, second paragraph, 2 °, of the VAT Code on:

- lands, other than the associated lands within the meaning of Article 1, § 9, first paragraph, 2 °, of the VAT Code
- (parts of) buildings other than new buildings
- new (parts of) buildings, outside the conditions for taxation referred to in the second and third category of heading B of this title, in other words performed by persons who have not formally opted for the application of the tax.

The exempt real estate supplies and real estate supplies excluded from this exemption, whether mandatory or optional (including the establishments, transfers or remittances of real rights in those (parts of) buildings) are discussed in detail in '. Book VI: Specific topics - Chapter 16: Specific topics, Section 1: Real estate - Deliveries'.

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Section 23 - The real estate rental (Article 44, § 3, 2 ° of the VAT Code)

1. Basic exemption

Physical property, movable or immovable, can be the subject of a taxable rental.

Nevertheless, Article 44, §3, 2 ° of the VAT Code, when transposing Article 135, paragraph 1, point 1, of the Council Directive 2006/112 / EC of 28.11.2006 on the common system of value-added tax, an **exemption** from tax for the leasing and rental of immovable property by its nature.

With a view to a more faithful transposition of the aforementioned article of the Directive, since 01.01.2019 that exemption no longer applies to the transfer of a rent with regard to a property of its nature.

2. Exceptions to the fundamental exemption

By way of **exception** , the basic **exemption** regarding the immovable lease **precluded** by:

- Article 135, paragraph 2, first paragraph, of the Directive 2006/112 / CE, aforementioned, which imposes the taxation (hotels and camping sites, sheds for carriages, permanently installed tools and machines, safe deposit boxes)
- Article 135, paragraph 2, second paragraph of the aforementioned Directive (additional exclusions from the exemption such as these with regard to the storage of goods or real estate rental in the short term).

These exclusions are justified for the following reasons:

- Return to taxation by operation of law (compulsory), (see section A of this title), in function of:
  - the nature of the performance, regardless of:
    * the duration of the rental (for several hours or per year), for example when a parking space is made available
    * the capacity of the customer (in a B2B or B2C context), for example in a hotel room.
  - the short term of the lease while retaining , in some cases, the principle of exemption from VAT (for example for housing purposes).
- Provide for the possibility to withdraw the exemption by opting for taxation (see section B of this title).

It is noted that compulsory taxation with regard to:

- the storage of goods does not apply if, to tax that act, the exercise of the option is possible
- short-term real estate has priority over optional taxation even if the option can be applied.

If not all conditions regarding the compulsory or optional taxation of the real estate rental are met, the general rule applies to this matter, namely the principal exemption from VAT (Article 44, §3, 2 ° of the VAT Code).

A. By law (compulsory) taxation with regard to the real estate rental (Article 44, §3, 2 °, a), first to seventh indent, b) and c), of the VAT Code.

In accordance with Article 135, paragraph 2, of the Directive 2006/112 / EC, the aforementioned are subject to the following tax:

- the provision of parking facilities for carriages
- the provision of spaces for storage purposes that meet the following standards (applicable from 01.01.2019): the spaces are used for more than 50% for the storage of goods, provided that they are not used for more than 10% as sales space. Are not intended: the provision for which the option referred to in Article 44, § 3, 2 °, d) of the VAT Code can be exercised (see Title 2 of this section *J*
- providing furnished accommodation in hotels, motels and establishments providing accommodation for paying guests
- the provision of a place to camp
- the provision of immovable property by its nature in connection with the operation of ports, navigable waterways and airports
- the provision of permanently installed tools and machines
- from 01.01.2019, the making available, for other than residence purposes, of immovable property by its nature, for a period not exceeding six months.

  Taxation is lifted if the customer:

  - is a natural person who uses the goods for private purposes or, more generally, for purposes other than those of his economic activity
  - is an institution (legal person or association) with no profit purpose
  - is any person who uses the goods for actions intended by Article 44, § 2 of the VAT Code (socio-cultural activity...)
- the real estate finance lease under the conditions of the Royal Decree No. 30 of 29.12.1992 regarding the application of the value added tax to the real estate finance lease
- the rental of safe deposit boxes.

B. Optional taxation with regard to the real estate rental (Article 44, § 3, 2 °, d) of the VAT Code)

a. Principle of taxation

If the **landlord and the tenant opt for it jointly** , the rental of a building or part of a building (including, if applicable, the associated land), which the tenant uses exclusively for the economic activity that grants him the status of taxable person, is subject to to the tax.

The option is valid for the entire duration of the agreement.

The option can only be exercised for contracts relating to buildings or parts of buildings of which the tax, on the transactions referred to in Article 19, § 2, third paragraph , of the VAT Code, relating to (the parts of) the building and which contribute to its construction (major or major renovation) is due for the first time on 01.10.2018 (hinge date) at the earliest.

This condition relating to the claimability of the tax does **not** apply to contracts for the provision of spaces which, in view of their total surface / volume, are used for more than 50% for the storage of goods and for no more than 10 % as sales space, for which the option can be exercised.

The optional taxation regime entered into force on 01.01.2019.

b. Associated site

The term 'associated land', included in section 22, title 1, section B of this chapter and in Article 1, § 9, first paragraph, 2 ° of the VAT Code does not apply to a building whose rental is taxed by exercising the option for taxation (Article 1, § 9, second paragraph of the VAT Code).

This term is defined in Article 44, § 3, 2 °, d), fourth paragraph, of the VAT Code: '... *is understood to mean "associated land", the cadastral parcel or the cadastral parcels on which the building or part of the building has been erected and that or that is being let by the same person at the same time as that building or part of that building '* .

For a more detailed discussion of the VAT exemption for real estate rental and the exceptions to that exemption, either compulsory or through the exercise of the option, reference is made to 'Book VI: Specific topics - Chapter 16: Specific topics, Section 2 - Real estate goods - Services, titles 2, 3, 4 and 5 'and the circular 2019 / C / 25 of 21.03.2019 regarding the law of 14.10.2018 amending the VAT Code in the field of real estate rental - FAQ .

C. Summary tables concerning the exemptions from the exemption of the real estate rental, referred to in Article 44, §3, 2 °, a), second indent (storage areas), seventh indent (short term) and d) (optional taxation) of the VAT Code - References to the Code

a. Real estate rental for purposes other than the storage of goods

Uitzonderingen op de principiële vrijstelling bedoeld in artikel 44, § 3, 2°		
	Verplichte belastingheffing (artikel 44, § 3, 2°, a), zevende streepje)	**Optionele belastingheffing** (artikel 44, § 3, 2°, d)
Duur van de verhuur	Maximum 6 maand	Meer dan 6 maand (duur zonder belang indien de huurder een vereniging is zonder winstoogmerk of éénieder die het goed bestemt voor doeleinden bedoeld in artikel 44, §2)
Aard van het goed	Onroerend uit zijn aard. **Geen** scharnierdatum op 01.10.2018 voor de opeisbaarheid van de btw geheven op de bouw of ingrijpende renovatie van het onroerend goed	Gebouw of autonoom deel van een gebouw en bijhorend terrein Scharnierdatum op 01.10.2018 voor de opeisbaarheid van de btw geheven op de bouw of ingrijpende renovatie van het (autonoom deel van het) gebouw
Hoedanig-heid van de afnemer	Iedereen behalve een instelling zonder winstoogmerk -> **Vrijstelling behalve** indien deze instelling als belastingplichtige kan opteren voor de belastingheffing ⟶	Belastingplichtige
Bestem-ming van het goed door de afnemer	Zonder belang, behalve indien: • huisvesting → **Vrijstelling** • privédoeleinden of andere doeleinden dan de economische activiteit van een natuurlijk persoon → **Vrijstelling** • verrichtingen bedoeld in artikel 44, §2 van het Btw-Wetboek gesteld door éénieder → Vrijstelling behalve indien het goed bestemd is voor een economische activiteit ⟶	Exclusief gebruik door de huurder in het kader van zijn economische activiteit waarvoor hij belastingplichtige is

b. Provision of spaces for the storage of goods in or on an (autonomous part of a) building

Hoedanigheid afnemer	**Duur van de verhuur**	**Opslagplaats volgens de normen (in verhouding tot de oppervlakte of het totaal volume, overschrijdt de opslagruimte 50% en bedraagt de verkoopsruimte maximaal 10%)**	**Opslagplaats buiten de normen**
Belasting-plichtige als zodanig handelend	Maximum 6 maand	**Btw van rechtswege verschuldigd** (artikel 44, §3, 2°, a), zevende streepje) **behalve** indien de afnemer: • een instelling is zonder winstoogmerk • of het goed gebruikt voor doeleinden bedoeld in artikel 44, § 2 → **Vrijstelling behalve** indien wordt geopteerd voor de belastingheffing ↓	**Btw van rechtswege verschuldigd** (artikel 44, § 3, 2° a), zevende streepje) **behalve** indien de afnemer: • een instelling is zonder winstoogmerk • of het goed gebruikt voor doeleinden bedoeld in artikel 44, § 2 → **Vrijstelling behalve** indien wordt geopteerd voor de belastingheffing ↓
	Meer dan 6 maand	**Btw verschuldigd bij optie** (artikel 44, § 3, 2°, d)) Scharnierdatum op 01.10.2018 voor de opeisbaarheid van de btw bij oprichting of ingrijpende renovatie van het (autonoom deel van het) gebouw is **niet** van toepassing	**Btw verschuldigd bij optie** (artikel 44, § 3, 2°, d)) Scharnierdatum op 01.10.2018 voor de opeisbaarheid van de btw geheven op de bouw of ingrijpende renovatie van het (autonoom deel van het) gebouw
Niet-belasting-plichtige instelling **met** winstoog-merk	Maximum 6 maand	**Btw van rechtswege verschuldigd** (artikel 44, §3, 2°, a), tweede streepje)	**Btw van rechtswege verschuldigd** (artikel 44, § 3, 2°, a), zevende streepje)
	Meer dan 6 maand	**Btw van rechtswege verschuldigd** (artikel 44, §3, 2°, a), tweede streepje)	**Vrijstelling** (artikel 44, § 3, 2°)
Niet belasting-plichtige instelling **zonder** winstoogmerk	Zonder belang	**Btw van rechtswege verschuldigd** (artikel 44, §3, 2°, a), tweede streepje)	**Vrijstelling** (artikel 44, § 3, 2°)

c. Provision of spaces for the storage of goods on an undeveloped site

- Storage facility within the surface standards (see subsection b of this section): VAT owed by operation of law, regardless of the capacity of the customer and the duration of the lease (Article 44, §3, 2 °, a, second indent)
- Storage outside the standards:
  - maximum 6 months: VAT is owed by operation of law (Article 44, § 3, 2 °, a), seventh indent) **unless** the customer either:
    * a physical person is acting for private or other than economic purposes
    * whether it is a non-profit institution
    * or is a person who uses the good for the purposes referred to in Article 44, § 2
    * Exemption (Article 44, § 3, 2 °)
  - More than 6 months: exemption (Article 44, § 3, 2 °)

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Section 24 - Contracts for expenditure (Article 44, § 3, 3 ° of the VAT Code)

In accordance with the provisions of Article 44, § 3, 3 °, of the VAT Code, the value added tax is exempted ' *the contracts for the publication of literary works or works of art concluded by the author or composer* '.

Articles 132 to 137 of Directive 2006/112 / EC do not provide an exemption for contracts for the publication of literary works or works of art.

However, in accordance with Article 371 of Directive 2006/112 / EC, a Member State may retain the exemption for services of authors, artists, interpreters of works of art, lawyers and other members of the liberal professions insofar as it already exempted those acts on 01.01.1978. This is why Article 44, § 3, 3 °, of the Belgian VAT Code retains the exemption from VAT for contracts for the publication of literary works or works of art (Written Parliamentary Question No. 106 by Mr People's Representative Christian Brotcorne from 16.12.2009).

1. Conditions of application

The application of the exemption is subject to three conditions:

- the transaction concerns a contract for expenditure
- the contract is concluded with the author or composer of the literary work or of the artwork
- the contract relates to a literary work or a work of art.

A. The transaction must be a contract for expenditure

a. Understanding

The contract for publication within the meaning of Article 44, § 3, 3 ° of the VAT Code, is the contract whereby someone, the publisher, opposes the author of a literary or artistic work that is protected by the legislation on the copyrights, against payment of a fee, undertake to reproduce this work mechanically and to distribute it to the public. Such a contract presupposes the pre-existence of a copyright in respect of someone who wishes to exploit it by transferring ownership or by granting enjoyment thereof (decision no. ET 6.597 of 09.06.1972).

No distinction should be made as regards the method of making available to the public, as well as as regards the medium. All techniques are eligible, both paper and digital, as internet sites (written Parliamentary Question No. 108 by Mr Representative Christian Brotcorne of 16.12.2009).

For the purposes of the exemption, it does not matter whether the person who concludes a contract for publication with an author or a composer himself carries out the publication of the transferred or concession work, or in turn contracts for publication with another person. Although the exemption does not apply in the relationship between the latter and the co-contractor of the author or the composer (decision no. ET 10.835 of 12.09.1972).

b. Independent photographer

The contract for consideration, whereby an independent photographer grants a publisher the right to publish photos without the latter assuming the obligation to publish, is not , however, a publishing contract as referred to in Article 44, § 3, 3 ° of the VAT Code (decision no. ET 60.548 of 11.03.1988).

c. sums paid for the display or performance in public or broadcasting of a literary, dramatic, dramatic musical or musical work

The sums paid directly or through an association of authors to authors or composers for the performance or performance of the show, concert or entertainment, operators of drinking establishments, dance or jukeboxes , radio and television institutes established in Belgium in public or for the public broadcast of a literary, dramatic, dramatic musical or musical work, are not exempt (see notice no. 142/1971 of 24.09.1971).

d. Lay-out

The so-called 'lay-out' performance, which consists of creating original drawings, page arrangements, decorations and the like for book and printed works, is a performance protected by copyright law. Doing it

of such performance fee is to be regarded as the transfer of a copyright or licensing of such rights (see Article 18, § 1, paragraph 7 ° of the VAT Code).

If the intended work is the subject of a contract whereby, on the one hand, the author grants permission to reproduce and distribute his work, and, on the other hand, the co-contractor assumes the obligation to publish, this contract is an edition contract which is pursuant to Article 44, § 3, 3 °, of the VAT Code is exempt from VAT (decision no. ET 21.772 of 21.01.1976).

B. The contract must be concluded with the author or composer of the literary work or of the artwork

Only natural persons can be considered as a literary or artistic author (see decision no. ET 13.653 of 01.12.1972). In accordance with Article XI.170 of Book XI of the Economic Law Code, only natural persons can be the author of a creation. Therefore, a legal person cannot be regarded as an author.

It follows that the exemption of Article 44, § 3, 3 ° of the VAT Code does not apply to a publishing contract concluded by a legal entity with a publishing house.

Nor does the exemption apply to a publishing contract concluded with a person other than the author or composer, including the contract between two publishers.

C. The contract must relate to a literary work or work of art

The terms 'literary works or works of art' encompass all products of literature, science and art, such as:

- books regardless of the genre (novels, technical works, comics, books in which illustrations occupy an essential place...)

- brochures
- texts of press articles
- lectures, speeches, sermons and other writings of that kind
- texts of sketches, screenplays and dialogues of plays and films, novel adaptations for the stage and for the screen
- musical compositions with or without words
- the representation of choreographic works and the description of pantomimes
- dramatic plays and dramatic-musical works
- cinematographic and television works and, more generally, audiovisual works (including direct radio and television broadcasts, interviews, commercials, music clips, video games, slideshows)
- works of drawing, painting, construction, sculpture, engraving and lithography
- photographic works
- works of applied arts
- drawings, sketches, maps and plastic works related to geography, topography, history, engineering, sciences... (Written Parliamentary Question No. 108 by Mr People's Representative Christian Brotcorne dated 16.12.2009).

2. Publisher is established in another Member State

The service provided by an author or composer established in Belgium under a publishing contract, for a publisher established in another Member State, is deemed to take place where the publisher has the seat of his economic activity .

However, if the service is provided to the issuer's permanent establishment established in another Member State, and the service is provided for the purposes of that permanent establishment and not for the purposes of the seat of the economic activity, the service is deemed to be provided. in the Member State of that permanent establishment (see Article 21, § 2 of the VAT Code and Article 44 of Directive 2006/112 / EC).

Any exemption from this benefit in that Member State must be assessed on the basis of the legal and regulatory provisions in force there. The Belgian author or composer is therefore obliged to ascertain the status of services rendered in this Member State in order to determine whether or not this act should be included in his declaration of intra-Community acts.

If the transaction is not exempt in the Member State (other than Belgium) where the transaction takes place, the Belgian author or poet must:

- be identified for VAT purposes by means of a VAT number
- submit a quarterly statement of its intra-Community transactions, stating, for each customer concerned, the VAT number allocated to the latter by the other Member State and the total amount of transactions for which VAT has become due during the period to which the declaration refers (see Written Parliamentary Question No 490 by Mr People's Representative François-Xavier de Donnea of 28.05.2009 and Written Parliamentary Question No 106 by Mr People's Representative Christian Brotcorne of 16.12.2009).

3. Independent journalists and independent newspaper correspondents

Letter No. 8/1993 of 10.03.1993 explains the VAT system applicable to self-employed journalists and self-employed newspaper correspondents.

Taking into account the circumstance that the persons drawn up by the above-mentioned persons
newspaper articles usually attest to the author as evidence of a personal and original work and in the agreement between those persons and the publishers of newspapers and magazines normally providing for the publication of all articles written by the journalists and correspondents, the administration accepts the interpretation of the parties involved that the articles in question are protected by copyright and the provision thereof to the publishers takes place under a contract for publication that is taxable under Article 44, § 3, 3 ° of the VAT Code exempt. The fact that the independent journalist or independent newspaper correspondent exclusively reserves the rights he owns at work to a single publisher does not affect the foregoing.

If, however, the circumstances referred to in the previous paragraph occur according to said journalists
and newspaper correspondents and the publishers of newspapers and magazines would not appear, the former who regularly provide articles or messages to a publisher in respect of that activity for a fee would obtain the status of ordinary taxpayer and, consequently, in the event of the combined application of Articles 2, 4 and 18 of the VAT Code, must charge VAT to the publisher.

It should also be noted that the regime of the aforementioned Notice No 8/1993 of 10.03.1993 is not an optional system whereby the parties can designate any contract as an expense contract. It goes without saying that the qualification by the parties must accurately reflect the terms of the agreement and the circumstances under which the services are provided. If it appears from the terms of the agreement and from the circumstances in which the services are provided that the conditions of Article 44, § 3, 3 ° of the VAT Code manifest have not been met, it follows that the exemption cannot be applied .

When the exemption of Article 44, § 3, 3 ° of the VAT Code does not apply, the self-employed journalists and newspaper correspondents, whose annual turnover in Belgium does not exceed 25,000 euros, can benefit from the exemption scheme for small companies , provided it complies with the requirements of Article 56 *bis* of the VAT Code and royal Decree no. 19 of 06.29.2014 regarding the exemption from value added tax for the benefit of small businesses .

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

Section 25 - Acts of insurance and reinsurance as well as brokers and agents regarding insurance (Article 44, § 3, 4 ° of the VAT Code)

1. General

In accordance with the provisions of Article 44, § 3, 4 °, of the VAT Code, the value added tax is exempted from *the activities of insurance and reinsurance, including the related services performed by brokers and agents, with the exception of however of the services as damage expert* '.

This exemption is the transposition into Belgian law of the Article 135, paragraph 1, point a) of Directive 2006/112 / EC said.

The Court of Justice of the European Union has repeatedly clarified what is meant by the concept of 'insurance transactions' (see inter alia Court of Justice of the European Union, Judgment Card Protection Plan ltd , Case C-349/96, 25.02. 1999 , paragraph 17). According to the Court, an insurance act within the meaning of Article 135 (1) (a) of Directive 2006/112 / EC is characterized by the fact that the insurer undertakes to provide the insured person with advance payment of a premium to provide the service agreed upon the conclusion of the agreement when the insured risk commences.

In principle, this term is broad enough to cover an insurance policy offered by a taxable person who is not an insurer himself, but who provides such cover to customers under collective insurance schemes by using the services of an insurer that assumes the insured risk (see, to that effect, inter alia Court of Justice of the European Union, Mapfre , Case C-584/13, 16.07.2015 , paragraph 30).

The scope of the provisions of Article 44, § 3, 4 ° of the VAT Code is explained in detail in Circular 2017 / C / 36 (no. ET 130.255) of 12.06.2017 , as regards the services of brokers and agents who related to insurance and reinsurance acts as well as to claims handling services.

The term ' **broker and agent** ' as referred to in the provisions of Article 44, § 3, 4 ° of the VAT Code does not refer to the formal status of the taxpayer, but to the content of the activity concerned.

In order for a service provider to be regarded as an insurance broker or agent, two conditions must be met:

- the service provider must be related to the insurer and the insured person (Court of Justice of the European Union, Taksatorringen , Case C-8/01, 20.11.2003 , paragraph 44). Such relations also exist if the broker or agent only has relations with the parties through another taxpayer who does have direct relations with one of the parties (Court of Justice of the European Union, judgment in JCM Beheer BV, case C 124/07, of 03.04.2008 , point 29)

  Such mediation may include informing the contracting party of opportunities to enter into this contract, contacting the counterparty on its behalf, and negotiating details of the reciprocal performance on behalf of the client. The aim of this activity is therefore to ensure that two parties conclude a contract without the intermediary having an interest of its own with regard to the content of the contract. There is no mediation activity, however, if one of the parties to the contract entrusts a subcontractor with part of the material acts related to the contract, such as the provision of information to the other party, as well as the receipt and processing of requests to subscribe to the securities that are the subject of the contract. In that case, the subcontractor takes the same place as the seller of the financial product and is therefore not, within the meaning of the provision in question, an intermediary who does not take the place of a contracting party (seeCourt of Justice of the European Union, Commissioners of Customs and Excise v CSC Financial Services Ltd., Case C-235/00, 13.12.2001 , paragraphs 39 and 40 and Court of Justice of the European Union, Arthur Andersen & Co, Case C-472/03, 03.03.2005 , point 38).
- the activity of the service provider should cover essential aspects of the role of insurance intermediary, such as finding new clients and contacting those new clients with the insurer (Court of Justice of the European Union, Arthur Andersen & Co, case C-472/03, 03.03.2005 , points 33 and 36).

Thus, the exemption of Article 44, § 3, 4 °, of the VAT Code not only relates to the actual intervention of the broker or agent when concluding an insurance contract, but also to the acts of management performed by the broker or agent. provided that they relate to insurance contracts that have been concluded or modified through its intervention and that cover the entire term of these contracts.

Management transactions within the meaning of this exemption may, inter alia, consist of the calculation of the amount of the premiums, the collection of these premiums, the recovery of the unpaid premiums, the intervention in the settlement of claims, the investigation of the changes in the contract requested by the customer or by the company.

However, the services performed as **damage expert** are expressly excluded from the exemption.

The taxpayer who performs acts of management with regard to contracts for which he himself does not intervene as a broker or agent fall in principle outside the scope of Article 44, § 3, 4 ° of the VAT Code, regardless of whether these persons for their intervene in other contracts as a broker or agent.

In the particular case where an insurance portfolio is taken over by a taxpayer, this exemption also applies to transactions performed by the person who did not intervene in taking out an insurance policy and subsequently became a 'management intermediary' of this policy by taking over all or part of the insurance portfolio of the insurance intermediary, as intended by Article 44, § 3, 4 °, of the VAT Code, which entered into the policy and insofar as the acts of management actually relate on the contracts that have been taken over.

In the past, the administration also assumed that the services provided by third parties in connection with the settlement of claims could benefit from the exemption for insurance brokers and agents. However, this position has changed as of 01.01.2018 (see Title 2 below).

2. Claims handling services

Claims-handling services which were awarded no later than 31.12.2017 may benefit from the exemption for insurance brokers and agents even if they were provided by a taxable person who did not intervene at the conclusion of the contract (see decision no. ET 103.851 / 3 of 20.01.2007).

Claims handling services may include one or more of the following actions: receiving claims, performing substantive claims handling, drawing up technical reports, examining objections and complaints about claims handling, arranging correspondence with the client (including legal notices).

However, the Court of Justice of the European Union has confirmed that where a taxable person, who has not intervened as a broker or agent in entering into or modifying an insurance contract, provides claims handling services, it does not fall within the scope of Article 135 (1), exemptions included under a) of Council Directive 2006/112 / EC of 28.11.2006 (converted into Belgian law by Article 44, § 3, 4 °, of the VAT Code) (Court of Justice of the European Union , Judgment of Minister Finansów against Aspiro SA, case C-40/15, 17.03.2016).

This view was endorsed by the Administration in its circular 2017 / C / 36 (No. ET 130.255) of 12.06.2017, which provides claims handling services performed by a third party on behalf and on behalf of an insurance company at the normal VAT rate are taxed. However, it was decided that the cancellation of the administrative concession contained in the aforementioned decision No. ET 103.851 / 3 of 20.01.2007 , following the aforementioned judgment of 17.03.2016 in case C-40/15, will only have effect for the contracts on claims settlement assigned from 01.01.2018.

Consequently, a transitional period was provided to allow the sector to adapt to the consequences of the aforementioned European judgment. For example, if an individual claim occurs after 31.12.2017, its assignment to a claims representative is not exempt from tax. This assessment is done file by file.

Finally, it goes without saying that when a broker or agent performs claims-handling services relating to an insurance contract in which he himself has intervened, these services remain exempted in application of Article 44, § 3, 4 ° of the VAT Code (see title 1 above).

3. Services whereby a Belgian insurance company has to rely on foreign correspondents in the context of assistance contracts for the handling and management of claims of which their insured persons are victims abroad

In accordance with the provisions of Article 44, § 3, 4 °, of the VAT Code, the activities of insurance and reinsurance, including the related services performed by brokers and agents, are exempt from value added tax. however of the services as damage expert '.

The scope of the provisions of Article 44, § 3, 4 ° of the VAT Code is explained in detail in section 1 above and in circular 2017 / C / 36 (no. ET 130.255) of 12.06.2017 .

Correspondent means an insurance company, or any other natural or legal person designated by one or more insurers for the management and settlement of damage claims resulting from accidents involving vehicles that are insured by them and that have taken place in the correspondent's country of residence.

The procedure governing compensation for injured parties as a result of a car accident occurring in a Member State other than the Member State of their residence is laid down in Directive 2009/103 / EC of 16/09/2009.

Taking into account the provisions of Directive 2009/103 / EC of 16.09.2009 with regard to the specific role of 'correspondents' recognized as claims adjusters by a national insurance agency, the administration accepts, as before, that the acts relating to treatment and management of claims by respective correspondents (also acts green card or four^{e} insurance Directive called), following an accident involving a motor vehicle is involved, and whose clients insured by the Belgian insurance company for which they act are victims, the benefit from the exemption of Article 44, § 3, 4 ° of the VAT Code.

4. Subscription Agent Services

The question was asked whether the services of so-called 'subscription agents' are intended by the provisions of Article 44, § 3, 4 ° of the VAT Code.

The term 'insurance agent' is defined as 'the insurance intermediary who, as agent of one or more insurance companies, has one or more mandates, with which he can subscribe risks offered by insurance intermediaries, on behalf of and for the account of the insurance companies he represents'.

The subscription agent subscribes to the risks and manages the related claims, taking into account the scope of the powers of attorney that are laid down in the agreement with the insurer. As a rule, the underwriting agent has the power of attorney to accept insurance risks in the name and on behalf of the insurer and to subscribe to all cover notes, insurance contracts and inserts. The underwriting agent also commercializes its own insurance products or at least organizes them independently at the request of its customers. With regard to the policyholder and his insurance broker, he acts as it were as an 'insurer' and is perceived as such.

The underwriting agent provides an integrated service relating to the insurance contract concluded through his actions, whereby, from the point of view of the insured, he takes over the risk for consideration and thus creates a legal relationship between him and the insured.

In view of the special characteristics of these integrated services of a subscription agent and their *sui generis* form, the administration assumed by circular C / 2017/60 (No. ET 130.108) of 20.09.2017 that the integrated service of a subscription agent , such as described above, should be regarded as 'insurance and reinsurance transactions', as referred to in Article 44, § 3, 4 °, of the VAT Code.

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Section 26 - Granting, mediation and management of credit (Article 44, § 3, 5 ° of the VAT Code)

Pursuant to Article 44, § 3, 5 °, of the VAT Code, "the *granting of credit and the negotiation of credit as well as the management of credit by the person who granted them*" are exempt from VAT .

This exemption is the transposition into Belgian law of the Article 135, paragraph 1, point b) of Directive 2006/112 / EC said.

First of all, it should be noted that the provisions of Article 44, § 3, 5 °, of the aforementioned Code do not only refer to loans and credits granted by banks and financial institutions (see Court of Justice of the European Union, Commissioners for Her Majesty's Revenue and Customs v Volkswagen Financial Services (UK) Ltd., Case C-153/17, 18.10.2018 , paragraph 35 and Court of Justice of the European Union, Vega International Car Transport and Logistic - Trading GmbH v Dyrekor Izby Skarbowej w Warszawie , Case C-235/18, 15.05.2019 , paragraph 44).

The term 'mediation' referred to in Article 44, § 3, 5 ° of the VAT Code mainly aims at the activities of an intermediary who does not take the place of a party to a contract and which aims to do the necessary so that two parties conclude a contract, without the intermediary having an interest of its own regarding the content of the contract. This may include informing the contracting party of opportunities to enter into this contract, contacting the counterparty on its behalf, and negotiating details of the reciprocal performance on behalf of the client. There is, however, no mediation activity when one of the parties to the contract entrusts a subcontractor with part of the material transactions linked to the contract,Court of Justice of the European Union, Commissioners of Customs and Excise v CSC Financial Services Ltd., Case C-235/00, 13.12.2001 , paragraphs 39 and 40 and Court of Justice of the European Union, DTZ Zadelhoff vof v State Secretary for Finance, Case C-259/11, 05.07.2012 , Item 27).

Management of credits within the meaning of the aforementioned Article 44, § 3, 5 ° of the VAT Code must be regarded as all the actions that are performed after a loan has been granted and that consist of material and administrative actions (under more, following up on repayments, taking care of communication with the borrower, archiving and reporting of data) aimed at the proper execution of the lending operation, whereby the person entrusted with those credit management tasks is not in itself a risk inherent in the lending act (even if it is contractually responsible for its errors and mistakes vis-à-vis its principal).

The operations prior to the granting of the credit cannot be classified as credit management services.

In the event of the transfer of a loan portfolio entrusted with the management of the original loan provider, the exemption under Article 44, § 3, 5 ° of the VAT Code also applies to the management services provided by the original lender to the transferee.

On the other hand, when the management services, whether or not after transfer, are outsourced to a third party, these services are not exempt and are therefore subject to VAT (see also circular 2018 / C / 49 (no. ET 133.200) of 24.04.2018) .

However, if the transfer of a loan portfolio will be managed by the acquirer, it must be concluded that after the transfer, it will no longer be classified as a third party within the meaning of the foregoing, but as the provider of the credit. Therefore, with regard to this management by the transferee, the exemption of Article 44, § 3, 5 ° of the VAT Code applies.

The commission charged by companies specialized in issuing credit cards to the amounts paid to the affiliated traders constitutes the reimbursement of services performed for the benefit of those traders and, in consideration of Article 44, § 3, 5 °, of the VAT Code exempted credit transactions, not subject to VAT (written parliamentary question no. 1.099 from Mr People's Representative Jean-Pierre de Clippele of 20.05.1994 and written parliamentary question from No 1.222 by Mr People's Representative Didier Reynders from 21.09.1994) .

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

Section 27 - Guarantees and guarantees as well as management of credit guarantees (Article 44, § 3, 6 ° of the VAT Code)

In accordance with Article 44, § 3, 6 ° of the VAT Code, the following are exempt from VAT, *mediating and entering into obligations, guarantees and other security and guarantee obligations, as well as the management of credit guarantees by the person who has the credit granted* '.

This exemption is the transposition into Belgian law of the Article 135, paragraph 1, point c) of Directive 2006/112 / EC said.

The security and guarantee obligations referred to in this respect , including the bail, are contracts in which, in particular, a third party guarantees the debtor's obligation to the creditor in various forms.

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

Section 28 - Certain banking and financial transactions (Article 44, § 3, 7 ° of the VAT Code)

In accordance with Article 44, § 3, 7 ° of the VAT Code, "transactions, including brokerage, concerning deposits, current account transactions, debts, checks and other negotiable instruments, excluding debt collection, are exempt from VAT".

This exemption is partial conversion into Belgian law of the Article 135, paragraph 1, point d) of Directive 2006/112 / EC said.

Attention is drawn to the fact that the services of brokers and agents are also exempt from tax in the above-mentioned transactions.

The **debt collection** is a problem with taking into account the jurisprudence of the Court of Justice of the European Union should be analyzed (Court of Justice of the European Union Judgment Finanzamt Groß-Gerau and MKG- Kraftfahrzeuge -Factoring GmbH, Case C -305/01, 26.06.2003 and Court of Justice of the European Union, Finanzamt Essen- NordOst v GFKL Financial Services AG, Case C-93/10, 27.10.2011).

As debt is **any economic activity** is intended **for the acquisition of operators debts, assuming the risk of loss increases and customers in return charges a fee** (see Court of Justice of the European Union Judgment Finanzamt Groß-Gerau and MKG- Kraftfahrzeuge -Factoring GmbH, case C-305/01, of 26.06.2003 , aforementioned).

In accordance with the case law of the Court of Justice of the European Union, the administration assumes that an economic operator who, at his own risk, purchases unsatisfied debts at a **price below nominal value** , **does not provide a service within the meaning of Article 2 of the VAT Code** and that **when the difference between the face value of those debts and their purchase price reflects the actual economic value of the debts at the time of transmission** (that is to say the reasonable estimate of the recoverable portion of the assigned receivables).

If the provision of services relating to the management and recovery of debts is invoiced separately to the transferee, when a portfolio of debts is transferred, the difference between the nominal value of the transferred claims and their purchase price will not be regarded as the consideration of a service relating to the recovery of debts, even if this price - taking into account, inter alia, their due date, the applicable interest rate, the solvency of the debtors - is lower than the book value of these debts. The provision of services consisting of the transfer of debts by the transferor to the transferee is intended by Article 44, § 3, 7 ° of the VAT Code.

Nevertheless, the circumstances (contracts, statutory provisions...) may show that the purpose of the transfer is to recover a debt.

If the **purchase price less** is **than the actual economic value** of the debt portfolio (determined considering closed the elements of the contract include the parties and amortization that would have been recorded in the accounts of the transferor) - which is always the case in principle is - this **difference constitutes** the consideration for an act consisting in the **recovery of debts** intended by the exception to the exemption of Article 44, § 3, 7 ° of the VAT Code.

Example:

A debt recovery portfolio has a nominal value of 100. The accounts of the transferor show that the economic value is only 50. Assuming that the purchase price of the debt-recovery portfolio is only 40, the difference between this purchase price and the economic value, being 10, is the consideration for an action consisting of the recovery of debts. For the sake of completeness, it is noted that the taxable amount of the transfer of debts exempted in accordance with Article 44, § 3, 7 ° of the VAT Code corresponds to the economic value of the debts, in this case 50.

In addition to their actual factoring services, a factoring company may advance funds to its customers. Taking into account that these advanced sums are an end in themselves for their customers, and not the means to make factoring services as attractive as possible, these acts cannot therefore be regarded as incidental acts within the meaning of European case law (see Court of Justice of the European Union, Judgment Card Protection Plan Ltd , Case C-349/96, 25.02.1999)

It follows that the advance of these sums must be regarded as a credit transaction, separate and independent of the factoring services, which is exempt from tax in accordance with Article 44, § 3, 5 ° of the VAT Code.

Since these credit operations constitute a specific economic activity of the factoring companies, the turnover they generate should be included in the denominator of the general ratio of the deductible of these companies or, where appropriate, in the denominator of the special ratio which shall be calculated by analogy with the general ratio when these companies exercise their right to deduct according to the actual use of all or part of the goods and services.

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

Section 29 - Payment and receipt transactions (Article 44, § 3, 8 ° of the VAT Code)

Pursuant to Article 44, § 3, 8 ° of the VAT Code, *payment and receipt transactions, including intermediation, with the exception of the recovery of debts,* are exempt from VAT *; the service provider may, under the conditions set by or on behalf of the Minister of Finance, opt for taxing it '* .

The conditions for exercising this choice are stipulated in Note 18/1979 of 26.10.1979 . The choice to tax it is irrevocable and it applies to all payment and receipt transactions made by the taxpayer.

The payment and receipt transactions referred to here are those that fell within the scope of VAT before 01.01.1978, but without being exempt. It is not only the transactions in which someone is responsible for making a payment on behalf of another, but also those in which someone collects a sum of money on behalf of another. Such collection may, in particular, relate to commercial papers, coupons and redeemable securities, receipts or invoices.

When it is not simply a matter of collecting, for example, when coercion is required to obtain payment, it is about the recovery of a debt. This provision of services is excluded from the exemption by the same provision.

Although the right of choice with regard to the services of brokers and agents in payment and receipt transactions is not expressly apparent from the aforementioned provision, the administration accepts that brokers and agents may also opt to tax the said transactions. If the taxable person has opted to tax it in accordance with statement No 18/1979 of 26.10.1979 , he may deduct, in accordance with normal rules , the VAT charged on the goods and services he uses for the payment and receipt transactions referred to here , even when the service takes place where the customer is located (see Article 45, § 1, 1 ° to 3 °, of the VAT Code).

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

Section 30 - Transactions concerning currencies, banknotes and coins that are legal tender (Article 44, § 3, 9 ° of the VAT Code)

1. General

Pursuant to Article 44, § 3, 9 ° of the Code, the transactions are exempt from tax, *including transactions, relating to foreign exchange, banknotes and coins that are legal tender, with the exception of coins and banknotes that are collected as collectibles considered; as such, are considered gold, silver or other metal beaten coins or bank notes which are not normally used as legal tender, or which have a numismatic value '* .

This exemption is the transposition into Belgian law of the Article 135, paragraph 1, point e) of Directive 2006/112 / EC said.

When a transaction amounts to a transfer of coins, it constitutes a service within the meaning of Article 18, § 1, second paragraph, 13 °, of the VAT Code. However, this act is expressly exempt from tax under Article 44, § 3, 9 ° of the Code. In this context, it should be noted that the exemption applies only to transactions, including brokering, concerning currencies, banknotes and coins that are legal tender, excluding coins and banknotes that are considered to be collectibles. The transfer of the latter coins and banknotes is the supply of a physical good which is normally not exempt from tax.

The services of brokers and agents also constitute services within the meaning of Article 18, § 1, second paragraph, 13 °, of the VAT Code. However, these services are also expressly exempt from tax in accordance with the provisions of Article 44, § 3, 9 ° of the VAT Code.

Activities relating to coins and notes that are not used as a means of payment are excluded from the exemption. Are therefore taxable, including mediation, on gold, silver or other metal coins, as well as banknotes that are not normally used as currency or that can still be used as currency but are traded from a numismatic point of view.

It is noted that the transfer of coins and banknotes that are not legal tender or that are traded from a numismatic point of view is considered to be the delivery of a good as referred to in Article 10 of the VAT Code.

2. Bitcoins and other contractual means of payment

The Court of Justice of the European Union has had to rule on whether this exemption applies to the provision of services consisting of the exchange of traditional currencies against virtual currencies which, without being legal tender, constitute a means of payment provided by the parties to a transaction are accepted, such as bitcoins .

With regard to bitcoins , the Court of Justice of the European Union has ruled in law that they are a contractual means of payment and that the transactions involving non-traditional currencies, that is to say, other than the coins that are the legal means of payment in one or more countries, insofar as these currencies have been accepted by the parties to a transaction as an alternative means of payment to the legal means of payment and have no other purpose than to be used as a means of payment, they constitute financial transactions. The Court also stated that the actions that consist in exchanging traditional currencies against units of the virtual currency ' bitcoinand vice versa, which are effected against payment of an amount corresponding to the margin resulting from the difference between the price at which the economic operator concerned buys the currency and the price at which he sells it to his customers - transactions which are exempt from VAT in the meaning of the aforementioned provision (Court of Justice of the European Union, Skatteverket v David Hedqvist , case C-264/14, 22.10.2015).

The Court has substantiated its position, inter alia, on the basis of the difficulties in determining the tax base and the amount of deductible VAT, which remain the same whether it concerns the exchange of traditional currencies, which are normally exempt , or exchanging such currencies for virtual currencies. In that regard, it is indeed apparent from the settled case-law of the Court that the exemptions provided for in Article 135 (1) (d) to (f) of the said directive are intended, in particular, to address the difficulties in determining the taxable person base and the amount of the deductible VAT (see inter alia Court of Justice of the European Union, Judgment Velvet & Steel Immobilien und Handels GmbH v Finanzamt Hamburg- Eimsbüttel , Case C-455/05, of 19.04.2007 , paragraph 24 and Court of Justice of the European Union, Order Tiercé Ladbroke SA and Derby SA v Belgian State, Cases C-231/07 and C -232/07, of 14.05.2008 , point 24)

However, there is currently no regulated and uniformly applicable exchange rate, so that the provisions of Article 27, § 2, second paragraph, of the VAT Code apply.

It goes without saying that the taxable amount for the underlying supply of goods or services, by analogy with the provisions of Article 26 of the VAT Code, must be determined on the basis of the usual market value in regular trade of the goods or services concerned. which is expressed in legal tender.

The foregoing also applies with regard to similar contractual means of payment, insofar as these have been accepted by the parties to a transaction as an alternative means of payment to the legal means of payment and they have no other purpose than to be used as a means of payment.

Finally, it is noted that the brokerage services provided by an online exchange platform which is limited to providing specific software for a fee to allow bitcoin users to access a digital interface cannot be classified as an exempt mediation service in the meaning of Article 44, § 3, 9 ° of the VAT Code. The service provided by such platform does not in any way exhibit the essential features of a mediation service as defined by the Court of Justice of the European Union (Court of Justice of the European Union, Commissioners of Customs and Excise v. CSC Financial Services Ltd., Case C- 235/00, from 13.12.2001 paragraphs 39 et seq.).

3. Various actions that are excluded from the provisions of Article 44, § 3, 9 ° of the VAT Code

A. Sorting, verifying and counting coins and notes

The **provision of services consisting of the sorting, verification and counting of coins and notes** do not fall within the scope of Article 44, § 3, 9 ° of the VAT Code (see, to that effect, decision no. ET 90.561 of 07.10.1997). Indeed, these are essentially material acts which, as such, do not display the specific and essential characteristics of an exempt service and do not correspond to the Court of Justice of the European Union, inter alia in its aforementioned *Velvet & Steel Immobilien* judgment ,stated conditions. However, they may be exempt from tax as an ancillary act to an act exempt from tax in accordance with Articles 44, § 3, 7 ° or 9 ° of the VAT Code (for example, when the equivalent of these coins is paid in a bank account).

B. Operations concerning coins and notes that are not used as a means of payment

As has been emphasized above, transactions relating to coins and notes that are not used as a means of payment are excluded from the scope of Article 44, § 3, 9 ° of the VAT Code. Are therefore taxable, including mediation, on gold, silver or other metal coins, as well as banknotes that are not normally used as currency or that can still be used as currency but are traded from a numismatic point of view.

The transfer of coins and banknotes that are not legal tender or that are traded from a numismatic point of view are regarded as the supply of goods within the meaning of Article 10 of the VAT Code.

With regard to the VAT rate to be applied, only the imports of coins with a numismatic interest intended by § 2, 2 °, b) of section XXI of table A of the annex to Royal Decree 20, of 20.07 .1970, fixing the rates of value added tax and classifying the goods and services at those rates , benefit from the application of the reduced rate of 6%.

Consequently, the other deliveries of collector coins are subject to the normal VAT rate, as they cannot benefit from a VAT exemption and, moreover, they are not covered by any heading in Tables A and B of the Annex to Royal Decree No 20 . intended.

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

Section 31 - Transactions, including brokerage, with regard to movable securities (Article 44, § 3, 10 ° of the VAT Code)

1. General

Pursuant to Article 44, § 3, 10 °, of the VAT Code, transactions are exempt from tax , *including brokerage, with the exception of custody and management, regarding shares, participations in companies or associations, bonds and other securities, excluding documents representing goods* ' .

This exemption is the transposition into Belgian law of the Article 135, paragraph 1, point f) of Directive 2006/112 / EC said.

The acts envisaged by this provision are acts that may create, alter or nullify the rights and obligations of the parties in securities (see, inter alia, Court of Justice of the European Union, Commissioners of Customs and Excise v CSC Financial Services Ltd ., Case C-235/00, 13.12.2001 , paragraph 33 and Court of Justice of the European Union, Skatteverket v AB SKF, Case C-29/08, 29.10.2009 , paragraph 48).

The exemption in question thus envisages, inter alia, the sale, purchase, borrowing and consumption loan (also known as ' *bond lending* ' or 'stock *lending* ') of any movable security that does not represent goods.

The services of brokers and intermediaries in the aforementioned transactions are also exempt from tax in accordance with this provision.

Conversely, transactions, including brokerage, relating to the holding and management of movable securities and, more generally, securities that do not represent goods, are taxed in accordance with the provisions of Article 18 of the VAT Code (Written Parliamentary Question No. 607 by Mr Representative Franck Wilrycx from 02.10.2013).

2. Portfolio management

Portfolio management can be defined as the discretionary and individualized management of savers' portfolios (including one or more financial instruments defined in Article 2, § 1, 1 °, of the Law of 02.08.2002 on the supervision of the financial sector and financial services) in the context of an assignment given by clients. This management means that the portfolio manager has the power, on his own initiative, to take decisions regarding these assets (Article 4 (1), 9) of Directive 2004/39 / EC of the European Parliament and of the Council of 21.04.2004 on the markets for financial instruments, amending Council Directives 85/611 / EEC and 93/6 / EEC and Directive 2000/12 / EC of the European Parliament and of the Council and repealing Council Directive 93/22 / EEC and Article 2, § 1, 8 °, of the Law of 25.10.2016 on access to the investment services business and on the status and supervision of companies for asset management and investment advice).

In its judgment of 19.07.2012 in Case C-44/11 *Deutsche Bank AG* , the Court of Justice of the European Union held that portfolio management constitutes a service provision consisting of two elements, namely:

- the analysis and supervision of the assets of the client-investor and
- the actual purchase and sale of securities (Court of Justice of the European Union, Finanzamt Frankfurt am Main V-Höchst v Deutsche Bank AG, Case C-44/11, 19.07.2012).

The Court has essentially decided that these two elements are on an equal footing and that they constitute a single supply of services which do not qualify for any VAT exemption and are thus subject to tax at the standard VAT rate (Decision No ET 124,567, 10.04.2015).

This view of the Court confirms the administrative position contained in the replies to written parliamentary question No. 61 by Mr Representative Gerolf Annemans of 01/09/1995 and oral parliamentary question No 589 by Mr Representative Olivier Henry of 16/10/2002 .

3. Investment advice

Investment advice (advisory management) can be defined as the provision of personalized recommendations to a client, either at his request or on the initiative of the service provider, regarding one or more transactions related to financial instruments (Article 4 (1) , 4) of Directive 2004/39 / EC of the European Parliament and of the Council of 21.04.2004 on the markets in financial instruments, amending Council Directives 85/611 / EEC and 93/6 / EEC and Directive 2000/12 / EC of the European Parliament and of the Council and repealing Council Directive 93/22 / EEC). The client may then purchase or sell securities or instruct the provider of investment services or any other financial institution to do so.

Even if the service provider that provides the investment advice is also responsible for the purchase and sale of securities, the possible purchase or sale of securities requires a new expression of the will of the beneficiary of the advice. It must then be assumed that it is not a matter of a single service, but of two transactions which must be considered separately and which must follow their own VAT regime.

Investment advice (advisory management) refers to one of the two elements that make up portfolio management, more specifically 'the advisory service'. The Court of Justice has classified this element as an exercise of analysis and supervision.

This transaction of analysis and supervision of the assets, which does not necessarily involve the creation of acts which may create, alter or nullify the rights and obligations of the parties in securities, does not fall within the scope of the exemption of article 44, § 3, 10 ° of the VAT Code and must therefore be subject to tax at the standard rate (see Court of Justice of the European Union, Finanzamt Frankfurt am Main V- Höchst v Deutsche Bank AG, Case C-44 / 11, 19.07.2012 , point 39).

On the other hand, any purchase or sale of securities subsequent to the aforementioned transaction is exempted in accordance with Article 44, § 3, 10 ° of the VAT Code.

Finally, if the service provider charges a global price for both the advisory service and the subsequent transaction of buying or selling securities, this global price must be broken down so that the price for the advisory service is subject to tax at the normal rate. VAT rate (decision no. ET 124.567 of 10.04.2015).

4. Documents representing goods

The exemption of Article 44, § 3, 10 ° of the VAT Code also does not apply to transactions, including mediation, with regard to **documents that represent goods** (for example, the *warrant warrant*).

This exception is based on the fact that the envisaged acts relate to tangible property because the document cannot have any value other than that of the goods it represents. The transactions referred to in that provision can therefore only relate to tangible goods, so that the applicable VAT system must therefore be determined in function of the transactions relating to those goods.

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

Section 32 - Operations performed by collective investment institutions (Article 44, § 3, 11 ° of the VAT Code)

In accordance with Article 44, § 3, 11 ° of the VAT Code, the following are exempt from tax:

'a) the collective investment undertakings referred to in the law of 03.08.2012 on collective investment undertakings that meet the conditions of Directive 2009/65 / EC and the institutions for investment in debt instruments;

b) the collective investment undertakings referred to in the law of 19.04.2014 on alternative collective investment undertakings and their managers;

c) the public or institutional regulated real estate companies referred to in Article 2, 1 °, 2 ° and 3 °, of the Law of 12.05.2014 on regulated real estate companies;

d) the bodies for financing pensions referred to in Article 8 of the Law of 27.10.2006 on the supervision of institutions for occupational retirement provision .'

The essential criterion that must be met for a collective investment undertaking to exist is that **the assets of different beneficiaries must be pooled** , allowing **the risk** of these beneficiaries to be **spread** over a number of securities (see Court of Justice of the European Union, Judgment ATP PensionService A / S v Skatteministerium , Case C-464/12, 13.03.2014 ,

paragraph 51).

Overall, in order to benefit from the exemption provided for in Article 44, § 3, 11 ° of the VAT Code, the **management services** provided to an institution intended by this provision must form a separate whole and form elements which are specific and essential for the management of collective investment undertakings (see, to that effect, Court of Justice of the European Union, Abbey National plc and Inscape Investment Fund v Commissioners of Customs & Excise , Case C-169/04, 04.05 2006 , paragraphs 70 to 72).

In that regard , it should be noted that the specific activity of an undertaking for collective investment consists in collective investment in capital raised from the public (see Court of Justice of the European Union, Judgment GfBk Gesellschaft für Börsenkommunikation mbH v Finanzamt Bayreuth, Case C-275 / 11, from 07.03.2013).

In addition to the **portfolio management tasks** , the **tasks of the management of the collective investment undertakings themselves are** tasks specific to collective investment undertakings, as set out in Annex II to Directive 2009/65 / EC of the European Parliament and the Council of 13.07.2009 coordinating the laws, regulations and administrative provisions relating to certain collective investment undertakings for securities (" UCITS ").

For example, the institution's accounting management services are included in this Annex II. They fall within the scope of the aforementioned exemption (see, to that effect, inter alia Court of Justice of the European Union, Judgment of the State Secretary for Finance against Fiscal Unit X NV et al , Case C-595/13, 09.12.2015 , paragraphs 72 and 73).

The same applies to the dissolution of a collective investment undertaking as well as to the legal advice specific to such dissolution.

The exemption also applies to the director's fees granted by the aforementioned collective investment undertakings to establishments (eg banks) that act as directors of these institutions (see decision no. ET127.850 of 30.03.2016 , points 63 to 66).

If the institution's assets consist of immovable property, the foregoing also applies if the specific activity of this institution consists, on the one hand, of the activities relating to the selection, purchase and sale of the immovable property and, on the other, of administrative and accounting tasks such as calculating the amount of income and the price of the units or shares of the fund, the valuation of the assets, the accounting, the preparation of declarations for the distribution of the income, the provision of information and documentation for the periodic accounts and tax returns, for the compilation of statistics and for declarations for VAT and the preparation of the yield forecasts (seeCourt of Justice of the European Union, Abbey National plc and Inscape Investment Fund v Commissioners of Customs & Excise , Case C-169/04, 04.05.2006 and Court of Justice of the European Union, ATP PensionService A / S v Skatteministerium , Case C-464/12, 13.03.2014).

Actual exploitation of the immovable property, on the other hand, is not specific to the operation of a collective investment undertaking as it is outside the scope of the various activities related to the collective investment of the capital raised. Since the actual exploitation of the real estate aims to preserve and increase the value of the invested capital, its objective is not specific to the activity of a collective investment undertaking, but is inherent in any type of investment (see Court of Justice of the European Union, Judgment of the Secretary of State for Finance against Fiscal Unit X NV et al , Case C-595/13, 09.12.2015 , paragraph 78).

Finally, where drawing up a prospectus of an undertaking for collective investment constitutes a service with regard to the administrative management of that institution which can benefit from the exemption (see, to that effect, the answer to Written Parliamentary Question No. 650 of the Mr. Senator Olivier De Clippele of 15.05.2000), the translation services of this prospectus remain subject to tax.

More generally, the services relating to the commercialization of parts of a collective investment undertaking do not constitute management services within the meaning of Article 44, § 3, 11 °, of the VAT Code, apart from Annex II of the Directive 2009 / 65 / EC , aforementioned.

Although this Annex contains a non-exhaustive list of the services included in the management acts of collective investment undertakings and investment companies, including, in addition to portfolio management and administrative management services, those for the commercialization of parts of an institution for collective investment in securities.

The aim of this is merely to approximate the conditions at Community level for the authorization of undertakings for collective investment in transferable securities and thus to promote cross-border trade by offering investors more effective protection. This objective therefore explains the broader view of the term 'management of collective investment undertakings in transferable securities'.

The Court of Justice of the European Union, in paragraph 64 of its judgment delivered on 04.05.2006 in Case C-169/04, Abbey National, reiterates only the sections 'Portfolio management' and 'Administration' of relevant Annex II as acts of its own. to the activities of collective investment undertakings (Court of Justice of the European Union, Judgment Abbey National plc and Inscape Investment Fund v Commissioners of Customs & Excise ., Case C-169/04, 04.05.2006).

As decided by the Court of Justice of the European Union in its judgment in *Gfbk* , case C-275/11, of 07.03.2013, the acts forming part of the management activity of a collective investment undertaking, which is provided by a third party for for the purposes of Article 44, § 3, 11 °, of the VAT Code under the concept of 'management of a collective investment undertaking' (Court of Justice of the European Union, Judgment in GfBk Gesellschaft für Börsenkommunikation mbH v Finanzamt Bayreuth, case C-275/11, of 07.03.2013).

For the rest, reference is made to Circular AOIF no. 22/2008 (no. ET 113 316) of 17.06.2008 regarding the services for management bodies to finance pensions, but also, *mutatis mutandis* , apply to the management services of the other collective investment undertakings.

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

Section 33 - Stamps, tax stamps and other similar stamps (Article 44, § 3, 12 ° of the VAT Code)

Pursuant to Article 44, § 3, 12 °, of the VAT Code, " *deliveries at nominal value, postage stamps that have postage value domestically, tax stamps and other similar stamps" are* exempt from tax.

With respect to the delivery of stamps, the tax is not payable if the following conditions are **cumulatively** fulfilled. The stamps must:

- have a franking value
- valid here in the country
- be sold at a price equal to the face value.

The fact that a stamp must have a postage value means that this stamp may not be stamped.

Consequently, if one of the aforementioned conditions is not met, the supply of stamps in the context of an economic activity (for example, sale by a stamp dealer) is generally regarded as a taxable supply of a good within the meaning of Article 10 of the VAT Code.

In this respect , it should be noted that the delivery and intra-Community acquisition of stamps, whether or not stamped, which are not valid in Belgium and which are also not intended to become valid or where stamps that do not cumulatively meet the aforementioned conditions, are subject to VAT at the normal rate which is currently 21%.

Nevertheless, the import of such stamps in accordance with section XXI, § 1, first paragraph, and § 2, 2 °, a) of Table A of the Annex to Royal Decree No. 20 of 20.07.1970 setting the rates of the value added tax and classifying the goods and services at those rates , subject to VAT at the reduced rate currently set at 6% (see also Written Parliamentary Question No 860 by Mr People's Representative François-Xavier de Donnea of 29.09.1994 and "Booklet II: Determination of the taxable basis and the applicable rate - Chapter VII: Tax rates, Section 3, Title 17").

For the sake of completeness, it is noted that persons who are not traders in stamps but ordinary collectors who only accidentally sell stamps, because of that activity, do not acquire the status of taxable person (see also decision no. T. 2.580 of 15.07.1971 and 'Book I: Taxable person'). and taxable transactions - Chapter 1: The taxable person, Section 3, title 4 ').

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

Section 34 - Lotteries and other games of chance and money (Article 44, § 3, 13 ° of the VAT Code)

Article 44, § 3, 13 °, of the VAT Code, exempts bets, lotteries and other games of chance and money games, whether or not provided electronically, from the tax, subject to the application of conditions and restrictions determined by the King. This provision is implemented by Royal Decree No. 45 of 14.04.1993 with regard to the exemption in the field of value added tax with regard to games of chance and money games .

For an explanation of this exemption, see Circular No. 6/1994 of 09.03.1994 .

The scope of this exemption was temporarily changed between 01.07.20016 and 21.05.2018.

On 01.07.2016, Articles 29 to 34 of the Program Law of 01.07.2016 (Belgian Official Gazette of 04.07.2016) amended, inter alia, Article 44, § 3, 13 ° of the VAT Code in the sense that the VAT exemption was only applicable to games of chance and money, on the one hand to 'lotteries' and on the other to' other games of chance and money, with the exception of those provided electronically as referred to in Article 18, § 1, second paragraph, 16 ° , of the VAT Code '.

These provisions also have definitions of the terms 'games of chance and money games' and 'lotteries' inserted in the Code (see Article 1, § 14 of the VAT Code). As the definition of the term 'games of chance and money games' was included in the VAT Code, the aforementioned provisions also repealed Royal Decree 45 relating to this definition.

These legislative changes are explained in circular AAFisc No. 32/2016 (No. ET 130.082) of 30.11.2016 . By decision of the Minister of Finance, they actually took effect on 01.08.2016.

The Constitutional Court, which was seized by a request for annulment, has Articles 29 to 34 of the Program Law of 01.07.2016 (Judgment of the Constitutional Court No 34/2018 of 22.03.2018) destroyed. The Court has ruled that, by adopting these provisions, the Federal Legislator has failed to respect the rules of division of powers between the federal and regional levels. On the one hand, the Court recognizes that the VAT measure does not directly affect the

taxable subject matter of the regional tax on games and bets. On the other hand, the Court finds that the measure taken reduces taxable material by making games and bets more expensive and therefore less attractive. And the latter is sufficient for the Court to speak of a violation of jurisdiction.

The judgments concerning cancellation of the Constitutional Court have absolute res judicata from their publication in the Belgian Official Gazette (Article 9, § 1, of the special law of 06.01.1989 on the Constitutional Court). The judgment of the Constitutional Court was published in the Belgian Official Gazette on 22.05.2018. As of that date, the provisions annulled by the Court have retroactively disappeared from the legal order

In order to take into account the budgetary and administrative difficulties that would result from the repayment of taxes already paid, the Court decided that the effects of the annulled provisions should be definitively maintained until the date of publication of the Judgment in Belgian Official Gazette (in application of Article 8 of the Special Law of 06.01.1989 on the Constitutional Court).

As is apparent from recital B.16 of Judgment No 34/2018, the Court has limited the final enforcement of the effects to 'taxes already paid' so that they cannot be recovered by taxable persons.

Accordingly, the maintenance of the effects of Articles 29 to 34 of the Program Law of 01.07.2016, to Judgment No 34/2018, should be interpreted as meaning that the retained effects of the annulled provisions are limited to taxes already paid for the period from 01.07.2016 to 21.05.2018. That final enforcement does not allow the tax administration to take decisions or take actions regarding the taxpayer after the aforementioned period with regard to the taxpayer relating to situations that occurred before 22.05.2018, now that those provisions have retroactive effect. have disappeared from the legal order and should be considered as having never existed (Judgment of the Constitutional Court No 34/2018 of 22.03.2018).

1. Definitions

A. Chronological evolution

The legal or regulatory definitions with regard to games of chance and money have evolved over time. Dienaangaand serve three periods to be distinguished:

- from 01.01.1993 to 30.06.2016, the Royal Decree No. 45 , referred to above, taken in implementation of Article 44, § 3, 13 ° of the VAT Code, contained a definition of the term ' *games of chance and money* ' .
- between 01.07.2016 and 21.05.2018, the definition of 'games of chance and money', following the changes made by the program law of 01.07.2016, was included in Article 1, § 14 of the VAT Code, since Royal Decree no. 45 , mentioned above, which contained this definition on 01.07.2016 has been deleted.

  During this period, Article 1, § 14 of the VAT Code included a definition of the term ' *lotteries* '.
- in accordance with the judgment of the Constitutional Court No. 34/2018 of 22.03.2018 , the definition of the term 'games of chance and money games' has been reinstated in Royal Decree 45 , aforementioned, taken in implementation of Article 44, § 3, 13 ° of the VAT Code.

B. The games of chance and money

a. Games of chance and money

The term ' *games of chance and money* ' means (Article 1 of Royal Decree 45 , aforementioned):

- the games, under whatever name, which provide an opportunity to compete for prizes or cash or in-kind awards, where the players cannot intervene at the beginning, nor during or at the end of the game and the winners by lot only or any other probability determination
- the games, under whatever name, which provide an opportunity to compete for prizes or cash or in-kind prizes, promised to participants of a prize camp of any kind, unless the prize camp establishes a contract between the winners and its organizer has as a consequence.

From 01.07.2016 to 21.05.2018, the definition of the term 'games of chance and money' was included in the provisions of Article 1, § 14, 1 ° of the VAT Code.

The term ' *games of chance and money games'* is a generic term of general scope encompassing all different types and categories of games of chance and money, whether online or not, including lotteries and betting.

This term also includes the games in which the players compete against each other and which give them the opportunity to win a prize.

' *Prize Camp* ' is to be understood to mean all games, competitions or competitions, regardless of their name, in which the participants must make a creative contribution to win a prize or a premium, such as, for example, completing a questionnaire, making of a piece of work, carrying out an assignment, delivering a sporting performance, etc. Also intended are: beauty contests, cat and dog shows, in which participants compete for prizes.

Examples of forms of gambling: sports betting, betting on horse races, games operated via radio, television, and newspapers and magazines, poker tournaments, architects competitions, etc., regardless of whether they play or not provided online.

On the other hand, are not games of chance or money, the devices that allow the player to test his dexterity such as pinball machines, grab cranes, and so on.

b. The lotteries

From 01.07.2016 to 21.05.2018 ' *lotteries* ' or 'tombolas' should be taken to mean: any opportunity to compete for prizes or cash or in-kind prizes through prizes to be bought in units or lottery tickets in which the winners are selected by lot or any other probability determination over which they cannot exert influence (Article 1, § 14 °, 2 °, (old) of the VAT Code).

c. Services provided by electronic means

Under ' *electronically supplied services*'the term electronically supplied services for the purpose of supplying and hosting computer sites, the remote maintenance of programs and equipment, the supply of software and its updating, the supply of images, written documents and information and the provision of databases, the supply of music or films, games, including games of chance and money, and broadcasts or events in the fields of politics, culture, art, sports, sciences or entertainment and the provision of distance education . The fact that the service provider and the recipient exchange messages electronically does not in itself mean that the service is provided electronically (Article 18, § 1, second paragraph, 16 °, of the VAT Code).

This term is explained in more detail under Title 3, below.

2. Scope of application of Article 44, § 3, 13 °, of the VAT Code

A. Chronological evolution

The scope of application of Article 44, § 3, 13 ° of the VAT Code has evolved over time. Dienaangaand serve three periods to be distinguished:

- from 01.01.1993 to 30.06.2016, Article 44, § 3, 13 °, of the VAT Code exempted tax on *bets, lotteries and other games of chance and money, subject to the conditions laid down by the King and limitations'.*
- between 01.07.2016 and 21.05.2018, Article 44, § 3, 13 °, of the VAT Code, following the amendments made by the program law of 01.07.2016, exempted from the tax on *the* one hand ' *the lotteries'* and ' *the other' games of chance and money, with the exception of those that are performed electronically as referred to in Article 18, § 1, second paragraph, 16 ° of the VAT* Code '.
- pursuant to the Judgment of the Constitutional Court No. 34/2018 of 22.03.2018 , Article 44, § 3, 13 °, of the VAT Code, re-establishes *bets, lotteries and other games of chance and money, taking into account the conditions and restrictions set by the king* ' free.

B. Scope of Article 44, § 3, 13 °, of the VAT Code since 22.05.2018 as well as between 01.01.1993 and 30.06.2016

Pursuant to the Judgment of the Constitutional Court No. 34/2018 of 22.03.2018 , Article 44, § 3, 13 °, of the VAT Code, states “bets, lotteries and other games of chance and money, taking into account the the king established conditions and restrictions' freely.

The same applies to the period between 01.01.1993 and 30.06.2016, before the changes made by the program law of 01.07.2016.

Examples of exempted games:

Type of game	Is the game exempted in accordance with Article 44, § 3, 13 ° of the VAT Code ?
Bingo	And
Bulldozer (decision no. ET 80.411 du 15.01.2001)	And
Flipper	No
Grab cranes	No
Jackpot	And
Automatic bowling	no
Lotto	And
One Ball	And
Poker	And
Sport prognoses	And

The transactions that could be envisaged by the term 'games of chance and money', but which are exempted from tax pursuant to another provision of Article 44 of the VAT Code (such as, for example, life insurance), are exempted in accordance with this provision and not in accordance with Article 44, § 3, 13 °, of the VAT Code.

C. Scope of Article 44, § 3, 13 °, of the VAT Code between 01.07.2016 and 21.05.2018

From 01.07.2016 to 21.05.2018, Article 44, § 3, 13 ° of the VAT Code, following the changes made to the program law of 01.07.2016, exempted from the tax:

- the lottery services that take place in Belgium, regardless of how they were provided (electronically or otherwise)
- the services relating to other games of chance and money that take place in Belgium, with the exception of such services that are provided electronically within the meaning of Article 18, § 1, second paragraph, 16 °, of the VAT Code.

During this period, the exemption provided for in Article 44, § 3, 13 ° of the VAT Code no longer applied to games of chance and money, other than lotteries, which were performed electronically within the meaning of Article 18, § 1, second paragraph, 16 °, of the VAT Code.

The purpose of this amendment was to tax games of chance and money games, other than lotteries, which were conducted electronically and located in Belgium.

3. VAT levy on games of chance and money played electronically

A. Principles

From 01.07.2016 to 21.05.2018, following the changes made to the program law of 01.07.2016, the ' *games of chance and money*' , other than lotteries, which were conducted electronically and which take place in Belgium, were subject to VAT.

By decision of Mr Minister of Finance, this measure came into effect on 01.08.2016 (see circular AAFisc no 32/2016 (no ET 130.082) of 30.11.2016)

The term ' *electronically* supplied *services* ' should be understood to mean: the electronically supplied services which concern the supply and accommodation of computer sites, the remote maintenance of programs and equipment, the supply of software and its updating, the supply of images, written documents and information and the availability databases, the supply of music or films, games, including games of chance and money, and broadcasts or events in the fields of politics, culture, art, sports, sciences or entertainment and the provision of distance education. The fact that the service provider and the recipient exchange messages electronically does not in itself mean that the service is provided electronically (Article 18, § 1, second paragraph, 16 °, of the VAT Code).

Article 7, paragraph 1, of the implementing regulation provides: ' *The Directive 2006/112 / EC "electronically supplied services" refer to services which are delivered over the Internet or an electronic network, largely geautoma by their nature are flavoring* '.

This definition includes the transactions listed in Annex II of the VAT Directive 2006/112 / EC, mentioned above. Annex II (4) of the VAT Directive specifically mentions the provision of games of chance or gambling as services provided by electronic means.

In addition, point 4 (d) and (e) of Annex I to the Implementing Regulation provides that games of chance and money are to be provided electronically when:

- they are downloaded on computers or mobile phones
- or when they consist of access to automated online games that depend on the Internet or similar electronic networks and where the players are distant from each other.

Even if certain online services may have similar characteristics to services that are traditionally provided (offline) and may be of a similar nature due to certain common elements they display, online and offline services cannot be considered identical services (guidance given in response to of the 102e VAT Committee of 03/30/2015 - document D - 862). The gambling and money services should therefore be assessed against the definition of ' *electronically supplied services* '.

The electronically supplied services are explained in detail in circular AFZ No. 9/2003 of 12.08.2003 . For additional information, reference is made to that circular.

B. Concept of 'minor human intervention'

The special feature of electronically supplied services is that they require only limited human intervention.

The concept of ' *minor human intervention* ' must be examined in the relationship between the service provider and the recipient of an individual service. In the context of games of chance and money that are carried out electronically, this concept must therefore be examined in the relationship between the player and the organizer.

Since the implementation of a sporting event is not one of the organizer's activities, the fact that a bet relates to a sport practiced by individuals (football, tennis, horse racing ...) does not affect the assessment of the term ' *minor' human intervention* '.

The concept of ' *minor human intervention* ' refers to the manner in which each individual service is provided to the customer and the degree of human intervention by the service provider to provide this individual service when the customer requests it. It is this intervention or involvement of the service provider that matters, not that of the customer.

The fact that the service system design needed to provide the service know that system regularly maintains or restores, no impact on the assessment of the concept of " *little human intervention* . The same applies if the organizer deploys persons who update or adjust the game or betting system in real time or still analyze the behavior of certain players, in particular to refuse certain bets from individual players when they endanger the entire system (for example, bets that are financial involve risks for the organizer).

The fact that the website or the online games of chance and money are adapted to the needs of the customers (for example as a result of the feedback from those customers) or that new functionalities are added to it is not aimed at providing an individual service to a specific customer. Such actions concern the general playing and betting environment, as well as the game rules, etc., but are not taken with a view to making adjustments for a specific player.

Specifically on betting, the organizer's services are provided with little human intervention and thus qualify as electronically supplied services when:

- initially, the parameters needed to determine the players' profits in an IT system are entered by the organizer's staff
- secondly, the acceptance of the bets and the determination of the winnings are automatically managed by a computer system available to the organizer.

It is irrelevant to what extent there is a human effort in entering and changing those parameters. The fact that the organizer calls on specialized or non-specialized persons (for example, to determine the rules for the bets, to analyze and monitor the bets and odds, to update the odds, etc.) does not affect the assessment of the concept of ' *minor human intervention* '. These persons focus on the general playing or betting environment and not on an individual bet made by a specific player. The fact that the organizer must check the identity of his customers does not affect the concept of ' *minor human intervention* ' either.

When a service provider broadcasts the games that take place materially in a casino or a gaming room (or hall) live, a distinction must be made according to whether or not the players interact with the dealer. To the extent that the activity of the dealer is separate from the activity of the player, human intervention remains limited and it is an electronically supplied service.

However, the aforementioned situation is different from that in which the players interact with the croupier via the Internet, so that the activity of the croupier depends on the interventions of each player. In that case, the internet is only used as a mere means of communication between the croupier and the players, so that there is no question of an electronically supplied service (compare the second paragraph of Article 58 of Directive 2006/112 / EC, aforementioned).

It goes without saying that players should interact with a croupier who is a physical person and not with a system that simulates the presence of a croupier through a recorded video or synthesis footage. If that is the case, human intervention remains limited and it is an electronically supplied service.

Neither is there any interaction between the croupier and the players if the croupier's actions are separate from the actions of the individual players. The same also applies, for example, when the dealer limits himself to welcoming new players and congratulating them on their winnings. In both cases, human intervention remains limited and it concerns an electronically supplied service.

In general, irrespective of the type of online gambling and money games, the actions that are not an end in themselves for the customer have no influence on the assessment of the concept of ' *minor human intervention* '. Thus, the contacts between the service providers and the players (e.g. exchange of mails, telephone calls, chat sessions, etc.) are related to the services offered (for example, to answer the customers' questions regarding a game or regarding their personal data to receive feedback from customers, etc.) does not affect the concept of ' *minor human intervention* '.

C. Special case: slot machines for games of chance and money

It is accepted that the games of chance and cash offered via interactive machines connected to the Internet or to a similar electronic network are not accepted as services which are provided electronically and are therefore exempt from VAT, where such vending machines are located:

- or in a class I, II, III or IV gaming establishment as referred to by the law of 07.05.1999 on games of chance, betting, games of chance and the protection of players
- or in a newspaper shop operated by a trader who holds a class F2 license (see article 43/4, § 5, of the aforementioned law of 07.05.1999).

4. Automatic relaxation devices

Article 44, § 3, 13 °, of the VAT Code also aims at certain automatic relaxation devices, so that their operation is also exempt from VAT.

In the following, the rules governing VAT applicable to contracts concluded between the users of vending machines and the operators of those devices and between the latter and those who place them at their disposal for the operation of those devices are set out.

A. Preliminary remarks

a. Intended vending machines

By machine is meant any device that contains a mechanical, electrical or electronic component, which is used to start, operate or use it and which is switched on by inserting a coin, a chip (token) or by any other means to replace this.

Some machines are called automatic relaxation devices, because they are intended for the entertainment of users, which includes games of chance, such as money games.

b. Parties involved in the operation of automatic relaxation devices

The operation of an automatic relaxation device always associates at least two persons: the operator of the device and its user.

It is the operator who has the receipts found in the device. Revenue is deemed to be available to the person who holds the key to open the device, even if it has been agreed that a certain percentage of that revenue should be paid to someone else.

The user is the person who inserts a coin or token into the mechanism, causing the machine to start working. Sometimes the operator or the holder of the room where the machine is located can insert a coin or token in the device for the benefit of someone else.

A third person is often involved in the operation of an automatic relaxation device. This can be the operator or the holder of the room where the device is made available to users. It can also be the owner of a place, such as a wall, a station platform, and so on.

Finally, it is possible that the operator of a machine does not own it. He may have rented the device. In addition to the operator of the device, one can also have the owner, who rents the device to the operator.

These various situations can occur together. An operator can rent a machine to make it available to users in a room that belongs to someone else.

The regulation to which the actions between the operator of the appliance and the user is subject is explained under heading B. The arrangement determined with regard to the other relationships arising from the operation of a machine is explained under heading C.

B. The operation of a vending machine

a. Capacity of the operator

When the operation of a machine gives rise to games of chance and money intended by Article 44, § 3, 13 ° of the VAT Code, the operator, acting within the framework of an economic activity, is therefore a taxable person without the right to deduction and should not be identified for VAT purposes if it does not engage in any other taxed economic activity

However, in the cases intended by Article 50, § 1, 2 ° of the VAT Code, that person will be assigned a VAT identification number for his intra-Community acquisitions .

Revenue from the operation of the aforementioned games of chance and money is not subject to tax.

Incidentally, the fact that the operator carries out an activity exempted by Article 44, § 3, 13 ° of the VAT Code means that he has to pay the VAT charged on the goods and services he has received and on the goods he has imported or acquired intra-community, cannot deduct to the extent that he uses those goods and services for the exploitation of the aforementioned games of chance and money. For example, the operator cannot deduct the VAT charged on the purchase, import, intra-Community acquisition, or rental of a machine. Nor can he deduct the VAT that he has to pay for the maintenance and repair of the appliance.

b. Exempt games of chance and money

Pursuant to Article 1 of Royal Decree 45 , the aforementioned, slot machines are regarded as exempted games of chance or money if they give rise to competition for prizes or premiums in cash or in kind, whereby the players are neither at the beginning, nor during, nor at the may intervene at the end of the game and winners will be designated only by lot or other determination of probability .

This criterion applies regardless of the provisions of the Income Taxes Code and of the Criminal Code.

For the purposes of VAT, the nature of the price or premium is also irrelevant in determining whether it is a game of chance or money. For example, for the purposes of VAT, a machine that meets the criteria to be regarded as an exempt gambling and money game and that does not give any chance of enrichment or material advantage, other than the right to continue playing for free, remains a chance or money game even if in that case it is not intended by the Criminal Code.

The player is deemed not to be able to intervene at any stage and, if appropriate, to be designated as the winner by lot only if the mechanical, electrical or electronic operation of the device itself does not allow the player to target and conduct the game in a targeted and efficient manner. to influence.

This is the case, for example, with the so-called 'Bingo' or the ' One Ball', in which the player can only shoot a ball or ball and cannot intervene in the game by means of mechanisms fitted on the machine. It is true that he can try to influence the course of the ball or ball by striking the device, but this is not included in the mechanism of action of the device itself.

The so-called 'Flipper', on the other hand, allows the player to activate obstacles that influence the course of the ball or ball. This device is therefore not regarded as a game of chance or money for the purposes of VAT.

Jackpot is also prohibited by the Criminal Act for the purposes of VAT as a game of chance or money.

On the other hand, are not games of chance or money, the devices that allow the player to test his dexterity, such as automatic shooters, automatic skittles, grab cranes, and so on.

C. The other actions

a. Fee paid by the operator

The operator of a machine is often obliged to pay a fee to the owner or tenant of the room or the place where the machine is located.

This fee constitutes the price of a service as referred to in Article 18, § 1, second paragraph, 6 °, of the VAT Code and is subject to tax at the normal rate that currently amounts to 21%.

The taxable amount of the service provided and the amount of tax owed thereon are included in the periodic declaration that the owner or tenant must submit (Article 53, § 2, of the VAT Code).

On the other hand, the tax levied on the goods and services used by the abovementioned owner or tenant solely to fulfill his obligations to the operator of the machine can be deducted.

b. Rental of vending machines

The owner of a machine can rent it out to someone who will operate the machine.

This rental is a service referred to in Article 18, § 1, 4 ° of the VAT Code and is subject to tax at the normal rate that currently amounts to 21% if the transaction takes place in Belgium (Article 21, § 2 of the VAT Code). In this regard, it should be noted that a person who rents only one appliance acquires the status of taxable person insofar as the rental is permitted for a certain period of time.

The tax is due and payable in respect of the rental, even if the rented device is an exempt game of chance or money. It should be noted that someone who hires a machine that is exempted as a game of chance or money for use is not allowed to deduct the tax on the rent.

5. Prize camp

A. Scope of the exemption

Prize camp is to be understood as all games, competitions or competitions, under whatever name, in which the participants, in order to win a prize or a premium, must make a creative contribution, such as filling in a questionnaire, making a workpiece, carrying out an assignment, delivering a sporting performance, and so on. Also intended are: beauty contests, cat and dog shows, in which participants compete for prizes.

The exemption referred to in Article 44, § 3, 13 °, of the VAT Code only applies to those games, prize camps, competitions and competitions where, in order to participate, an investment must be paid. The contests, prize camps, etc. that can be entered for free are not intended by the exemption. Nevertheless, such transactions remain outside the scope of VAT.

He who organizes such price camps makes transactions which are either exempt from VAT or outside the scope of VAT and therefore, in principle, have no right to deduct input tax. On the other hand, the issue of prices or premiums is also not subject to VAT. Therefore, no distinction should be made in this regard according to whether or not the competitions, prize camps, etc. are organized for advertising purposes or as a sales promotion .

B. Deduction

The organizer of a prize camp may not deduct the VAT charged on the purchase of prizes or premiums awarded to the winners, as this is done in the performance of an act which is exempt from VAT or, where applicable, outside the scope of application. of the VAT.

However, where the organizer engages in another economic activity subject to VAT and the prize camp organization is directly related to that other activity, the tax may be levied on the purchase of the prize or premium awarded to the winner deductible if this prize or premium constitutes a promotional gift of low value and if there is no express exclusion from the right to deduct pursuant to Article 45, § 3, of the VAT Code (circular 2017 / C / 32 (no. ET 130.632) of May 29, 2017).

If, on the other hand, the price or premium does not constitute a promotional gift of little value, the VAT charged on it may not be deducted. If, where appropriate, that deduction has already been made (for example, goods taken from the stock intended for sale), the deduction originally made must be revised (see Article 5, 3 °, of Royal Decree No 3 , aforementioned.).

6. Commissioners

In this regard, the Court of Justice of the European Union (Court of Justice of the European Union, Judgment of the Belgian State v Pierre Henfling and others, Case C-464/10, 14.07.2011), regarding the conduct of intermediaries in betting said in law that acting in the intermediary's own name means:

- There is no direct legal relationship between the gambler and the company on whose behalf the economic operator acts as an intermediary
- that there is a legal relationship between the economic operator and the gambler on the one hand and this economic operator and the aforementioned company on the other.

The Court concludes from the foregoing that if the supply of services where the broker acts as an intermediary is exempt from VAT, this exemption therefore also applies to the legal relationship between the principal and the broker and states that this conclusion also applies to the exemption regarding bets (decision no. ET 127.279 of 13.07.2015).

A. The position of the administration as regards the interventions of betting offices and newspaper dealers that took place before 01.01.2011

Previously, the administration has always taken the fundamental position that betting offices and newspaper dealers (contractors or sellers of bets), when accepting bets placed by an organizer of bets on behalf of and for that organizer, act as agents. It has always been considered that the performance of the intermediary betting agents and newspaper traders cannot be classified as a betting service. Consequently, the exemption under Article 44, § 3,Notice No. 15/1974 of 02.10.1974). Deviations from this were only possible if, based on the contracts concluded between the parties involved and the actual circumstances in which the parties involved act, it could be clearly demonstrated that the intervening party is acting in its own name and thus receives a betting service itself and that it provided in turn (Article 20, § 1 of the VAT Code).

B. The position of the administration with regard to the interventions of betting offices and newspaper dealers that took place from 01.01.2011

The activities of betting organizers and of betting contractors (betting offices and newspaper traders) are regulated by law in the Games of Chance, Betting, Gambling Establishments and Protection of Players Act (Games of Chance Act) of 07.05.1999, as substantially and fundamentally amended by the Law of 10.01.2010. A large number of royal decrees also implement this law. The new gambling legislation entered into force on 01.01.2011.

Taking into account this new legislation and with a view to the correct application of the VAT exemption for bets, lotteries and other games of chance and money, as referred to in Article 44, § 3, 13 ° of the VAT Code, a new investigation was carried out into how and in what capacity the betting offices and newspaper dealers (the so-called F2 license holders) act when accepting bets organized by the betting organizers (the so-called F1 license holders).

From 01.01.2011, the legislator has launched two new licenses for betting, based on the distinction between organizers on the one hand and contractors on the other hand on bets.

The organizers are responsible for organizing the bets and must have a so-called F1 license.

The contractors are the actual sellers of the bets. They take bets from players at the expense of the organizers. They need a so-called F2 permit.

The Gaming Act itself (Article 25, 7 ° and Article 43/4, § 1), as it has been in force since 01.01.2011, explicitly states that bets by F2 license holders are taken on behalf of the F1 license holders . The F2 license holders take bets in the so-called Class IV Gaming Establishments, a place exclusively intended for the acceptance of bets or also outside that gambling establishment in the event that bets are accepted as a side activity by newspaper dealers.

Article 3 of the Royal Decree of 22.12.2010 on the operating rules of the bets explicitly states: ' *The license holder F2 accepts bets* ***in his own name*** *but on behalf of the license holder F1 who organizes the bets concerned.* ***The F1 license holder guarantees,*** *in respect of the players, all obligations which have been validly entered into by the license holder F2 in the performance of his betting activity in the event that the license holder F2 defaults on payment* '.

Article 9 of the Royal Decree of 22.12.2010 regarding the form of the class F2 license, the manner in which applications for a class F2 license must be submitted and examined and the obligations with which license holders F2 must comply with regard to management and accounting are determined. that without prejudice to the provisions of the betting rules, the holder of the F2 license holder must immediately pay out the player's winnings.

It is clear from the above provisions that the legislator has wanted the F2 licensees to personally commit themselves when taking bets. From the guarantee of the F1 license holder referred to in article 3 of the Royal Decree of 22.12.2010 regarding the operating rules of the bets, it can be deduced that the F1 license holder is not initially obliged to pay the main debt resulting from the acceptance of the bet and that there is no direct legal relationship between the F1 license holder and the player.

In view of the legal framework in force since 01.01.2011 in which the F2 license holders (betting shops and newspaper traders) carry on their activity, it is provided that both the contracts concluded between the parties involved and the actual circumstances in which they carry on their activity comply with These legal provisions, accept that from the aforementioned date, betting offices and newspaper dealers will act as agents for services within the meaning of Article 20, § 1 of the VAT Code towards the F1 license holders on the one hand and towards the players on the other hand. They are expected to receive the betting services themselves from the betting organizer and in turn to provide them to the players.

The exemption included in Article 44, § 3, 13 ° of the VAT Code therefore applies both in the relationship between the F1 license holders and the F2 license holders and in the relationship between the F2 license holders and the players.

7. Special cases

A. The price or premium is provided by a third party in return for a publicity

It is not uncommon for the organizer of a bet, lottery or other tax-exempt game to receive the prizes awarded to the winners from a third party in kind in return for the advertising made by the former for the benefit of that third party during or in as part of the organization of the lottery or game. In that case, in the relationship between the organizer and the third party, reciprocal transactions take place for consideration that are taxable according to their own nature. For practical reasons, the administration agrees that the VAT due on the advertised goods and the issue by the third party of the good intended as a price is calculated on the normal value of the good (Article 33, § 3, of the the VAT Code).

Since the prices obtained by the organizer of the third party are by definition used to carry out transactions which are exempt from tax, the VAT owed by the third party in connection with the issue of the gifts is of course not deductible in respect of the former.

B. The prize or premium consists of a purchase receipt

The issue of a purchase receipt to the winner by the organizer is not subject to VAT.

On the other hand, the issue of a good referred to in Article 9 of the VAT Code in exchange for the purchase receipt constitutes a supply as referred to in the Code, the VAT of which is payable in the relationship between the taxable person who supplies the good and the holder of the purchase receipt . The tax is calculated on the normal value of the property determined in the manner set out in Article 32, second paragraph, of the VAT Code.

C. The prize or premium is a good manufactured by an organizer who pursues another taxable economic activity

The good that was manufactured and presented by the organizer as a prize or premium is deemed to have been withdrawn by him. In accordance with Articles 12, § 1, 4 ° and 33, § 1, 1 ° of the VAT Code, the organizer is obliged to pay the tax on the purchase price of the goods or similar goods or, if there is no purchase price, cost price, where applicable taking into account Article 26, second and third paragraph, and Article 28 of the VAT Code determined at the time when those actions are performed. This tax is not deductible.

If the good manufactured by the organizer qualifies as a commercial gift of little value (circular 2017 / C / 32 (no ET130.632) of 29.05.2017), the tax levied on the components of this good may be deducted and the issue of the good to the winner gives no reason to revise the deduction or to withdraw it.

D. A contract is concluded between the organizer and the winner (s)

If the prize camp results in a contract being concluded between the winner (s) and the organizer, the exemption of Article 44, § 3, 13 ° of the VAT Code does not apply. In that case, the applicable VAT regime will be determined according to the terms of the contract.

For example, the fee paid by the organizer of an architectural competition to the participants of that competition whose submitted designs meet certain requirements is exempt from tax pursuant to Article 44, § 3, 13 ° of the VAT Code. However, if the payment of the fee results in the organizer acquiring rights to the award-winning designs, this concerns the price of a service as referred to in Article 18, § 1, second paragraph, 1 ° or 7 °, of the VAT. Code regardless of whether or not the organizer will implement the design.

Another example is the organization of a competition by a trading company with a view to acquiring the rights to the best advertising message for a particular product.

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Section 35 - Public postal services (Article 44, § 3, 14 ° of the VAT Code)

Pursuant to Article 44, § 3, 14 °, of the VAT Code - which transposes into Belgian law Article 132 (1) (a) of Directive 2006/112 / EC - *the services are* exempt from tax. *and the supply of goods incidental to these services provided by postal service providers that undertake to provide all or part of the universal postal service, if these services concern universal postal services as defined in Articles 15 and 16 of the Law of 26. January 2018 on postal services*' .

This exemption applies to both public and private service providers that assume this obligation (see also Court of Justice of the European Union, European Commission v. Kingdom of Sweden, Case C-114/14, 21.04.2015 , paragraph 28)

Under the provisions of the aforementioned Article 15 of the Law of 26.01.2018 on postal services, the universal postal service comprises the following transactions:

- the collection, sorting, transport and distribution of postal items up to 2 kg
- the collection, sorting, transport and distribution of postal packages up to 10 kg offered at single piece rates
- the distribution of postal parcels offered at single piece tariffs received from other Member States up to 20 kg
- services related to registered and declared value shipments.

The universal postal service includes both national and cross-border services.

The provision of the universal postal service also includes a number of obligations and requirements listed in Article 16 of the Law of 26.01.2018 on postal services. The management contract referred to in Article 14, § 2 or § 4 of the aforementioned Law may establish special rules and conditions under which the universal service provider fulfills its universal service obligations.

Only the postal operator who assumes the obligations associated with the universal postal service is regarded as the provider of the universal postal service.

It follows from the foregoing that the exemption provided for in Article 44, § 3, 14 ° of the VAT Code only applies to the acts envisaged by that Article that are classified as universal postal services within the meaning of Article 15 of the Law of 26.01.2018 on postal services and which are provided by the universal postal service provider (s) (Circular 2019 / C / 5 of 29.01.2019 on the conditions under which a universal postal service is exempt from VAT in accordance with Article 44, § 3, 14 °, of the VAT Code).

In this regard, the Court of Justice of the European Union has ruled in law that this exemption applies only to services and related supplies of goods, which the public postal services as such provide, namely in their capacity as operators who have the obligation to undertakes to provide all or part of the universal postal service in one Member State. The Court emphasizes that this exemption does not apply to services and related supplies of goods performed under conditions negotiated individually (Court of Justice of the European Union, The Queen, at the request of TNT Post UK Ltd v. The Commissioners for Her Majesty's Revenue and Customs , Case C-357/07, 23.04.2009).

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