VAT Comment - Chapter 14: Tax refund (Update on 01.06.2020)

[Table of contents of the VAT Comment]

B OEKWERK IV: Payment of tax

Chapter 14: Refund of the tax

Updated according to the state of the legislation applicable on **01.0 6.2020**

[Version 01.07.2018]

TABLE OF CONTENTS

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

Section 1 - Legislative framework

1. Overview of provisions of the VAT Code

Article 75

Article 76

Article 77

Articles 77 *bis*

Article 78

Article 79

Article 80

Article 82

Articles 82 *bis*

2. Overview of provisions for implementing decisions

Royal Decree No. 4 of 29.12.1969 with regard to the returns on value added tax

Royal Decree no. 14 of 03.06.1970 with regard to the alienation of buildings, parts of buildings and the associated land and the establishments, transfers and retransfers of a right in rem within the meaning of Article 9, second paragraph, 2 °, of the Value Added Tax Code on such goods

Royal Decree no. 31 of 02.04.2002 regarding the arrangements for applying value added tax to transactions performed by taxable persons not established in Belgium

Royal Decree No. 48 of 29.12.1992 with regard to the delivery of means of transport within the meaning of Article *8a* , § 2, 1 ° of the VAT Code, performed within the conditions of Article 39bis of the VAT Code

Royal Decree No. 56 of 09.12.2009 regarding the refund of value added tax to taxable persons established in a Member State other than the Member State of refund

[Inhoudsta f ell of this chapter] - [Contents of the VAT Comments]

Section 2 - Introduction

Under the provisions of the Article 75 of the VAT Code tax is added value to be returned only in cases where the aforementioned Code provides. These cases are listed in Articles 76, 77 and *77a* , the implementation procedures of which are determined by Royal Decree No 4 of 29.12.1969 with regard to returns on value added tax . In principle, the concept of a refund therefore has a broad scope.

when the latter are not or are no longer contested. This also applies in the event of seizure, transfer, concurrence or insolvency proceedings.

A claim for a refund must always be substantiated on the basis of evidential information such as an invoice, an import declaration, a certificate of invalidity ...

In order to give as clear as possible a picture of the problem of the refund of the value added tax, the following subjects are discussed successively:

- the causes of the refund (Articles 76 to *77a* of the VAT Code)
- the person entitled to the refund
- the time when the claim for refund arises
- the modalities and formalities of the refund.

[Contents va n this section] - [Contents of the VAT Comments]

Section 3 - Causes of the refund

In accordance with the provisions of Article 75 of the VAT Code, the tax can only be refunded in cases provided for by the VAT Code.

The possible causes of the refund of value added tax or find their origin in the provisions of Articles 76, 77 and 77 *bis* of the VAT Code.

1. Refund under Article 76 of the VAT Code

The provisions of Article 76 of the VAT Code only apply to taxable persons with a right to deduct input tax levied on the costs relating to the transactions they have carried out in accordance with the provisions of Article 45 of the aforementioned Code.

A. Article 76, § 1 of the VAT Code

Article 76, § 1 of the VAT Code states that ' *without prejudice to the application of Article 334 of the Program* Law *of 27 December 2004, when the amount of the tax eligible for deduction under Articles 45 to 48 is deducted from the end of the calendar year exceeds the tax payable by the taxable person who has been identified for VAT purposes in accordance with Article 50 and who is obliged to submit the return referred to in Article 53, § 1, first paragraph, 2 °, under the conditions determined by the King, the difference returned within three months at the express request of the taxpayer or of his liable representative referred to in Article 55, §§ 1 or 2. "*

This refers to the case in which, for the same declaration period, the deductible VAT is higher than the VAT due if it concerns a taxable person with a right to deduct input tax, who is established in Belgium, who has a permanent establishment in Belgium or who, in accordance with Article 55 Belgium has had a liable representative recognized. The taxable person who enjoys direct identification in Belgium is also envisaged by this provision. The same applies to a taxpayer not established in Belgium, who is represented by a person recognized in advance in accordance with Article 55, § 3, second paragraph, of the VAT Code for certain registration no. 4/2003 (ET 103.925) of 04.03.2003 listed transactions (see also Book I: Tax liability and taxable transactions - Chapter 1: The taxable person - Section 10: Taxable persons not established in Belgium).

In this context, attention is drawn to Article 8 [3] of the Royal Decree No 4 , referred to above, which concerns the refund of a tax credit that exists for a taxable person without a right to deduct input tax or for a non-taxable person legal and resulting from a declaration under Article 53 *for* , 1 ° of the VAT Code.

As a rule, the result of an Article 53 *for* , 1 ° of the VAT Code envisaged a return to the payable amount is. It is nevertheless possible that the declaration in question shows a final result owed by the state.

When the amount of VAT deducted by a taxable person in a periodic VAT return under Articles 45 to 48 of the VAT Code exceeds the VAT due, the difference is in principle carried forward to the next tax period. However, if such a difference is apparent from the tax return for the last tax return period of a calendar year, under the provisions of Article 76, § 1, of the VAT Code, it should be refunded within three months at the express request of the taxpayer. . In the event of subsequent repayment, interest of 0.8% per month would be payable by law for the benefit of the taxpayer (Article 91, § 3, of the VAT Code).

However, in order to determine whether there is reason to refund a surplus, account must be taken not only of the VAT deductible and payable for the reporting period, but also of the VAT that is subject to a refund under Article 77, §§ 1 and *1a* , of the VAT Code and with the VAT that must be paid due to revisions or that can be deducted additionally (Articles 5 and 7 of Royal Decree No 4 , aforementioned). If the final result is an amount owed by the state, it constitutes a tax credit that is returned by either transfer to the next tax return period by inclusion in the current account or by an actual refund according to the distinction made in Article 8 [1] of the Royal Decree No 4 , aforementioned (see also Section 6: Terms and formalities for the refund - Title 1).

B. Article 76, § 2, of the VAT Code

Article 76, § 2, of the VAT Code provides that ' *the taxpayer not referred to in § 1 can, by way of refund, recover the tax levied on the goods and services supplied to him, and on the imported goods goods and intra-Community acquisitions of goods, to the extent that such tax is deductible in accordance with Articles 45 to 48* '.

The purpose of the provisions of the aforementioned article is only to exercise the right to deduct input tax that is granted by the provisions of the VAT Code to the following persons or groups:

- people who just happen to new buildings or parts of buildings and the accompanying land transfer or to establish which buildings rem, transfer or re-transfer under the provisions of Article 8 of the VAT Code. They do not acquire the status of taxable person by operation of law, but must explicitly opt for this capacity (see also Book I: Tax liability and taxable transactions - Chapter 1: The taxpayer - Section 7: Accidental taxpayers and Section 5: Time when the claim for refund arises - Title 5 of this chapter).
- the persons or groups who happen to deliver a new means of transport intra-Community under the provisions of Article *8a* , § 1 of the VAT Code. They acquire the status of taxable person by operation of law and should therefore not explicitly opt for it (see also Book I: Taxable and taxable transactions - Chapter 1: The taxable person - Section 7: Accidental taxable persons). Pursuant to Article 76, § 2 of the VAT Code, they can obtain a refund within the limits stipulated in Article 45, § 1 *bis* of the aforementioned Code. As a general rule, this refund can be obtained by submitting the refund referred to in Article 1 of theRoyal Decree no. 48 of 29.12.1992 regarding the supply of transport within the meaning of Article 8 *bis* , § 2, 1 ° of the VAT Code, conducted within the terms of Article 39 *bis* of the VAT Code , shall declare the tax levied on the supply, importation or intra-Community acquisition of new means of transport under the conditions laid down in Article 39 *bis* are provided by the VAT Code. This declaration counts as an application for a refund if the conditions for exercising the right to deduct have been met at the time of submitting this declaration. If not, an application for a refund must be made in accordance with Article 9 of theRoyal Decree No 4 , aforementioned.
- taxable persons not established in Belgium who do not have a liable representative and who do not have a direct identification (see letter no 4/1988 of 24.02.1988 , letter no 4/2003 (ET 103.925) of 04.03.2003 and circular AFZ no. 20/2009 of 22.12.2009 and see also Book I: Tax liability and taxable transactions - Chapter 1: The taxable person - Section 10: Taxable persons not established in Belgium) according to the following distinction:
  - the refund is made in accordance with Article 6 of the Royal Decree No 31 of 02.04.2002 regarding the arrangements for the application of the value added tax in respect of transactions performed by taxable persons not established in Belgium if it concerns a taxable person established in another Member State than Belgium and which is not identified for VAT purposes in Belgium. The modalities for this are laid down in Royal Decree No. 56 of 09.12.2009 with regard to the refund on value added tax to taxable persons established in a Member State other than the Member State of refund .
  - the refund is effected in accordance with Articles 9, §§ 2 and 3, and 12, §§ *1a* and 2, of the Royal Decree No 4 , aforementioned, if it concerns a taxable person established outside the Community who is not liable for VAT in Belgium. for the purposes of identifying whether a non-taxable legal person who is not established in Belgium and who has not carried out any transactions in the Netherlands under the VAT Code, other than the intra-Community acquisition of new means of transport referred to in Article *8a* , § 2 of the aforementioned Code or in the case of a service provider who, for the purposes of applying the provisions of Article *58a* of the special scheme referred to in that Code in Belgium or in another Member State.
- taxable persons who carry out transactions that are carried out in accordance with the provisions of Article 44, § 3, 4 ° to 10 ° of the VAT Code and agents or brokers who carry out such transactions, which are carried out in accordance with the provisions of Article 45, § 1, 4 ° and 5 °, may deduct from the VAT Code the input tax levied on the aforementioned transactions whenever the co-contractor is established outside the Community or when the related transactions are directly related to goods intended for export to a country outside the Community.

2. Refund under Article 77, § 1 of the VAT Code

The provisions of Article 77, § 1 of the VAT Code relate to several of the aforementioned cases that qualify for VAT refunds with regard to a supply of goods, a service or an intra-Community acquisition of a good in Belgium come:

A. Article 77, § 1, 1 °, of the VAT Code

Without prejudice to the application of Article 334 of the Program Law of 27.12.2004, aforementioned, **the tax levied on the supply of goods, of a service or of an intra-Community acquisition of an asset** up to the appropriate amount shall be refunded when **the amount is exceeds that which is legally due** .

Refunds are made when the tax paid on a supply of goods, a service or an intra-Community acquisition of a good exceeds the tax payable by law. This includes, inter alia, all cases where an error has been made in the invoicing or in the declaration to be submitted by the taxable or non-taxable legal person: levy on a non-taxable transaction, application of an incorrect rate or an incorrect criterion of levy, double booking...

Refunds will also be made if the taxable amount is reduced as a result of an event occurring after delivery, such as the definitive determination of a price that is subject to revision or the fulfillment of an express or tacit dissolving condition.

Furthermore, the Court of Justice of the European Union has also ruled on the specific situation where a Member State has maintained in its national legislation an exemption from withholding tax refund for certain specified supplies or services, but has misinterpreted its national legislation in that As a result, certain supplies or services which should have been eligible for exemption from input tax refund under national law are taxed at the standard rate. The Court hereby held that, under the general principles of Community law, including the principle of fiscal neutrality, an undertaking which supplied such supplies or services,Court of Justice of the European Union, *Marks & Spencer plc v Commissioners of Customs and Excise* , case C-309/06, 10.04.2008).

Furthermore, the case referred to in Article *25d* , § 3, second paragraph, of the VAT Code is also envisaged in which the taxable amount of an intra-Community acquisition of goods can be lowered in the Member State that has assigned the VAT identification number under which the customer this acquisition and insofar as tax on this acquisition is levied in the Member State of arrival of the dispatch or transport of the goods in application of Article *25d* , § 2, of the aforementioned Code.

B. Article 77, § 1, 2 °, of the VAT Code

Without prejudice to the application of Article 334 of the Program Law of 27.12.2004, aforementioned, **the tax levied on the supply of goods, of a service or of an intra-Community acquisition of an asset** up to the appropriate amount is refunded when the contracting partner a **price reduction** is allowed.

The tax is returned to the appropriate course when a price reduction is allowed to the co-contractor and is obtained by him after the time when the tax becomes chargeable. The reason for the allowable price reduction is of no significance and may include, for example, the granting of year-end discounts, the non-conformity of the goods with the order or simply based on trade considerations.

Attention is drawn to the fact that these discounts and reductions to which the customer has an acquired right at the time when the tax becomes chargeable, in accordance with Article 28, 2 ° of the VAT Code, do not form part of the taxable amount.

C. Article 77, § 1, 3 °, of the VAT Code

Without prejudice to the application of Article 334 of the Program Law of 27.12.2004, aforementioned, **the tax levied on the supply of goods, of a service or of an intra-Community acquisition of an asset** up to the appropriate amount shall be refunded when the supplier credit the contracting partner for the **return of packaging that served for the transport of delivered goods** .

The tax will be refunded up to the amount of the amounts for which the supplier credits his co-contractor for the return of the packaging materials used to transport the goods supplied. This provision applies only if it was not already established at the time of delivery that the contracting partner had the option of returning the packaging, because if this is possible, the costs for ordinary and usual packaging should not be included in the taxable amount. are included under Article 28, 4 ° of the Code.

D. Article 77, § 1, 4 °, of the VAT Code

Without prejudice to the application of Article 334 of the Program Law of 27.12.2004, aforementioned, **the tax levied on the supply of goods, of a service or of an intra-Community acquisition of an asset** up to the appropriate amount shall be refunded if **the contract is the delivery of the good or the performance of the service has been broken** .

The tax is refunded if the contract is broken before the delivery of the good or before the performance of the service, but in any event after the tax on the supplier or the service provider pursuant to some legal or regulatory provision (see Articles 16, 17 , 22 and *22a* of the VAT Code) have become due and payable.

The **termination** is a legal act whereby the parties **terminate** an agreement without there being a contractual shortcoming:

- or by mutual consent: the parties may agree, in accordance with the provisions of Article 1134 of the Civil Code, to terminate the agreement which binds them.
- either unilaterally: as a rule, a party cannot unilaterally terminate an agreement, but the law provides for exceptions to this. For example, any contract that provides for continuous services and that is concluded for an indefinite period of time is always susceptible to being the object of a termination by one of the parties. In addition, the unilateral termination of certain agreements is regulated by the Civil Code. The parties may also include clauses concerning unilateral termination in their agreements.

E. Article 77, § 1, 5 °, of the VAT Code

Without prejudice to the application of Article 334 of the Program Law of 27.12.2004, aforementioned, **the tax levied on the supply of goods, of a service or of an intra-Community acquisition of an asset** up to the appropriate amount shall be refunded if the **agreement is reached amicably or destroyed by the force of res judicata court decision or terminated** is .

The tax is refunded when the agreement is canceled or terminated.

No distinction is made as to whether the annulment or dissolution is amicable or judicial, but in the latter case the judicial decision must have the force of res judicata to justify repayment.

The **termination** is the method of destruction which penalizes the erroneous non-performance of a reciprocal contract (for example: non-conformity of the goods or of the service, late delivery…). It is regulated by law (the tacit dissolution clause laid down in Article 1184 of the Dutch Civil Code), if necessary supplemented or amended by means of a contractual clause (explicit dissolution clause). In principle it has retroactive effect, but there are modalities and exceptions that deviate in whole or in part from this rule.

There is also **dissolution**when a contract is terminated by the fulfillment of a resolutive condition. The resolutive condition differs from an expressly resolutive clause in that the parties have envisaged termination of the contract by not providing it with any form of sanction. The dissolving condition is an uncertain and future event that entails the dissolution of the obligation to which it relates or of the agreement in its entirety. The dissolving condition is effected by operation of law by the mere fact that the condition has been fulfilled and without any expression of will or intervention by either party or the judge being required. Unless stipulated otherwise, this condition is also retroactive.

An agreement can be **canceled**when it is affected by nullity. Nullity is a way of extinguishing contracts and penalizes a defect that essentially affects the conclusion of the contract. As a result of this defect, the agreement could not be validly concluded, but at the latest there is a title that must be declared null and void. Normally, a judge should declare null and void in the event of a dispute. Nevertheless, nothing prevents the parties from agreeing to recognize and declare nullity, so that the intervention of a judge is not required. As a rule nullity has a retroactive effect. However, there are several exceptions to this retroactive effect, primarily with regard to agreements with continuous performance .

The agreements are subject to cancellation in the following cases:

- if a defect affects one of the validity conditions for agreements listed in Article 1108 of the Dutch Civil Code: permission, competence, object or cause;
- if, at the time of entering into the agreement, the substantial formal requirements or formal requirements prescribed under penalty of nullity are not complied with where the law provides for an obligation to comply with such formal requirements;
- in the event of a breach of a public policy provision or of a mandatory legal provision at the conclusion of the contract in the event that the legislator does not provide for any other sanction and if it concerns provisions that are essential for the validity of the conclusion of a contract.

F. Article 77, § 1, 6 °, of the VAT Code

Without prejudice to the application of Article 334 of the Program Law of 27.12.2004, aforementioned, **the tax levied on the supply of goods, of a service or of an intra-Community acquisition of a good is** refunded up to the appropriate amount when the **good delivered has been taken back by the supplier within six months of the delivery or the intra-Community acquisition of a good without any of the parties having obtained a monetary advantage with regard to the price** .

The tax is refunded if the delivered good has been taken back by the supplier within six months of the delivery or the intra-Community acquisition of the good without any of the parties having obtained a monetary advantage in respect of the price.

Under that provision, in principle, no refund can be given if the price for which the good is taken back is not exactly the price for which it was originally sold.

The administration accepts, however, that neither party has obtained a monetary benefit in terms of price if a fee was paid to the supplier for the use of the good, which is determined according to the actual useful life of the good and which is not case exceeds the gross profit made by the supplier on the original sale of the good.

That provision allows for refund without the person requesting it having to provide proof of the annulment or dissolution of the contract in respect of the taxed transaction. Only the material fact of the return and the absence of any monetary advantage must be demonstrated (see also Note No. 78-2 / 1970 of 24.11.1970 and Note No. 78/1970 of 24.11.1970).

G. Article 77, § 1, 7 °, of the VAT Code

Without prejudice to the application of Article 334 of the Finance Act of 27.12.2004, mentioned above, is **a supply of goods, the tax levied, a service or an intra-Community acquisition of goods** to the amount of the appropriate amount refunded if the **claim of the price has been lost in whole or in part** .

The refund instituted by Article 77, § 1, 7 ° of the VAT Code, is permitted as soon as the total or partial loss of the claim has been established. It concerns the situation where goods or services are provided in the performance of an agreement that has not been destroyed or dissolved, but where for some reason the price has not been paid, either in full or in part. The refund applies not only when the loss of the claim of the price is the result of a bankruptcy or judicial reorganization, but also when the supplier finds that an invoice has been completely or partially unpaid.

The question of when the loss of a claim can be considered as certain depends on the circumstances of each case (see written parliamentary question No. 1.288 by Mr MP Jean-Pierre Viseur of 21.11.1994).

In practice, the administration will not dispute that the loss has been established if the amount of the loss was recorded in the 'Loss and Profit' account, insofar as that annotation is made at a time when the creditor, by all possible facts or remedies , can prove that his claim can be considered lost. In any event, the registration of all or part of the debt in an account for 'bad debt provision' is not in itself sufficient to prove the authenticity of the loss.

In accordance with the provisions of Article 79, § 1, first and second paragraph, of the VAT Code, the supplier or the service provider is obliged to provide the contracting partner with an improving document stating the amount of the tax returned to him. The supplier or service provider recovers from the State the VAT stated on the credit note issued, by including the amount in Schedule 64 of the VAT return for the period in which he issued the corrective document. The contracting partner must hereby return the tax to the State, to the extent that it was deducted by him, by including it in schedule 63 of the VAT return regarding the period in which he received the correcting document. .

Article 79, § 1, third paragraph, of the VAT Code stipulates that the supplier or service provider who has received a refund of the tax up to the appropriate amount in the event of total or partial loss of the price claim, assuming that the debtor has become wealthy again and later pays all or part of the amount claimed to be unrecoverable to the creditor, he must repay to the State the amount of the tax corresponding to the amount recovered, by including it in the amount of the tax due in respect of the period in which he received this deposit.

With regard to the loss of a claim as a result of bankruptcy or as a result of a judicial reorganization, reference is made to section 5: Time at which the claim for refund arises - title 2 - section B.

3. Refund pursuant to Article 77, § *1a* of the VAT Code

The provisions of Article 77, § *1a* , of the VAT Code relate to various aforementioned cases that qualify for a refund of VAT paid in respect of imports.

That article does not contain any provision under which VAT paid on importation can be refunded on account of the bankruptcy of the person in whose name the goods were put into service (see Written Parliamentary Question No 208 by Mr Senator Hugo Wechx from 17.03.1987).

In all cases where a refund can be granted with regard to imported goods, the refund will be granted to the person designated as entitled party by the Royal Decree no. 4 , referred to above.

A. Note in advance: Exclusion of the right to a refund based on Article 77, § 1bis of the VAT Code

Pursuant to Article 2, first paragraph, of the Royal Decree no. 4 , mentioned above, referred to in Article 77, § 1 *a* refund is not paid pursuant of the VAT Code as it relates to the importation of goods that is not a business asset and the addressee is a taxable person who is required to file a monthly or quarterly return and who can deduct in full the tax paid on import.

Indeed, in that case, the taxable person who paid the import tax has normally deducted that tax in his return for the period during which the import took place. If the refund were to be granted to him, he would also have to revise the deduction made in advance and return the wrongly deducted amount to the Treasury by including that amount in Schedule 61 of the periodic VAT return.

However, the refund normally takes place for the imported goods:

- when the addressee is a non-taxable person or a taxable person who is not obliged to file periodic returns.
- where the addressee is a taxable person without a right to deduct, or with a partial right to deduct (if he did not receive a refund, he would be disadvantaged up to the amount of the non-deductible part of the amount wrongly paid).
- when the action relates to operating assets. Pursuant to Article 48, § 2 of the VAT Code, the deduction of the tax levied on operating assets is subject to review. It is therefore important to determine the final amount of the tax subject to revision.
- when a taxable person imports goods from which the right to deduct is excluded or limited (including pursuant to Article 45, §§ 2 and 3 of the VAT Code).

The principles cited here also apply to a VAT unit within the meaning of Article 4, § 2 of the VAT Code.

Where the refund relates to the importation of a business asset or other goods for which the tax paid on import could only be partially deducted, the addressee who receives the refund is obliged to recover the amount previously deducted pay to the state to the extent that he obtains a refund. In such a case, however, it may be determined by or on behalf of the Minister of Finance that the refund is limited to the tax that could not be deducted (Article 2, second and third paragraph, of the Royal Decree No. 4 , aforementioned).

B. Article 77, § 1bis, 1 °, of the VAT Code

Without prejudice to the application of Article 334 of the Program Law of 27.12.2004, aforementioned, **the tax levied** on **imports** shall be refunded up to the appropriate amount if **it exceeds the amount legally owed** or if the contracting partner a **price reduction** is allowed.

On the one hand, a refund is given to the appropriate course when the import tax exceeds the statutory tax. This refers in particular to all cases in which errors were made in determining the taxable amount, the application of an incorrect rate, calculation errors or errors in the preparation of import documents that result in the cancellation of those documents.

Refunds will also be made if the taxable amount is reduced following an event occurring after importation, such as the final fixing of a price that could be revised or the fulfillment of an express or implied resolutive condition.

On the other hand, the tax paid on import is refunded up to the appropriate amount when a price reduction is authorized and is obtained after the tax has become due to the extent that that price has served to determine the taxable amount of the tax. VAT on import. The reason for this permitted price reduction is of no significance.

C. Article 77, § 1bis, 2 °, of the VAT Code

Without prejudice to the application of Article 334 of the Program Law of 27 December 2004, the aforementioned, **the tax levied** on **imports** shall be refunded up to the appropriate amount when the supplier credits his contracting party for the **return of packaging used for the transport of delivered** goods **. goods have served** and this on **condition** that the **package is returned to a place outside the community** .

This concerns packaging that was not placed under a temporary importation scheme with full exemption from import duties, for example because the return was not originally foreseen.

D. Article 77, § 1bis, 3 °, of the VAT Code

Without prejudice to the application of Article 334 of the Program Law of 27 December 2004, the aforementioned, **the tax levied** on **imports** shall be refunded up to the appropriate amount when the **agreement is overturned amicably or by a final decision or wound** is and this on **condition** that the goods **within six months after the destruction or dissolution** of the contract **to a place outside the Community re-exported** were.

The reason for destruction or termination of the agreement is of no importance (non-conformity of the good with the order, late delivery, trade considerations ...).

Nor should a distinction be made according to whether the annulment or dissolution is amicable or judicial, but in the latter case the judicial decision must have the force of res judicata to justify repayment.

E. Article 77, § 1bis, 4 °, of the VAT Code

Without prejudice to the application of Article 334 of the Program Law of 27 December 2004, the aforementioned, **the tax levied** on **imports** shall be refunded up to the appropriate amount if the **good** is **re-exported** to the outside **within six months of the declaration for consumption.** supplier established in the Community or to the destination outside the Community designated by the supplier, **without either party having obtained a monetary advantage in respect of the price** .

Under that provision, in principle, no refund can be given if the price for which the good is taken back is not exactly the price for which it was originally sold.

The administration accepts, however, that neither party has obtained a monetary benefit in terms of price if a fee was paid to the supplier for the use of the good, which is determined according to the actual useful life of the good and which is not case exceeds the gross profit made by the supplier on the original sale of the good.

That provision allows for refund without the person requesting it having to provide proof of the annulment or dissolution of the contract in respect of the taxed transaction. Only the material fact of the return and the absence of any monetary advantage must be demonstrated (see also Note No. 78-2 / 1970 of 24.11.1970 and Note No. 78/1970 of 24.11.1970).

F. Article 77, § 1bis, 5 °, of the VAT Code

Without prejudice to the application of Article 334 of the Finance Act of 27.12.2004, mentioned above, is **the tax levied in respect of imports** to the extent of the appropriate amount returned when the **property** before leaving the customs supervision, **as a result** has been **destroyed due to force majeure or accident** , and **refunds of import duties may be granted, or may be granted, under the customs regulations if the goods had been subject to import duties** .

G. Article 77, § 1bis, 6 °, of the VAT Code

Without prejudice to the application of Article 334 of the Program Law of 27 December 2004, the aforementioned, **the tax levied** on **imports** shall be refunded up to the appropriate amount when the **good** , after being declared for consumption, is **placed under one of the following: the arrangements referred to in Article 23, §§ 4 and 5** , and **according to the customs regulations, a refund of import duties may be granted, or could be granted, if the goods had been subject to import duties** .

H. Article 77, § 1bis, 7 °, of the VAT Code

Without prejudice to the application of Article 334 of the Finance Act of 27.12.2004, mentioned above, is **the tax in respect of imports was lifted** returned to the amount of the appropriate amount when it is **good** , as **a result of measures taken by the competent authority** , **should not be used for the purpose for which it was imported and the good was re-exported to a place outside the Community or destroyed under official supervision** .

4. Refund under Article 77, § 2 of the VAT Code

Without prejudice to the application of Article 334 of the Program Law of 27 December 2004, the aforementioned, the tax paid on the **acquisition and import of a passenger car shall be** refunded provided that such automobile has not been the subject of a delivery subject to the special arrangements for the taxation of the profit margin established by Article 58, § 4 of the VAT Code and is purchased **by one of the aforementioned persons** to be used by him **as a personal means of transport** :

- military and civilian war invalids who receive an invalidity pension of at least 50%
- persons who are completely blind,
- persons who are completely paralyzed in the upper limbs or whose upper limbs have been amputated
- persons with permanent disability that is directly attributable to the lower limbs and is at least 50%.

The provisions of Article 77, § 2 of the VAT Code naturally only apply to VAT that has become due and payable in Belgium. The following are thus intended: the delivery, intra-Community acquisition or importation of a car to or by the aforementioned disabled or disabled person, which takes place in Belgium on the basis of the provisions of Articles 14, 23 and *25d* of the aforementioned Code (see also Book II). : Determination of the taxable basis and the applicable rate - Chapter 7: Tax rates - Section 3 - Section 22).

It should be noted that only the VAT paid for the acquisition or import of the vehicle is returned, and not the VAT paid for parts, equipment and accessories for maintenance and repair work, or for other supplies or imports (petrol, lubricants ...) or services (parking costs...) related to that vehicle. Nor can the tax levied on the supply be refunded if the vehicle was purchased from a taxable reseller under the special scheme of taxation on the profit margin established by Article 58, § 4 of the VAT Code.

Moreover, the benefit of this provision can only be claimed for a single car at a time and presupposes the use of the vehicle obtained by the acquirer as a personal means of transport for a period of 3 years. If, during this period, the car is used for other purposes, or is surrendered by the beneficiary, the beneficiary is obliged to refund the tax returned to the appropriate amount in proportion to the time remaining until the expiry of the 3- year period.

The term 'use as a personal means of transport' under the favor scheme for certain categories of disabled and disabled people is explained in Circular 2019 / C / 23 of 13.03.2019 regarding the term 'use as a personal means of transport' under the favor scheme on VAT for motor vehicles of certain disabled and disabled persons (No ET122.470) .

5. Refund under Article *77a* of the VAT Code

Pursuant to Rule 77 *bis* granted, the VAT Code, without prejudice to the application of Article 334 of the Finance Act of 27.12.2004, refund *"when, in the article 25quinquies, § 4, determined case by a non-taxable entity acquired goods from a third territory or a third country are dispatched or transported to a Member State other than Belgium, the VAT paid in the case of imports of goods in Belgium, returned to the importer, to the extent that the latter shows that the intra-Community acquisition which he was subject to tax in the Member State of arrival of the dispatch or transport of the goods'*

When a non-taxable legal person purchases goods outside the Community which are intended to be transported or dispatched to Belgium, where they are imported with payment of VAT, those goods are, in accordance with Article *25d* , § 4, of the VAT Code, deemed to have been dispatched or transported from Belgium, so that this act gives rise to an intra-Community acquisition in the Member State of arrival of the dispatch or transport.

When that intra-Community acquisition makes VAT payable in that Member State of arrival, the non-taxable legal person has paid VAT twice on its purchase of goods. In that case, Article 77 *bis* of the VAT Code provides that the VAT non-taxable legal person for the release for consumption is, in Belgium met rendered provided that person demonstrates that the intra-Community acquisition which he performed was subject to VAT in the Member State of destination.

[Contents va n this section] - [Contents of the VAT Comments]

Section 4 - Rightholder of the refund

As a rule, the person entitled to a refund is the person who has paid the value added tax to the State, provided that the conditions to be fulfilled for this purpose are met.

Nevertheless, some cases are explained below in which the tax can be returned to someone other than the person who paid it to the state.

1. Refund referred to in Article 76, § 1 of the VAT Code

The person entitled to the refund referred to in Article 76, § 1 of the VAT Code is the taxpayer who submits the returns referred to in Article 53, § 1, first paragraph, 2 °, of the aforementioned Code that is entitled to a deduction and that is provided by a creditor documents can demonstrate that the deductible VAT exceeds the VAT due and that it meets the conditions of Article 8 [1] of Royal Decree No 4 , aforementioned.

The request for a refund must be made by the aforementioned taxpayer or by his liable representative (1) as intended in the provisions of Article 55, §§ 1 to 3 of the VAT Code.

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

2. Refund referred to in Article 76, § 2 of the VAT Code

The person entitled to the refund referred to in Article 76, § 2 of the VAT Code is the taxable person referred to in that Article (see also section 3: Causes of the refund - point 1 - section B) who can demonstrate that the VAT refunded for deduction is eligible, being:

- people who just happen to new buildings or parts of buildings and the accompanying land transfer or to establish which buildings rem, transfer or re-transfer under the provisions of Article 8 of the VAT Code. They do not acquire the status of taxable person by operation of law, but must explicitly opt for this capacity (see also Book I: Tax liability and taxable transactions - Chapter 1: The taxpayer - Section 7: Accidental taxpayers and Section 5: Time when the claim for refund arises - Title 5 of this chapter).

- the persons or groups who happen to deliver a new means of transport intra-Community under the provisions of Article *8a* , § 1 of the VAT Code. They acquire the status of taxable person by operation of law and should therefore not explicitly opt for it (see also Book I: Taxable and taxable transactions - Chapter 1: The taxable person - Section 7: Accidental taxable persons). Pursuant to Article 76, § 2 of the VAT Code, they can obtain a refund within the limits specified in Article 45, § *1a* of the aforementioned Code. As a rule, this refund can be obtained by submitting the document referred to in Article 1 of Royal Decree 48., Said declaration provided by the tax levied on the supply, importation or intra-Community acquisition of new means of transport under the conditions laid down in Article 39 *bis* are provided by the VAT Code. This declaration counts as an application for a refund if the conditions for exercising the right to deduct have been met at the time of submitting this declaration. If this is not the case, an application for a refund must be submitted in accordance with Article 9 of Royal Decree No 4 , aforementioned.
- taxable persons not established in Belgium who do not have a liable representative and who do not have a direct identification (see letter no 4/1988 of 24.02.1988 , letter no 4/2003 (ET 103.925) of 04.03.2003 and circular AFZ no. 20/2009 of 22.12.2009 and see also Book I: Tax liability and taxable transactions - Chapter 1: The taxable person - Section 10: Taxable persons not established in Belgium) according to the following distinction:
  - the refund is made in accordance with Article 6 of Royal Decree 31, aforementioned , if it concerns a taxable person established in a Member State other than Belgium and who has not been identified for VAT purposes in Belgium. The modalities for this are determined in Royal Decree 56, aforementioned .
  - the refund is made in accordance with Articles 9, §§ 2 and 3, and 12, §§ *1a* and 2, of the Royal Decree no. 4 , above, if it concerns a taxable person established outside the Community who is not liable for VAT in Belgium. for the purposes of identifying whether a non-taxable legal person who is not established in Belgium and who has not carried out any transactions in the Netherlands under the VAT Code, other than the intra-Community acquisition of new means of transport referred to in Article *8a* , § 2 of the aforementioned Code or in the case of a service provider who, for the purposes of applying the provisions of Article *58a* of the special scheme referred to in that Code in Belgium or in another Member State.
- the taxpayer who carries out transactions that are carried out in accordance with the provisions of Article 44, § 3, 4 ° to 10 ° of the VAT Code and agents or broker's boots who carry out such transactions that are carried out in accordance with the provisions of Article 45, § 1, 4 ° and 5 °, may deduct from the VAT Code the input tax levied on the aforementioned transactions whenever the co-contractor is established outside the Community or when the related transactions are directly related to goods intended for export to a country outside the Community.

3. Refund referred to in Article 77, § 1 of the VAT Code

In accordance with Article 1, first paragraph, of the Royal Decree No. 4 , aforementioned, the person entitled to the refund is the person who paid the tax to the State.

As far as domestic transactions and intra-Community acquisitions of goods are concerned, this is thus:

- either the taxable person or the non-taxable legal person who has included the tax to be refunded in the amount of tax due entered in the declaration and has paid it to the treasury in the case of transactions carried out by the taxable person or a non-taxable person -taxable legal person as appropriate, is required to submit the declaration envisaged in article 53, § 1, paragraph 2 ° of Article 53 *for* , 1 ° of the VAT Code
- or, in other cases, the person who can demonstrate that he has regularly paid VAT to the Treasury.

In accordance with Article 1, third paragraph, of the Royal Decree No 4 , the administration may , however, deviate from the rules laid down above in certain cases. This provision thus makes it possible to take into account special factual circumstances in order to allow refunds to other persons. For example, to an agricultural entrepreneur subject to the special agricultural regulation as intended in the Royal Decree No. 22 of 15.09.1970 regarding the special scheme for agricultural entrepreneurs regarding value added tax .

When a sale is dissolved for the benefit of a third party subrogated in the seller's rights , the tax levied on the sale can be returned as if the sale had been dissolved at the request of the seller. The finance company that has been subrogated under the rights of the seller or possibly the insurance company that has been subrogated under the rights of the seller or the finance company is authorized to exercise the right of refund instead of the seller.

In the event of total or partial loss of the claim of the price, the tax may also be returned, to the appropriate amount, to the institution subrogated into the seller's rights . The return for the benefit of a third party subrogated in the seller's rights is explained in Note 20/1975 of 24/09/1975 and Note 21/1975 of 24/09/1975 .

The refund of the tax may also be granted to the person who, acting as a guarantor for the bankrupt buyer, pays the seller the selling price for a supply of goods and the VAT charged on it. After all, in this case there is a legal substitution in favor of this person in the rights of the seller, pursuant to Article 1251, 3 ° of the Civil Code. In order to obtain this refund, the guarantor must, in accordance with Article 9 of the Royal Decree No 4 , referred to above, submit an application for restitution to the head of the control office of the value added tax (control center) to which he belongs.

In this regard , it should be noted that if the guarantor is able to recover the claim in whole or in part at the expense of the bankrupt estate, he must repay the VAT relating to the amount recovered to the State to the extent that it was initially deducted (see also written parliamentary Question No. 7 by Mr Vansteenkiste, Member of Parliament, 14.05.1974).

To the extent that credit insurance companies are fully subrogated to the rights of the insured, in this case the taxable creditors, even if the latter were only partially reimbursed by those companies, and that this full subrogation arises from the law itself (see in particular Article 75 of the law of 25.06.1992 on the land insurance contract) or from the contractual provisions regulating the relations between the credit insurance companies and their insured persons, these companies may provide for the right to a refund in Article 77, § 1, 7 °, of the VAT Code to replace the aforementioned insured persons. This of course only applies insofar as credit insurance contracts do not exclude value added tax from their scope. However, if only the amount of the claims excluding VAT is the subject of a guarantee against losses incurred as a result of the inability of customers of the insured persons, the credit insurance companies are only subrogated in the rights of the insured persons to the extent of the amount excluding VAT. therefore not authorized to exercise a right to a refund of value added tax for the benefit of these insured persons (see also decision no. ET 112.070 of 15.05.2007 anddecision no. ET 112.070 / 2 of 10.08.2007).

With regard to the transfer of the claim, the acquirer - usually a factoring company - becomes owner of the claim due to the transfer thereof, which is usually established by endorsement of the invoice and can even be invoked against third parties (see Article 13, first paragraph, and Article 16 , third paragraph, of the law of 31.03.1958). In those circumstances, it is the transferee of the claim who is entitled to a refund of VAT in the event of total or partial loss of the claim of the price under Article 77, § 1, 7 ° of the VAT Code (decision no. ET 56,795 of December 4, 1987).

4. The refund referred to in the articles 77, § 1 *bis* and 77 *bis* of the VAT Code

Pursuant to Article 1, first paragraph, of the Royal Decree no. 4 , aforementioned, the refund of the import tax paid is granted to the person who holds an import document designating him as the addressee and that the payment of the tax in his person head.

In the case of goods imported with a charge shifted domestically, the person entitled is the taxable person who entered the tax due on import in Schedule 57 of his periodic VAT return and who paid the tax for which that declaration is due and payable.

When applying the third paragraph of Article 1 of the Royal Decree No 4 , the aforementioned, the administration may in certain cases deviate from these rules. That provision thus makes it possible to take account of special factual circumstances in order to permit refunds to other persons. For example, refunds may be given to the declarant who paid VAT on behalf of and on behalf of the consignee where the import document presented to customs to establish payment of VAT has to be canceled. This is the case, inter alia, when the imported goods are refused by the consignee and re-exported by the declarant to a place outside the Community, or even if, before submitting the validated declaration for consumption to the consignee, the declarant ascertains that the declaration contains errors and must be replaced.

However, the situation outlined above should not be confused with that in which the declarant is still in possession of the import document after having paid the VAT due on import on behalf of a customer declared bankrupt. In that case, the declarant cannot claim a refund under the application of Article 77, § 1 *bis* of the VAT Code, nor with the application of Article 1, third paragraph, of the Royal Decree No. 4 , aforementioned. For example, if the declarant is in possession of the validated import declaration and the consignee refuses (for whatever reason) to pay the (advanced) amount of VAT to the declarant.

Pursuant to the provisions of Article 2 of the Royal Decree no. 4, the aforementioned, the refund referred to in Article 77, § *1a* of the VAT Code is not granted if it concerns the import of a good that is not a business asset and the addressee is a taxpayer who is obliged to file the declaration referred to in Article 53, § 1, first paragraph, 2 °, of the aforementioned Code and who can deduct the tax paid on import in full. Where the said refund relates to the importation of a business asset or other goods for which the tax paid on importation could only be partially deducted, the addressee who receives the refund is obliged toto return tax to the State to the extent that it originally deducted it. This repayment is made by including its amount in the amount of the tax payable over the tax return period in which the refund is obtained.

5. Refund referred to in Article 77, § 2 of the Code

The refund established by Article 77, § 2 of the VAT Code is granted to the disabled or disabled person who, when acquiring or importing a car, meets all the conditions required to benefit from the reduced VAT rate, provided in table A, section XXII, first section, of the annex to the royal decree 20 of 20.07.1970 determining the rates of value added tax and classifying the goods and services at those rates .

No provision allows a refund of the VAT levied on conversion work on such a vehicle.

However, where the vehicle is transformed under the sales contract by the seller of the vehicle or by a third party acting on behalf of the seller, the cost of the conversion is an element of the price of the delivery of the modified vehicle and becomes taxed as such. The tax levied on the part of the price that corresponds to the value of the conversion works can then be refunded on the basis of the aforementioned Article 77, § 2. If the conversion works are carried out on behalf of the invalid, under a separate agreement - for example, by a third party or after the delivery of the vehicle - VAT is payable without a refund (written parliamentary question No. 290 by Mr Volksvert Representative David Geerts of 11.01.2010).

[Contents va n this section] - [Contents of the VAT Comments]

Section 5 - Time when the claim for refund arises

In accordance with the provisions of Article 3 of Royal Decree No 4 , aforementioned, the claim for a refund arises at the time when the cause of the refund arises.

After all, it is essential to correctly determine the day on which the claim for a refund arises. After all, this is the day from which the claim for a refund can be instituted, but also the day from which the claim for a refund begins to expire in accordance with Article 82 of the VAT Code. Under the provisions of Article 82 *bis* of the said Code, barred the claim for refund after the expiry of the third calendar year following that in which the cause of the refund occurred.

1. Refund referred to in Article 76, § 1 of the VAT Code

If the right to a refund is due to the filing of a periodic return as referred to in Article 53, § 1, first paragraph, 2 °, of the VAT Code, in which the amount of the deductible and refundable VAT exceeds the amount due VAT, the claim for refund arises at the time of submitting the aforementioned declaration.

For further information regarding the limitation period of this claim, reference is made to Book VII: Control and recovery of the tax - Chapter 19: Limitation periods - Section 11 - section C: End point of the limitation period.

If, on the other hand, a right to a refund is due to the filing of a special tax return as referred to in Article 53b , 1 °, of the VAT Code, the claim for a refund arises at the time of submitting this tax return, provided that all the conditions of Article 8 are met. [3] of Royal Decree No 4 , aforementioned, is satisfied.

With respect to the taxpayer or the non-taxable legal person, which, depending on the case, kept is referred to in Article 53, § 1, first paragraph, 2 °, or item 53 *in order to* , 1 °, of the said Code shall report to be transmitted , the refund is made by attributing to the amount of the tax payable for the declaration period, the total amount of the tax for which the cause of the refund occurred during that period.

2. Refund referred to in Article 77, § 1 of the VAT Code

A. General

In the cases referred to in Article 77, § 1, of the VAT Code (see also section 3: Causes of the refund - Title 2), the point in time at which the cause of the refund occurs, and therefore the claim for a refund arises. , determined as follows:

- when the tax paid exceeds the amount that is legally owed, on the date of payment (Article 77, § 1, 1 ° of the VAT Code)
- when a price reduction is permitted to the co-contractor or when the supplier credits the co-contractor for the return of packaging materials that have served for the transport of delivered goods, on the date when the price reduction is permitted or on the date on which the supplier's credit note to the co-contractor is issued (Article 77, § 1, 2 ° and 3 ° of the VAT Code)
- when the agreement for the delivery or for the performance of the service is broken, on the date on which the parties agree on the termination (Article 77, § 1, 4 ° of the VAT Code)
- when the agreement has been amicably destroyed or dissolved, on the date on which the parties determine the annulment or agree on the dissolution (Article 77, § 1, 5 ° of the VAT Code)
- when the agreement has been annulled or dissolved by a judicial decision on the date on which the judgment or judgment pronouncing the annulment or dissolution has become final and binding (Article 77, § 1, 5 ° of the VAT Code)
- when the delivered good has been taken back by the supplier within six months after the delivery or the intra-Community acquisition of a good without one of the parties having obtained a monetary advantage in respect of the price on the date on which it is demonstrated that the good was taken back (Article 77, § 1, 6 °, of the VAT Code)
- in the event of total or partial loss of the claim of the price, on the date when the loss can be considered as certain. This will be the case, for example, if the loss suffered was recorded in the profit and loss account after all means of recourse have been exhausted (Article 77, § 1, 7 ° of the VAT Code).

If the refund is granted on the basis of an error in the invoice or the provisions of Article 77, § 1, 2 ° to 7 ° of the VAT Code, the supplier or service provider must, in accordance with the provisions of Article 79, § 1. (1) and (2) of the aforementioned Code provide the contracting partner with an corrective document stating the amount of the tax returned to him.

The contracting partner must hereby return the tax to the State, to the extent that it was deducted by him, by including it in schedule 63 of the VAT return regarding the period in which he received the correcting document. .

As a rule, the supplier or service provider who has received refund of the tax up to the appropriate amount in the event of total or partial loss of the claim of the price within the meaning of Article 77, § 1, 7 ° of the VAT Code to repay to the State the amount of tax corresponding to the amount recovered if the debtor has become wealthy again and later pays all or part of the amount claimed as not recoverable to the creditor. This is done by including the amount of tax owed in the tax return regarding the period in which he received this deposit.

However, this does not apply to the claim for a refund in the event of a judicial reorganization or bankruptcy (see also sections B and C below).

B. Incurrence of the claim for refund in case of judicial reorganization

a. General

In accordance with the provisions of Article 3 of the Royal Decree No 4 , aforementioned, the claim for a refund arises with regard to the loss of the claim as a result of a

judicial reorganization:

- in the event of judicial reorganization by collective agreement, on the date of the homologation by the court, in respect of the claims the reduction of which was recorded in the reorganization plan
- in the event of judicial reorganization by an amicable settlement, on the date of the judgment establishing the amicable settlement, in respect of the claims the reduction of which was recorded in the settlement
- on the date of the decision closing the judicial reorganization procedure by transfer under judicial authority, as regards claims that could not be discharged as a result of the transfer.

The debts envisaged for this purpose are therefore, in principle , deemed to have been permanently reduced within the meaning of Article 77, § 1, 7 °, of the VAT as of the relevant dates - included in the provisions of the aforementioned Article 3 of Royal Decree No 4 . Code. The administration assumes that the provisions of Article 79, § 1, third paragraph, of the aforementioned Code do not apply in this, as they only envisage the situations in which the debtor has become wealthy again **and** later pays all or part of the amount deemed uncollectible to the creditor. An exception to this, however, is the case where the amicable agreement is ended or the reorganization plan is withdrawn. In such cases, the 'lost' nature of the claim will be questioned again and the provisions of Article 79, § 1, third paragraph of the VAT Code will apply where appropriate.

In accordance with the provisions of Article 79, § 1, first and second paragraph of the aforementioned Code, the supplier or the service provider is always obliged to provide the contracting partner with an improving document stating the amount of the amount returned to him in the cases intended for this purpose. tax. The supplier or service provider recovers from the State the VAT stated on the credit note issued, by including the amount in Schedule 64 of the VAT return for the period in which he issued the corrective document. The contracting partner must hereby return the tax to the State, to the extent that it was deducted by him, by including it in schedule 63 of the VAT return regarding the period in which he received the correcting document. .

b. Judicial reorganization through a collective agreement

First of all, it is emphasized that the following applies only in the context of the judicial reorganization procedure through a collective agreement.

In accordance with the provisions of Article 44 et seq. Of the Business Continuity Act (hereinafter WCO), in the context of the judicial reorganization procedure, a collective agreement provides for the drawing up of a reorganization plan, in which the rights of all persons who are holders of claims in the suspension or claims that will arise as a result of the vote or approval of the restructuring plan (Article 48 of the WCO) are described. The relevant restructuring plan also mentions, among other things, the proposed payment terms and the reductions in the amounts receivable in the suspension, in capital and interest (Article 49 of the WCO).In this regard , Article 2 of the aforementioned Law clarifies that the term claims in the suspension refers to 'the claims arising from the judgment opening the judicial reorganization procedure or arising from the application or judicial decisions taken in the context of the procedure'.

For the sake of completeness, it is noted, however, that the restructuring plan in question is deemed to have been approved by the creditors if the majority of them, representing their undisputed or provisionally accepted claims in accordance with Article 46, § 3 of the aforementioned Law, represent half of all amounts owed in principal. votes (Article 54 of the WCO).

As a result of the foregoing, any VAT liability arising from the administration following the vote on the restructuring plan or its approval by the competent commercial court must be regarded as a suspension debt within the meaning of of the provisions of the aforementioned Article 2 and thus, in accordance with the provisions of Article 49 of the same Law, must also be reduced to the same extent as the claim to which it relates. This approach is also consistent with the judgment of 07.04.2016 in Case C-546/14, *Degano Trasporti Sas di Ferrucio Degano & C., delivered* by the Court of Justice of the European Union .

In the same way as in subsection a., The supplier or service provider (in this case the creditor) is bound to the contracting party in accordance with the provisions of Article 79, § 1, first and second paragraph of the aforementioned Code (in this casethe debtor) to issue a corrective note stating the amount of the tax returned to him. The supplier or service provider recovers from the State the VAT stated on the credit note issued, by including the amount in Schedule 64 of the VAT return for the period in which he issued the corrective document. The contracting partner must hereby return the tax to the State, to the extent that it was deducted by him, by including it in schedule 63 of the VAT return regarding the period in which he received the correcting document. . At the same time, the co-contractor in timetable 62 carries out a regularization in his favor to the extent of the reduction that this VAT has as a debt in the suspension.

Examples

- A taxable debtor (hereinafter referred to as A) has an outstanding debt of EUR 12,100.00 (= EUR 10,000.00 + EUR 2,100.00 VAT) with his taxable supplier (hereinafter referred to as B) and is invoking the judicial reorganization procedure by collective agreement. At the opening of the relevant procedure, the Belgian State (in this case the VAT administration) does not hold a debt that already exists at that time against A. For the sake of completeness, it is noted that A is the input tax (in this case EUR 2,100.00) entirely deduction.

  Following the vote and approval of the restructuring plan by the competent commercial court, all debts in the suspension within the meaning of Article 2 of the Business Continuity Act are reduced by one third.

  As a result, the outstanding debt is reduced to EUR 8,066.67 (= EUR 6,666.67 + EUR 1,400.00 VAT) and, in accordance with the provisions of Article 77, § 1, 7 ° of the VAT Code, a claim for repayment of the amount arises of EUR 700.00 (= 1/3 of EUR 2,100) in respect of B who issues a credit note for EUR 4,033.33 (= EUR 3,333.33 + EUR 700.00 VAT) to A. Therefore, A is in accordance with the provisions of Article 79, § 1, first and second paragraph, of the aforementioned Code, are obliged to return the tax to the State in the amount of EUR 700.00, in particular to the extent that it was deducted by him, as a result of which of the Belgian State an amount receivable to the detriment of creating a.

  In accordance with the aforementioned Article 2, this debt arising under A must also be regarded as a claim in the suspension, which, in accordance with the provisions of Article 49 of the same Act, must also be reduced by, in this case , one third. Therefore, the aforementioned debt of EUR 700.00 should be reduced by one third, being EUR 233.33, to EUR 466.67.

  The amount of VAT stated in this credit note must, on the one hand, be included by A in schedule 63 of the VAT return with regard to the period in which the corrective document was received for an amount of 700.00 euros and in schedule 62 a regularization in favor of the declarant (A) is recognized for an amount of EUR 233.33. On the other

hand, the amount of VAT stated in the relevant credit note must be included by B in schedule 64 of the VAT return regarding the period in which the corrective document was issued.

- A taxable debtor (hereinafter referred to as X) invokes the judicial reorganization procedure through a collective agreement and has several outstanding debts with various suppliers and with the Belgian State, being:
  - at supplier Y amounting to 36,300.00 euros (= 30,000.00 euros + 6,300.00 euros VAT)
  - at supplier Z for an amount of 24,200.00 euros (= 20,000.00 euros + 4,200.00 euros VAT)
  - 30,000.00 euros in tax arrears (corporate income tax and VAT) for the benefit of the Belgian State.

For the sake of completeness, it is noted that X has deducted the input tax in full.

Pursuant to the vote and approval of the reorganization plan by the competent commercial court, a differentiated treatment of the different creditors is provided and the relevant claims in the suspension are respectively reduced by the following percentages:

- outstanding debts with supplier Y by 20%
- outstanding debts at supplier Z by 40%
- outstanding debts with the Belgian State by 20%.

By way of clarification, this shows the treatment in terms of value added tax with regard to outstanding debts with supplier Z. As a result of the homologation of the aforementioned reorganization plan, the outstanding debt is reduced to EUR 14,520.00 (= EUR 12,000.00 + EUR 2,520.00 VAT) and arises in accordance with the provisions of Article 77, § 1, 7 ° of the VAT Code. a claim for a refund of 1,680.00 euros (= 40% of 4,200.00 euros) in respect of Z, who issues a credit note of 9,680.00 euros (= 8,000.00 euros + 1,680.00 euros VAT) to X. Therefore, in accordance with the provisions of Article 79, § 1, paragraphs 1 and 2 of the aforementioned Code, X is obliged to return the tax to the State in the amount of EUR 1,680.00,the detriment of X is created.

In accordance with the aforementioned Article 2, this debt arising under X must also be regarded as a claim in the suspension, which must also be reduced by 40%, in particular by the same percentage as applicable, in accordance with the provisions of Article 49 of the same Act. is on the claim in the suspension to which it relates. Therefore, the aforementioned debt arising from X of EUR 1,680.00 should be reduced by 40%, being EUR 672.00, to EUR 1,008.00. **For the sake of completeness, it is noted that this reduction is thus in no way influenced by the respective percentage, in this case 20%, which applies to the debts that X has outstanding with the Belgian State.**

The amount of VAT stated in this credit note must on the one hand be included by X in grid 63 of the VAT return with regard to the period in which the corrective document was received for an amount of 1,680.00 euros and in which grid 62 a regularization in favor of the declarant (X) is recognized for an amount of EUR 672.00. On the other hand, the amount of VAT stated in the relevant credit note must be included by Z in grid 64 of the VAT return regarding the period in which the corrective document was issued for an amount of 1,680.00 euros.

C. Incurrence of the claim for a refund in the event of bankruptcy

In accordance with the provisions of Article 3 of the Royal Decree no. 4 , the aforementioned, a claim for restitution arises with regard to the loss of a claim due to bankruptcy on the date of the bankruptcy order.

Until 30.04.2018, the Bankruptcy Act of 08.08.1997 (BS 28.10.1997) was applicable.

Article 11 of the aforementioned Bankruptcy Act of 08.08.1997 stipulates that the aforementioned bankruptcy court appoints an Examining Judge by its judge, with the exception of the chairman, among its members. The court also states one

or more curators, depending on the importance of the bankruptcy. She recommends where appropriate

in the event of a drawing by the examining magistrate, the bankruptcy trustees and the registrar. She recommends that

the creditors of the bankrupt will report their claim to the Registry within a

a maximum period of thirty days, counting from the bankruptcy order, and it orders the publication referred to in Article 38 of the aforementioned Act.

As of 01.05.2018, the aforementioned Bankruptcy Act of 08.08.1997 was repealed, under

reservation on its application to the bankruptcy proceedings running on 01.05.2018, and

was replaced by the Law of 08.11.2017 (BS 11.09.2017) on insertion of the

Book XX "Insolvency of companies", in the Economic Law Code, and containing

insertion of the definitions specific to Book XX and of the law enforcement provisions specific to

Book XX in Book I of the Economic Law Code.

Article XX.104 of the Economic Code provides that the insolvency court in the

judgment of bankruptcy among its members, except the Chairman, one or more court commissioners appointed. The insolvency court appoints one or more liquidators, depending on the importance of the bankruptcy. It orders the creditors of the bankrupt to declare their claim in the register within a maximum period of thirty days from the bankruptcy order and orders the publication referred to in Article

XX.107. The same judgment determines the date on which the first official report of the verification of the

claims are filed in the register. This time is chosen so that there is at least

five and no more than thirty days have elapsed between the expiry of the notification period of the

debts and the filing of the first report of investigation.

It follows from the reading of the foregoing that the claim for refund with

with regard to the loss of debt due to a bankruptcy arises on the date of the bankruptcy judgment and that one or more bankruptcy trustees are appointed by the same judgment. In addition, the aforementioned Article 11 of the Bankruptcy Act and Article XX.104 of the Economic Law Code clarify that the creditors of the bankrupt must report their claim in the register within a period of no more than thirty days, counting from the bankruptcy order .

Finally, it is noted that in the event of partial or complete loss of the claim of the price as a result of bankruptcy, the supplier or the service provider is not obliged to provide his co-contractor with an improving document as provided for in Article 79, § 1, first paragraph. , of the VAT Code and in accordance with the modalities of Article 4 of Royal Decree No. 4 , aforementioned. In addition, given that the partial or complete loss of claim of the price in the event of bankruptcy is considered permanent, the provisions of Article 79, § . 1, third paragraph, of the VAT Code not applicable. Consequently, the supplier or service provider who has obtained a tax refund will not be obliged to refund to the State the amount of the tax corresponding to the amount recovered on the assumption that the debtor has become wealthy again and pays part of the amount claimed to be uncollectible.

3. The refund referred to in Article 77, § 1 *bis* , and 77 *bis* of the VAT Code

In the cases referred to in Article 77 § 1 *bis* , and 77 *bis* of the VAT Code (see also Section 3: Causes of the refund - Titles 3 and 5) the date on which the cause of the refund occurs, and to which, therefore, the claim for a refund arises, as follows:

- if the tax paid exceeds the statutory tax (Article 77, § 1 *bis* , 1 ° of the VAT Code), on the date the tax was paid
- when a rate reduction is allowed (Section 77, § 1 *bis* , 1 °, of the VAT Code), on the date of the credit note is issued by the supplier,
- when the package is sent back to a place outside the Community (Article 77, § 1 *bis* , 2 °, from the VAT Code), on the date of the credit note is issued by the supplier,
- when the contract amicably or destroyed by a court decision or is dissolved (article 77, § 1 *bis* , 3 ° of the VAT Code), the date on which the goods are re-exported to a place outside the Community, or if the goods were re-exported before destruction or dissolution , on the date on which the parties ascertain or agree on the destruction about the dissolution, or also, on the date on which the judgment or judgment pronouncing the destruction or dissolution has the force of res judicata
- When it was well within six months of re-exported (Article 77, § 1 *bis* , 4 ° of the VAT Code), on the date of re-export outside the Community
- if the goods were destroyed before leaving the supervision of the customs authorities (Article 77, § 1 *bis* , 5 ° of the VAT Code), on the date of the destruction
- when it is to be good after at indicated consumption, is placed under a scheme referred to in section 23, §§ 4 or 5 of the Code (Article 77, § 1 *bis* , 6 °, of the VAT Code), on the date on which the tax was paid
- when it is good, as a result of action of the governing body, should not be used for the purpose for which it has been introduced (Article 77, § 1 *bis* , 7 °, from the VAT Code) of the re-export outside on the date the Community or destruction of the good
- when the non-taxable legal person proves that he has undertaken an intra-Community acquisition subject to taxation in the Member State of arrival of the dispatch or transport of the imported goods (Article 77 *bis* of the date of the VAT Code), which VAT-subject acquisition has taken place.

4. Refund referred to in Article 77, § 2 of the VAT Code

The claim for a refund in favor of certain categories of disabled and disabled persons referred to in Article 77, § 2 of the VAT Code (see also section 3: Causes of the refund - Title 4) arises at the time when the cause of the refund occurs on the date on which the person entitled paid the tax on the acquisition of the vehicle in the hands of the seller or on the date on which the VAT due on account of the intra-Community acquisition or import was paid.

For the invalids, enjoying an invalidity pension of at least 50% is an essential condition for obtaining the refund.

When a disabled person is granted an invalidity pension of at least 50%, or when his invalidity pension is brought to 50% or more retroactively up to a time prior to the purchase, the intra-Community acquisition or the import, the claim for a refund arises on the date of service of the decision granting the invalidity pension or increasing the invalidity percentage to the person concerned.

In accordance with Article *82a* of the VAT Code, the claim for a refund can be exercised until December 31 of the third calendar year following that in which the cause of the refund occurred.

5. Accidental taxpayer as referred to in Article 8 of the VAT Code

For the casual taxpayer referred to in Article 8 of the VAT Code (see also section 3: Causes of the refund - Title 1 - section B above and Book I: Tax liability and taxable transactions - Chapter 1: The taxpayer - Section 7: Accidental taxable persons) is the cause of the claim for refund at the time when the tax becomes chargeable on the full taxable amount with regard to the tax that is already deductible at that time, and at the time when the right to deduct arises with regard to the tax for which the taxable person becomes a debtor only after the date on which the VAT becomes due on the full taxable amount (see alsoArticles 2 and 5 of Royal Decree No 14 of 03.06.1970 with regard to the alienation of buildings, parts of buildings and the associated land and the establishments, transfers and retransfers of a right in rem within the meaning of Article 9, second paragraph, 2 °, of the Code of value added tax on such goods).

6. Refund of amounts paid at the request of the administration

The claim for a refund of tax, interest and fines paid at the request of the administration arises on the date on which those sums were paid.

In accordance with the provisions of Article 6 of the Royal Decree No 4 , the aforementioned, the refund of the tax, the interest and the fiscal fines paid at the request of the administration in charge of the value added tax, can be derogation from Article 5, § 1, of that Royal Decree, does not take place by attributing to the amount of the tax owed by the taxable person or the non-taxable legal person, insofar as it does not concern the refund of the sums determined in a declaration .

The claim for a refund of that tax, interest and fines is not dependent on the fulfillment of the formalities provided for in Article 4 of that Decree. It must be brought before the court provided for in Article 632 of the Judicial Code, in a petition for contradiction drawn up in accordance with Article *1385i* of that Code.

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

Section 6 - Refund modalities and formalities

When explaining the modalities and formalities of the refund, a distinction is made depending on whether it concerns a refund to a taxable or non-taxable person who is either obliged to file a periodic return as referred to in Article 53, § 1, first paragraph, 2 °, or to submit a special declaration within the meaning of Article 53ter, 1 °, of the aforementioned Code, or a refund to another person.

1. Refund to taxable or non-taxable legal persons who, depending on the case to be required to submit a periodic declaration in view of article 53, § 1, first paragraph, 2 °, or to a special report in view of article 53 *in order to* , 1 °, of the VAT Code

Pursuant to Article 7 of the Royal Decree No 4 , the aforementioned, the tax for which the right of deduction is exercised is, in accordance with Article 4 of the Royal Decree No 3 of 10.12.1969, with regard to the deduction scheme for the application of the value added tax , combined with the amounts to be returned in application of Article 77, § 1 and *1a* of the VAT Code to determine whether the final result of the declaration is an amount to be paid to the state or a tax credit in favor of the taxpayer.

Amounts to be returned for any reason are allocated to the amount of VAT payable by the taxable person or non-taxable legal person for the tax period. However, the allocation is not permitted for the tax, interest and fines paid at the request of the administration. Under no circumstances may these amounts be included in a declaration (see Article 6 of Royal Decree No 4 , aforementioned).

When the final result of the declaration is a tax credit in favor of the taxpayer, he is obliged to submit periodic returns as referred to in Article 53, § 1, first paragraph, 2 °, of the VAT Code, this balance will be carried forward to a subsequent declaration period under subject to what is provided below.

A. Special declaration as intended in Article 53ter, 1 °, of the VAT Code

If it is a balance in favor of the taxpayer or a non-taxable legal person required to submit a declaration contemplated in Article 53 *for* , 1 ° of the Code, this sum will be in accordance with Article 8^{3} of the Royal Decree no. 4 , aforementioned, will be refunded to him since the signed declaration counts as an application for a refund.

B. Periodic declaration as intended in Article 53, § 1, first paragraph, 2 °, of the VAT Code

When the final result of the declaration is a tax credit in favor of the taxpayer, he is obliged to submit periodic returns as referred to in Article 53, § 1, first paragraph, 2 ° of the VAT Code, this balance will in principle be transferred to a subsequent tax return period subject to what is determined below.

By way of derogation from this, in accordance with the provisions of Article 8^{1}, § 2, 1 °, of the Royal Decree no. 4 , the aforementioned, at the express request of the taxpayer, a periodic declaration as referred to in Article 53, § 1 is required, first paragraph, 2 °, of the aforementioned Code the tax credit, which appears from the declaration relating to the last declaration period of the calendar year, returned by transfer to the postal account of the entitled person or of a credit institution authorized by him, if the minimum amount is EUR 245 . If the tax credit is less than EUR 245 , it will be carried over to the first tax period of the following year.

Such a tax credit may arise, inter alia, from the difference between the advance paid in accordance with Article 19, § 3, of Royal Decree No. 1 of 29.12.1992 regarding the scheme for the payment of value added tax . the taxpayer who, on December 1 of the current calendar year, is obliged to submit monthly returns, and the amount of the tax that is due according to the declaration for December (decision no. ET 27.132 of 19.01.1978).

RELATED DOCUMENTS

- VAT Commentary, Chapter 14, in PDF

CHARACTERISTICS

Title: VAT Comment - Chapter 14: Tax refund (Update on 01.06.2020)

Summary: VAT Comment - Tax refund

Keywords: refund register , improving document , tax credit , co-contractor , claim for refund , monthly refund of VAT , refund of VAT , judicial agreement , refund of tax , collective agreement , bankruptcy, non-taxable legal person , value added tax

Date of the document: 04/06/2020

Publication date: 04/06/2020

Date of entry into force: 01/06/2020

Datum Fisconet *plus* : 06/04/2020

Contrary to the foregoing, the tax can also be refunded either quarterly or monthly, provided that the conditions to be fulfilled are met:

a. Refund per quarter

In accordance with the provisions of Article 8[1], § 2, 2 °, of the Royal Decree no. 4, aforementioned, the amount owed by the State is obliged, at the express request of the taxpayer, to submit a periodic return as referred to in Article 53, § 1, first paragraph, 2 °, of the VAT Code after submitting the tax return in respect of each of the first three calendar quarters or of the tax return in respect of the last month of each of those quarters, in the same manner to the taxpayer returned if it reaches 615 or 1,485 euros, respectively, for taxpayers submitting quarterly returns or for those submitting monthly returns.

b. Monthly VAT refund

In accordance with the provisions of Article 8[1], § 2, 3 °, of the Royal Decree no. 4 , aforementioned, a system of monthly VAT refunds is also provided. This system applies to taxable persons who almost always have a balance against the treasury, in order to mitigate the pre-financing burden caused by such deposits.

This generally concerns companies whose activity is largely exempt from VAT (for example because they are active in international trade) or which is not subject to VAT in Belgium (for example because the transactions are not carried out in Belgium or companies whose activity consists of transactions in Belgium for which they are not regarded as a VAT debtor) while they have to pay VAT for their incoming transactions.

The same applies to companies within the construction sector whose transactions are subject to the reduced rate of 6% in accordance with table table A of the annex to Royal Decree No. 20 , aforementioned, while their incoming transactions are in principle at the rate of 21%. are subject to VAT, as a result of which they too regularly have a tax surplus.

The monthly VAT refund system is the subject of circular AOIF No. 9/2009 (No. ET 115.806) of 03.03.2009 .

Intended taxable persons

Both the taxpayer who is established in Belgium and who makes a monthly return in accordance with Article 53, § 1, first paragraph, 2 ° of the VAT Code, and the taxable person who is not established in Belgium and who makes a monthly return in accordance with Article 53, § 1, first paragraph, 2 °, of the aforementioned Code (2) are eligible to benefit from the monthly refund system, insofar as they expressly request this and they meet the application conditions stated below.

(2) The fact whether or not this taxpayer has appointed a liable representative plays no role whatsoever.

On the other hand, the monthly refund system excludes non-resident taxable persons who are not identified for VAT purposes in Belgium under an individual number but who are represented by a pre-recognized person who has a global VAT identification number under which they represents several foreign taxpayers.

Application conditions (general)

In order to benefit from the monthly refund, the taxpayer must meet the following three application conditions:

- have realized at least 30% of its total turnover during the past calendar year:
  - by performing supply of goods and services which are exempt under Article 39, 39 *bis* or 39 *quater* , or Article 40, § 2, 1 ° and 2 °, 41, § 1, first paragraph, 2 ° to 6 °, or 42 of the VAT Code
  - by making deliveries of goods and services for which the tax is payable by the contracting party pursuant to Articles 51, § 2, first paragraph, 5 °, and 51, § 4, of the VAT Code
  - by supplying goods and services within the real estate sector for which the reduced VAT rate applies in accordance with headings XXXI, XXXII, XXXIII, XXXVI, XXXVII and XXXVIII of Table A of the Annex to Royal Decree 20 , aforementioned
  - by providing supplies of goods and services that take place abroad insofar as the tax surplus arises from the pre-financing of the tax levied on these goods and services.
- have benefited from at least EUR 12,000 tax surplus during the same period
- the tax credit shown in the monthly return must be at least EUR 245 .

The aforementioned conditions of application are explained in detail below.

Application condition 1: Determination of the total turnover and of the 'exempt' turnover

When determining the **total turnover** of the taxable person under the monthly VAT refund system, account should be taken of **all supplies of goods and services** supplied by a taxable person acting as such in Belgium for consideration. .

Despite the fact that the turnover figure does not only include exempt transactions, the turnover figure eligible to benefit from the monthly refund scheme is called 'exempt' turnover figure.

The **'exempt' turnover** includes **following** the **supply of goods and services** exempted from VAT in accordance with the following Articles of the VAT Code:

- **Article 39 of the VAT Code** : supplies of goods dispatched or transported to a place outside the Community (exports) and services relating to goods exported

- **Article 39 *bis* of the VAT Code** : supplies of goods dispatched or transported to another Member State of the Community (intra-Community supplies)
- **Article *39c* , § 1, 1 ° to 3 °, of the VAT Code** : supplies of goods and services that are performed in the context of a bonded warehouse other than a bonded warehouse (VAT warehouse)
- **Article 40, § 2, 1 ° and 2 ° of the VAT Code** : deliveries of goods that are subject to one of the regulations referred to in Article 23, §§ 4 and 5 of the Code, while maintaining that regulation, as well as services related to such goods
- **Article 41, § 1, first paragraph, 2 ° to 6 °, of the VAT Code** : services relating to the international transport of goods and related services
- **Article 42 of the VAT Code** : transactions treated as exports from the Community.

The **following transactions** , insofar as they take place in Belgium, are also **included in the 'exempt' turnover figure** insofar as the co-contractor is a taxpayer established in Belgium, obliged to file a periodic return, or a taxpayer not established in Belgium. has appointed a liable representative:

- **work in immovable state** and the **acts treated as equivalent** pursuant to Article 20 of Royal Decree No. 1 , aforementioned (application of Article 51, § 4, of the VAT Code)
- the **supplies of gold or semi-finished products** with a purity of at least 325 thousandths or the supplies of investment **gold** referred to in Article *20a* of the Royal Decree No. 1 , aforementioned (application of Article 51, § 4 of the VAT Code)
- the **supplies of goods and services performed by a taxable person not established in Belgium but identified for VAT purposes** (application of Article 51, § 2, first paragraph, 5 °, of the VAT Code)
- **services** as referred to in Article *20b* of the Royal Decree No 1 , referred to above, **consisting in the transfer of greenhouse gas emission allowances** as defined in Article 3 of Directive 2003/87 / EC, which are transferable in accordance with Article 12 of that Directive, as well as other units that can be used by operators to comply with that Directive (application of Article 51, § 4 of the VAT Code) (3)

---

(3) Insofar as they take place in Belgium, these transactions are also included in the 'exempt' turnover figure to the extent that the contracting partner is a taxpayer not established in Belgium who, in accordance with Article 50, § 1, first paragraph, 3 °, of the VAT. Code for VAT purposes has been identified.

- **real estate works, supplies of buildings, transfers and re-transfers of real rights to such buildings** which are subject to the **reduced rate of 6% in** accordance with items XXXI, XXXII, XXXIII, XXXVI, XXXVII and XXXVIII of Table A of the Annex to the Royal Decree 20 , aforementioned (4).

---

(4) These transactions also give rise to a tax surplus and are therefore classified as an 'exempt' turnover figure .

The **following actions** may **be** added to the **total turnover as well as** to the **'exempt' turnover** figure:

- certain deliveries of goods abroad, in particular:
  - deliveries of goods from Belgium that take place in another Member State pursuant to Article 15, § 2 of the VAT Code (distance selling)
  - deliveries of goods from Belgium that are installed or assembled by or on behalf of the supplier and for which the place of delivery is located abroad in accordance with Article 14, § 3 of the VAT Code
  - supplies of goods the place of which is outside the Community insofar as those goods were first transferred from Belgium to a sales office outside the Community by the taxable person
  - supplies of goods where the place in a Member State other than Belgium is located, provided that the goods have been part previously the subject of a provision under Article 12 *bis* of the VAT Code (with a supply for consideration equivalent transmission). In order to avoid double counting, the amount used as the taxable amount for the supply referred to in Article *12a* should be deducted from total turnover and exempt turnover. Moreover, this double counting is avoided because the transfer in the periodic VAT return must be canceled. The shipment must be included in schedule 46 of the periodic VAT return, the cancellation in grid 49 and sales within the other Member State in grid 47
  - supplies from Belgium of gas through a natural gas system situated in the territory of the Community or any network connected to such a system, supplies of electricity or supplies of heat or cold via heating or cooling networks , which, pursuant to Article *14a* of the VAT Code to take place abroad, insofar as the tax credit arises from the input tax levied on the goods in question
- invoices for goods or services with suspension of payment of VAT pursuant to Article 15 of Royal Decree No 18 of 29.12.1992 regarding exemptions for exports of goods and services to a place outside the Community, on the piece of value added tax (in the event of a cause of due before the goods are exported), as well as the invoices referred to in Article 17, § 2 of the VAT Code (in the case of intra-Community supplies when the invoice is delivered before the fifteenth of the month following the month in which the chargeable event took place)

  If, however, following a change in the performance of the contract, the goods are intended for domestic consumption, the invoiced amount referred to in the previous paragraph must be deducted from the 'exempt' turnover. If the contract is broken after invoicing, the invoiced amount must be deducted from the 'exempt turnover' and from the total turnover.
- the value of the materials dispatched to a place outside the Community for the purpose of carrying out any physical work or expertise or of a work in immovable state in that third country
- the services that consist of a physical work or expertise relating to a property other than a property of its nature that are physically performed in Belgium, but the place of which is located in a Member State other than Article 21, § 2 of the VAT Code. Belgium is situated
- services of transport and transport-related services that take place outside Belgium on the basis of Article 21, § 2 or § 3, 2 ° of the VAT Code, or referred to in Article *21a* , § 2, 3 °, 4 ° or 6 °, c) of the VAT Code and which take place outside Belgium on the basis of that article
- the services other than those listed above that are deemed to take place abroad on the basis of Article 21 and Article *21a* of the VAT Code. These services may form part of the exempt turnover figure insofar as the tax surplus arises from the pre-financing of the VAT on these services. If it turns out that the vast majority of the tax surplus has arisen from the purchase of investment goods, the license will be refused.

The **following transactions in Belgium** , however, must **be** to be considered in the **overall turnover** but should **never** be charged **for the calculation of the exempted turnover** :

- the following transactions carried out in Belgium subject to a special arrangement exempting both the taxable person and his contracting partner from payment of the tax (transactions registered in Schedule 00 of the periodic return), in particular:
  - sales of manufactured tobacco as referred to in Article 58, § 1 of the VAT Code
  - selling newspapers and magazines and recovery materials
  - the sales of goods under the profit margin scheme referred to in Article 58, § 4 of the VAT Code, valued at purchase price.
- the transactions other than those referred to in Articles 51, § 2, and 51, § 4, of the VAT Code, which have been carried out in Belgium and in which the tax is payable by the contracting partner on the basis of a general or special administrative decision.

Finally, make the **following or** part of the **overall turnover** , **nor** the **'exempt' turnover** :

- transactions carried out in Belgium that are exempted under Article 44 of the VAT Code
- the transactions in Belgium pursuant to article 44 *bis* be exempted from the VAT Code
- transactions deemed to take place abroad which are exempted under Articles 132 to 136 of Council Directive 2006/112 / EC of 28.11.2006 on the common system of value added tax (see also Article 44 of the VAT Code).

Application condition 2: Determination of the tax surplus

In order to benefit from the monthly refund system, the taxpayer, as a second condition of application, **must have had at least 12,000 euros in tax surplus to his advantage during the past calendar year** . This means that the total amount of the deductible tax is at least 12,000 euros higher than the total amount of the tax owed.

When calculating the total amount of the deductible tax and the total amount of the tax due, account must also be taken of the revisions of the deductible and the VAT due relating to those transactions.

In principle, the turnover and the tax surplus of the past calendar year have to be taken into account in order to determine whether the aforementioned application condition is fulfilled. However, if the taxpayer thus becomes subject to the conditions to obtain the authorization, the reference period of the past calendar year may be replaced by the period of 12 consecutive months preceding the application for monthly refund authorization.

The same reference period should be used for determining turnover and the tax surplus.

In the case of the creation of a new company, of the establishment in Belgium of a permanent establishment or of the obtaining of a VAT identification in Belgium via an individual number by a company not established in Belgium, or, more generally, in the event that the taxable person cannot base on a turnover of at least twelve consecutive months, the license may be granted taking into account the annual prospects for the aforementioned conditions of application.

Likewise, the permit may be granted on the basis of prospects, to taxable persons who, on the basis of their activity already realized, do not meet the aforementioned conditions of application, but who will meet these conditions due to important changes in the commercial or industrial organization. the part of the calendar year that is still to run or for the following calendar year. The taxpayer will have to be able to substantiate this by means of evidential documents.

Among the facts that can be taken into account can be mentioned: the unbundling, merger and absorption of companies, the capital increase, the creation of a new division, the purchase of new important investment goods and the creation of new jobs.

Application condition 3: Minimum credit

The **holder of the license** can only obtain an effective refund if the **amount owed by the state** after submitting the monthly declaration shows a **surplus in his favor of at least EUR 245** even if it concerns the declaration regarding the transactions of the last month of the current quarter. If the tax surplus does not reach EUR 245 , it is generally automatically carried over to the next tax period.

For the rest, the general rules for the refund of tax credits resulting from the submission of a periodic return as defined above apply mutatis mutandis with regard to the monthly refund system.

For the application of the foregoing, it is not necessary to distinguish whether the transactions performed during the calendar year were entered in the current account kept by the CIV or in a special account which, in accordance with the provisions of Article 8 of Royal Decree No. . 24 of 29.12.1992 regarding the payment of the tax on value added , is maintained.

However, the repayments referred to under heading B for this purpose are not made and the tax credit is transferred to the next tax return period, if the taxpayer who is obliged to submit a periodic return as referred to in Article 53, § 1, first paragraph, 2 ° of the VAT Code, not all obligations have been fulfilled with respect to the filing of the returns and the payment of the due and payable tax, either for the entire past year or for the elapsed period of the current year as the case may be.

The reimbursement must be expressly requested by the taxpayer by placing a cross in the 'Application for reimbursement' box of the monthly return for the transactions for the period for which the refund is requested. The declaration that contains this cross serves as an application for a refund.

In addition, the benefit of the monthly refund under Article 8^{1}, § 5 of Royal Decree No. 4, aforementioned, is secondary to the issue by the head of the control office (control center) under which the taxpayer is subject to a license that must be requested in writing . This application must contain all the elements that enable the taxpayer to verify whether the

conditions of application are met.

Within a period of one month, the requested license will be granted if the conditions set for it are met or the application will be rejected by a reasoned decision.

The license applies to applications for refunds submitted during the calendar year for which it was granted. However, it is also valid for subsequent years if the taxable person continues to meet the conditions of application. In that case, adding the cross in the box 'Application for reimbursement' (see Article 8[1], § 4, of the Royal Decree No. 4, aforementioned) serves as a declaration by the taxpayer that he meets those conditions and dismisses to submit a new application. If he no longer meets the conditions, the license will automatically lapse and he can no longer rely on it. If he subsequently meets it again, he must apply for a new permit.

In the case of the creation of a new company, of the establishment in Belgium of a permanent establishment or of identification for VAT purposes in Belgium of a taxable person not established in Belgium, either by direct identification or through the recognition of a liable representative, the said taxable person apply for a new license during the twelfth month following the one during which the license originally obtained on the basis of prospects regarding the conditions of application was granted.

The same applies if the license was granted to a taxpayer who, on the basis of his already pursued activity, does not meet the conditions of application of a license, but who will meet these conditions due to important changes in the economic or industrial organization (according to the prospects) during the period of twelve consecutive months from the application for the license.

If the administration establishes that the taxpayer no longer meets the required special conditions or that the taxpayer no longer carries out transactions referred to in Article 8[1], § 2, first paragraph, 3 °, of Royal Decree 4, aforementioned, due to an amendment of the activity or the prospects for exploitation, it may withdraw the license at any time in accordance with Article 8[1], § 5, seventh paragraph of Royal Decree No. 4 by reasoned decision. In that case, the taxpayer can apply for a new permit as soon as he meets the conditions again.

If the permit, which was issued, was obtained on the basis of an incorrect statement or if the taxpayer fails to comply with the obligations imposed by the Code or in the implementation thereof, or in the case referred to in Article 8[1], § 3, fifth paragraph, of Royal Decree No 4, aforementioned, the administration may also withdraw the license by reasoned decision in accordance with Article 8[1], § 5, paragraph 8 of that Royal Decree. In that case, a new license can only be applied for after the expiry of the calendar year following that in which the decision to withdraw was notified to the taxpayer.

Scheme relating to a VAT unit

- **License previously granted to a member who joins the VAT unit**

The authorization for the monthly refund of tax credits granted to a VAT taxable person will automatically lapse from the moment that that taxable person joins a VAT unit, because this taxable person is no longer obliged as such to submit periodic VAT returns.

- **License applied for by the VAT unit**

The VAT unit will have the opportunity to apply for the license for the monthly refund of its tax credits.

If the VAT entity wishes to benefit from this system from its inception, it can submit an application based on prospects.

It is recalled that in order to benefit from the monthly refund scheme during the past calendar year, a taxable person must have a tax surplus to his advantage of at least EUR 12,000 and that, during the same period, his turnover must be at least 30 % should consist of the supply of goods and services rendered that are released from the load upon application of the articles 39, 39 *bis* and 39 *c*, and the articles 40, § 2, 1 ° and 2 °, and 41, § 1, 2 ° to 6 °, and 42 of the VAT Code, supplies of goods and services for which the tax is payable by the contracting partner pursuant to Articles 51, § 2, 5 °, and 51, § 4 of the VAT Code, supplies of goods and services within the real estate sector for which the reduced VAT rate applies in accordance with sections XXXI, XXXII, XXXIII, XXXVI, XXXVII and XXXVIII of Table A of the Annex to Royal Decree No. . 20, above, and / or supply of goods and services which take place abroad to the extent that the tax surplus resulting from the pre-financing of VAT levied on those goods and services (see "application conditions" above).

Since the transactions performed between the members of the VAT unit fall outside the scope of VAT, those amounts should not be taken into account for the determination of total and 'exempt' turnover.

In order to calculate total turnover and exempt turnover, the VAT unit must, at the time of its outlook, take into account all the turnover realized by each member before its accession in Belgium during the previous calendar year. Actions taken between members are not taken into account to determine these amounts.

C. Formalities

For the refund in favor of taxable or non-taxable legal held depending on the case, to the filing of a declaration in view of article 53, § 1, first paragraph, 2 °, or in the article 53 *in order to*, 1 °, of the VAT Code, the claim for a refund is exercised without direct intervention by the administration and the justification of the right to a refund must only be provided when an official of the VAT control office (control center) requests it.

Pursuant to Article 4 of the Royal Decree no. 4 , the aforementioned, the exercise of that claim is dependent on drawing up an improvement document and keeping a refund register.

a. Corrective piece

Pursuant to Article 4, § 1, 1 °, of the Royal Decree No 4 , the aforementioned, the taxable person or non-taxable legal person who, as the case may be, must comply with the provisions of Article 53, § 1, first paragraph, 2 °. or Article 53 *for* , 1 ° of the VAT Code declaration referred to submit a piece improving format indicating the amount of refund susceptible to exercise his claim for refund.

The corrective document must be drawn up at the time when the claim for refund arises, or at the latest at the time when the taxable or non-taxable legal person exercises that claim. The document mentions the elements which make it possible to identify the transaction to which the refund relates and the declaration which included the refundable amount under the tax due, the cause of the refund, the tax paid, the refundable amount and, where applicable, reference to supporting documents (letters exchanged with the co-contractor, contract establishing the cancellation or dissolution of the original contract, recording the loss of the claim in the profit and loss account ...) .

If the refund relates to a domestic transaction and is granted either on the basis of an error in the invoice or on the basis of one of the causes referred to in Article 77, § 1, 2 ° to 7 ° of the VAT Code, in accordance with Article 79, § 1, of that Code, a double of the corrective document will be issued to the contracting partner. This double must contain the following statement: 'VAT to be refunded to the state, to the extent that it was originally deducted' (see also Article 4, § 1, 3 °, of the Royal Decree No 4 , aforementioned).

In the case of a refund of the tax paid for an intra-Community acquisition of goods or for a service or a supply of goods for which the tax is payable by the co-contractor, no duplicate of the corrective document must be issued, but the taxpayer or non-taxable legal person must return the tax to the State to the extent that it was originally deducted. This repayment will take place in accordance with Article 4, § 1, 4 ° of Royal Decree No. 4 , aforementioned, take place by understanding its amount in the amount of the tax payable over the tax return period during which the refund is obtained (grid 61 of the tax return referred to in Article 53, § 1, first paragraph, 2 °, of the Code or grid 81 of the declaration in view of article 53 *in order to* , 1 °, of the Code).

It is noted that it is not permitted to reduce an invoice for a new delivery by the amount of the price reduction, the return ... for an earlier delivery and thus only tax the difference.

The taxpayer obliged to submit returns as referred to in Article 53, § 1, first paragraph, 2 °, of the VAT Code must not issue double of the corrective document to his contracting partner in the event of a refund of VAT that was paid for an act with a private individual, without an invoice being issued because the distribution was not mandatory. In principle, he must be able to prove that he has refunded the wrongly charged tax to his customer.

In the event of partial or complete loss of the claim of the price as a result of bankruptcy, the supplier or service provider is not obliged to provide his co-contractor with an improving document as provided for in Article 79, § 1, first paragraph, of the VAT Code. and in accordance with the terms of Article 4 of Royal Decree No 4 , aforementioned. In addition, given that the partial or complete losses of claim of the price in the event of bankruptcy are considered permanent, the provisions of Article 79, § 1, third paragraph, of the VAT Code not applicable. Accordingly, the supplier or service provider who has obtained a tax refund will not be obliged to refund to the State the amount of the tax corresponding to the amount recovered on the assumption that the debtor has become wealthy again and pays part of the amount claimed as uncollectible (see also see also section 5: Time at which the claim for refund arises - title 2 - section C, above).

In the event of partial or complete loss of the claim of the price as a result of a judicial reorganization, the administrative tolerance referred to in the previous paragraph does not apply and the formalities established by Article 79, § 1, first paragraph of the VAT Code and in accordance with the modalities of Article 4 of Royal Decree No 4 , aforementioned, are complied with. Given the partial or complete loss of claim of the price in the event of a judicial reorganization, such as in the event of bankruptcy, are considered permanent, the provisions of article 79, § 1, third paragraph, of the VAT Code, however, does not apply. Consequently, the supplier or service provider who has obtained a tax refund will not be obliged to refund to the State the amount of the tax corresponding to the amount recovered on the assumption that the debtor has become wealthy again and pays part of the amount claimed as uncollectible (see also see also section 5: Time at which the claim for refund arises - title 2 - section B, above).

However, the exception to the previous paragraph is the case where the amicable agreement is terminated or the reorganization plan is withdrawn. In such cases, the 'lost' nature of the claim will be questioned again and the provisions of Article 79, § 1, third paragraph of the VAT Code will apply where appropriate.

The taxable supplier is not obliged to exercise the claim for a refund if the original transaction relates to a supply of goods or a service performed in the country for a taxable person who is obliged to make a periodic declaration as referred to in Article 53, § 1, first paragraph, 2 °, of the VAT Code and that was able to deduct the tax originally charged to him in full and definitively and that tax was not levied on a business asset within the meaning of Article 7 of the Royal Decree No. 3 , aforementioned. The credit note issued by the supplier or service provider who has paid the tax to the treasury obviously does not mention the VAT and the co-contractor is not obliged to rectify the originally applied deduction or to make any refund .

b. Refund Register

In accordance with Article 4, § 1, 2 °, of the Royal Decree No 4 , the aforementioned, the taxable person or non-taxable legal person who, as the case may be, must comply with the provisions of Article 53, § 1, first paragraph, 2 °. , or item 53 *in order to* , 1 °, of the VAT Code declaration referred to submit to, the said improver piece enroll in an appropriate register.

The refund register, which, subject to authorization by the administration, may be kept on separate sheets (see also notice no.78 / 1970 of 24.11.1970 and note no.81 / 1970 of 07.12.1970 , part I, in fine) actually constitutes a inventory of the improving items that are numbered consecutively. Each tender must provide at least the following information:

- a sequence number that is also the number of the corrective piece
- the date of registration
- the designation of the contracting partner
- the amount to be returned.

At the end of each tax return period, the taxable person or non-taxable legal person aggregates the refundable tax and writes that amount in full in letters after the last registration.

The register must be kept at the disposal of the control office (control center) under which the taxable person or non-taxable legal person falls and must be submitted to that office at the request of the head of that control office (control center). If the register is not submitted, the taxable person or non-taxable legal person must refund the tax from which he received the refund and which had to be entered in the register.

The administration will not criticize when a taxpayer, who is obliged to submit periodic returns as referred to in Article 53, § 1, first paragraph, 2 °, of the VAT Code, enters the issued credit notes in the book for outgoing invoices, provided that the VAT amounts to be returned are added up per declaration period and the total is transferred to the special register kept for the registration of the returns for which no credit note is issued to a co-contractor (e.g. refunds related to imports, refunds related to withdrawals...). It goes without saying that in that case the book for outgoing invoices, as well as the actual refund register, must be submitted to the VAT control office (control center).

c. Entry in the declaration

If applicable, the supplier of the goods or the service provider exercising his right to a tax refund must add to the amount the amounts excluding value added tax of the corrective documents he has drawn up in schedule 49 of his periodic return and on the other hand the amount of the tax for which he exercises his right of refund to be included in schedule 64 of this return.

d. Consequences of the refund for the contracting partner

If the co-contractor of the taxpayer who has received a refund under Article 77, § 1 of the VAT Code, is himself obliged to submit a periodic tax return, this co-contractor will write the received credit note in his book for incoming invoices or in a special register that he keeps for this purpose, stating the amount of VAT credited to him and the amount to be returned to the State (tax effectively deducted). At the end of each tax return period, he makes the total of the amounts to be refunded and lists that total in schedule 63 of the periodic VAT return.

The amount of the received credit note excluding VAT is included in the amount specified in schedule 85 of the periodic return and deducted from the amount of purchases to be registered for the reporting period, as appropriate, in timesheet 81, 82 or 83. If the amount stated in schedule 81, 82 or 83 is insufficient, the balance in the relevant schedule must be deducted from one or more subsequent VAT return (s). In any case, negative amounts should never be included in a periodic VAT return.

2. Refund to other persons

A. Formalities

If the person entitled to the refund is a **person established in Belgium other** than a taxable person or a non-taxable legal person, who is obliged to file, depending on the case of a periodic declaration referred to in Article 53, § 1, first paragraph, 2 °, or Article 53 *for* , 1 ° of the VAT Code, it must comply with Article 9 § 1 of the royal Decree no. 4 , the aforementioned, an application for a refund, in two copies to the VAT control office (control center) to which he reports if he is a taxable person or a non-taxable legal person, or in the jurisdiction in which he has his domicile or registered office if it concerns every other person.

Among other things, the following are intended :

- the taxpayer subject to the exemption scheme for small enterprises, the conditions of application of which are set out in Royal Decree 19 of 29.06.2014 regarding the exemption scheme for value added tax for the benefit of small enterprises
- the agricultural entrepreneur who has not opted for the normal tax scheme (see also Article 57 of the VAT Code and Royal Decree No 22 , aforementioned)
- someone who has erected a building and who makes use of the regulation referred to in Article 8 of the VAT Code (see also section 5: Time at which the claim for refund arises - title 5, above) and is in the situation referred to in Article 5, § 2, of the Royal Decree No. 14 , aforementioned
- the military and civilian war invalids who receive an invalidity pension of at least 50%, persons who are completely blind, persons who are completely paralyzed in the upper limbs or whose upper limbs have been amputated or persons with a permanent disability that is directly attributable lower extremities and is at least 50% (see also section 3: Causes of the refund - title 4, above)
- the casual taxpayer referred to in Article *8a* , § 1 of the VAT Code if the conditions for the exercise of his right of deduction were not fulfilled at the time of submission of the Article 48 of Royal Decree 48 , the aforementioned declaration.

In accordance with Article *82a* of the VAT Code, this application can still be submitted until December 31 of the third calendar year following that in which the cause of the refund occurred.

This refund is contingent upon proof of payment of the tax and justification of the cause of the refund.

In connection with the restitution in favor of the **taxable or non-taxable legal entities** that are not required, depending on the case, to the filing of a declaration in view of article 53, § 1, first paragraph, 2 °, or in the article 53 *in order to* , 1 ° of the VAT Code, and which are **not established in Belgium** , the following distinction must be made:

- the taxable person established in another Member State must submit his application for a refund of Belgian VAT via the electronic portal provided to him for that purpose by his Member State of establishment. The applicant's Member State of establishment shall, after an initial check, forward the request electronically to Belgium where it will be processed by the Central VAT Office for non-resident taxpayers (now called SME Foreign Control Center Brussels; see also Article 6 of the Royal Decree 31 , aforementioned, in connection with the formalities, reference is made to Royal Decree 56 , aforementioned, and circular AFZ 20/2009 of 22.12.2009)
- the other rightholders not established in Belgium submit an application in triplicate to the head of the aforementioned Central VAT office for foreign taxpayers (now called SME control center Brussels Abroad; see also article 9, § 2, of the Royal Decree no. 4 , aforementioned , and in connection with the formalities, reference is made to Letter No. 4/1988 of 24.02.1988).

B. Method of refund

The refunds referred to in Article 9, § 1, of the Royal Decree No. 4 , aforementioned, are made taking into account the bank details provided to the administration, including IBAN and BIC. However, refunds of less than 7 euros are not permitted.

The refunds to the persons established abroad in section A referred to above (see also Article 9, § 2, of the Royal Decree No. 4 , aforementioned, and Article 6 of the Royal Decree No. 31 , aforementioned, and Note No. 4/1988 of 24.02.1988), either taking into account the bank information provided to the administration, or by international check (Article 12, § *1a* , of the Royal Decree No 4 , aforementioned).

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