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TAXATION / Value added tax / Administrative guidelines and comments / Flyers

Circular 2019 / C / 48 on the provision of vital non-food products for charity

This circular comments on Article 12, § 1, first paragraph, 2 °, c) of the VAT Code, which relates to the free provision of vital non-food products for charity purposes.

transfers for free; donations; withdrawals; r really deductible ; revisions

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1 Introduction

If a taxable person withdraws a good from his company to provide it free of charge, this act is in principle equated with a supply for consideration when applying Article 12, § 1, first paragraph, 2 °, of the VAT Code, if for that the good or its components has been entitled to full or partial deduction.

However, since the aforementioned provision was amended and supplemented by **point (b), the free distribution for charitable purposes of foodstuffs for human use has** no longer been equated with a supply for consideration, subject to certain conditions (Article 12, § 1, first paragraph), 2 °, b) of the VAT Code, as on 20.08.2018 as amended and supplemented by Article 2 of the law of 30.07.2018 amending the Code of b elasting the t dded w earth (Moniteur belge 10.08.2018)).

In a similar context of poverty reduction and support for sustainable development, Article 12, § 1, first paragraph, 2 ° has been supplemented by a **point c)** so that the **free distribution for charity purposes of certain vital non-food products is** no longer equated with a delivery for consideration, subject to compliance with certain conditions (Article 12, § 1, first paragraph, 2 °, c), of the VAT Code, as amended on 16.05.2019 and supplemented by the law of 07.04.2019 to amend the Value Added Tax Code in order to exempt VAT from non-food donations to the most deprived persons (Moniteur belge, 06.05.2019)).

This circular explains the latter amendment to the law.

Article 12, § 1, third paragraph, of the VAT Code provides for an authorization to the King to determine the conditions of application to which the withdrawals intended under Article 12, § 1, first paragraph, 2 °, c) of the VAT -Code must comply.



RELATED DOCUMENTS

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CHARACTERISTICS

Title: Circular 2019 / C / 48 on the provision of vital non-food items for charity

Summary: This circular comments on Article 12, § 1, first paragraph, 2 °, c), of the VAT Code, which relates to the free provision of vital non-food products for charity purposes.

Keywords: [right to deduct VAT](#), [transfer for non-](#), [donation](#), [revision](#).

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Pending the publication of a royal decree, the administration will not invoke the application of the presumption of article 64, § 1 of the VAT Code and assumes that the goods were not delivered under conditions under which the tax becomes due and payable for insofar as the provision for charitable purposes of certain vital non-food products takes place under the conditions provided for in this circular.

2. Free transfer of certain vital non-food products (Article 12, § 1, first paragraph, 2 °, c) of the VAT Code)

The new Article 12, § 1, first paragraph, 2 °, c) of the VAT Code reads as follows:

" § 1: is treated as a supply for consideration:

(...)

2 ° the withdrawal by a taxable person of his business for free, when that good or its components have been subject to a full or partial tax deduction, with the exception of the withdrawals made with the eye on:

c) the provision for the charitable purposes of vital non-food products, other than goods that can be used sustainably, the intrinsic characteristics of which prevent them from being sold at any link of the economic circuit at the original commercialization conditions; '

This provision, which enters into force on 16.05.2019, means that the free (free) charitable provision of certain vital non-food products will no longer be equated with a supply for consideration provided that certain conditions are met. Those conditions are set out below.

3. The goods referred to

Only the vital non-food, other than goods that can be used in a sustainable manner, on the basis of their intrinsic characteristics, in any link of the economic circuit, can no longer be sold at its original marketing conditions are contemplated.

The use of the term '*essential to life*' indicates that these are goods that can actually improve the quality of life of people living in poverty. It thus concerns goods which are indispensable in the daily life of the persons concerned and which allow them to lead a life of dignity. It only concerns the goods that are necessary to lead a decent life.

It goes without saying that luxury goods are not intended. However, the VAT rate that would normally have applied to the supply of those goods is irrelevant.

The use of the terms '*other than goods that can be used in a sustainable way*' indicates that it must be consumables. Durable goods are not intended.

That restriction is meant the risk ' limit at the emergence of parallel circuits and distortion.

The use of the words "*whose intrinsic features prevent them from being sold at any link of the economic circuit at the original commercialization conditions*" indicates that there must be objective reasons justifying that such goods can no longer be used under normal conditions. are commercialized.

The first of those circumstances concerns the perishable nature of a product. For example: basic medicines for the home pharmacy with a best-before date.

The second possible circumstance concerns the packaging (regardless of its shape) of the product if it is damaged in such a way that the product can no longer be sold under the original conditions of sale. The same rule applies as from the commercialization of the product, that packaging can be considered non-compliant. That condition should be evaluated in the light of the quality standards commonly used by the seller or the manufacturer, regardless of whether those standards are regulatory in nature or related to marketing considerations. For example: a shampoo with an old brand logo.

The third circumstance concerns the case where the product does not or no longer meets the production standards established by the producer.

Finally, the last circumstance concerns the goods which are usually only commercialized during relatively short periods. Therefore, when those periods are over, such goods are much more difficult to sell unless significant discounts are granted.

Pending the publication of an implementing decision - as provided for in Article 12, § 1, third paragraph, of the VAT Code - one must rely on the reports of the parliamentary activities in determining the eligible goods for this scheme. The relevant reports of parliamentary activities are added as an annex to this circular (see Title 10).

For example, as a frame of reference and indicative, the following goods are intended:

- essential hygiene products such as soap, shampoo, toothpaste and toothbrushes (see [Parl.St. Room 2018-19, No. 3559/1](#). And [C.RIV, House of Representatives, 2018-2019, session of 28.03.2019, No. 54-PLN- 278, pp. 14-16](#)) ;
- beauty - and base care products such as cleansing cream, razors and shaving cream (see [Parl.St. Room 2018-19, No. 3559/1](#)) ;
- basic medicines for the home pharmacy, such as aspirins, bandages and disinfectants (see [Parl. St. Chamber 2018-19, no. 3559/1](#)) ;
- household products such as floor cleaners, detergents and garbage bags ([Parl.St. Room 2018-19, no. 3559/1](#)) ;
- products for babies and small children, such as diapers, adapted soap and shampoo ([Parl. St. Room 2018-19, no. 3559/1](#)) ;
- school and office supplies, such as ballpoint pens , pencils and satchels ([Parl. St. Room 2018-19, no. 3559/1](#)) ;

- toilet paper and disposable towels (see [Parl. St. Room 2018-19, no. 3559/2](#)).

In accordance with the report of the parliamentary activities, the following goods are also intended:

- Games and toys ([Parl.St. Room 2018-19, No. 3559/1.](#)) ;
- clothing and footwear ([Parl.St. Room 2018-19, No. 3559/1.](#)) ;
- kitchen utensils such as pots and pans ([Parl.St. Room 2018-19, No. 3559/1.](#)) ;
- basic goods for home comfort, such as household *linen* ([Parl. St. Room 2018-19, no. 3559/1](#)) .

For indicative purposes, the following goods are not intended, for example:

- electrical household appliances such as microwave ovens, hobs and drying *cabinets* (excluded in [CRIV, Chamber, 2018-2019, session of 28.03.2019, no. 54-PLN-278, pp. 14-16](#)) ;
- furniture (excluded in [Parl. St. Room 2018-19, no. 3559/3](#)) ;
- mattresses (envisaged in [Parl.St. Room 2018-19, No. 3559/1.](#) But then ruled in [CRIV, Chamber, 2018-2019, session of 28.03.2019, no.54-PLN-278, p. 14-16](#));
- strollers (intended in [Parl. St. Chamber 2018-19, no. 3559/1](#) but subsequently excluded in [CRIV, Chamber, 2018-2019, session of 28.03.2019, no. 54-PLN-278, pp. 14-16](#)) ;
- vehicles (excluded in [Parl. St. Chamber 2018-19, no. 3559/2 and no. 3559/3](#)) ;
- lawn mowers (excluded in [Parl. St. Chamber 2018-19, no. 3559/2](#)) .

4. Who can donate goods?

The donors envisaged by the new provision are taxable persons who have purchased or produced a good referred to in Title 3, above, when that good or its components are entitled to a full or partial deduction of input tax.

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

The taxpayer donor must be able to demonstrate that he provided the goods for charity purposes. The administration assumes that this is the case when the taxpayer has a document of the beneficiary (see title s 5 and 6) showing that the donated goods **for commercial purposes** shall be used only **as part of a social action in favor of persons in need** (see Titles 8.1 and 8.3.1).

5. To whom can the goods be donated?

The withdrawals of goods envisaged by the new provision are those carried out with a view to providing them **free of charge** to:

A. a local, municipal, intermunicipal, provincial, community, regional or federal administration or government as part of their duties to distribute material assistance to needy persons ; B. any charitable organization recognized by a government referred to under A above.

The institutions referred to in points A and B are hereinafter referred to as ' **the beneficiaries** ' .

The aforementioned institutions must distribute the goods received among the needy persons in the context of poverty reduction. These are persons who are in an acute or chronic emergency and who do not have (or no longer have) sufficient means to lead a life that corresponds to human dignity. The goods may not be distributed directly to the needy persons by the taxpayer donor.

The institutions envisaged under point A are envisaged anyway.

Pending the publication of a royal decree that implements Article 12, § 1, third paragraph, of the VAT Code, the administration assumes that a charitable organization intended under point B is in any case deemed to be **recognized** by the government if they jointly meet the following conditions:

- it must present itself to the competent administration / governmental authority (1) as a charitable organization ;
- it has a social raison d'être, which is apparent, inter alia, from its objective of granting of help that it generally combines with social counseling of deprived persons ;
- it has to advance with the appropriate authorities / government agency (eg the municipality in which it operates CPAS) an **agreement** concluded, in which a representative of the administration / government authority confirms that the particular charitable organization:

- * is known as an organization committed to the fight against poverty and the distribution of non-food products ;
- * is able to distribute the goods received free of charge, intended under Title 3, in good conditions, and ;
- * undertakes not to use the goods intended under Title 3 for commercial purposes and to actually distribute them free of charge only to those in need.

(1) It concerns recognition by an administration or government agency competent for social policy at the level corresponding to the area of activity of the charitable organization (local, provincial, regional or national). For example, a charitable organization that operates nationally must be recognized by a federal administration / government agency.

This agreement must be dated and signed by the parties involved and must be kept by them.

It goes without saying that the beneficiaries referred to under points A and B above must strictly comply with the VAT obligations and formalities (see Title 8 below).

6. Special case: distribution platforms

Taxpayers **donate** goods **through a platform** that receives, stores and then distributes the donated goods among government agencies or charities that ultimately distribute those goods to needy persons. Such a platform can be set up by a government agency or a private initiative.

In principle, such distribution platforms have the logistical and human capabilities at their disposal to collect, transport and store a larger number of donated goods from the donor. However, the distribution platform will not distribute the goods among the needy persons itself. This is done by another beneficiary with whom the platform collaborates.

Pending the publication of an implementing decision and in order to ensure the follow-up of the distribution chain of the donated goods and to prevent the creation of parallel sales channels, the administration shall assume that a distribution platform as a ' beneficiary ' within the meaning of Title 5 of this circular can be considered if it jointly meets the conditions of Titles 6.1 and 6.2.

Donations of goods intended under Title 3 to distribution platforms that meet the conditions of Titles 6.1 and 6.2 are in any case intended by the exception to the withdrawal provided for in point c) of Article 12, § 1, first paragraph, 2 °, of the VAT Code. Naturally, the VAT obligations and formalities provided for in Title 8, below, must be complied with.

6.1 GENERAL CONDITIONS REGARDING THE APPROVAL OF DISTRIBUTION PLATFORMS

Pending the publication of a royal decree that implements Article 12, § 1, third paragraph, of the VAT Code, the administration assumes that a distribution platform is in any case deemed to be **recognized** by the government if it complies jointly with the following conditions:

- it must present itself to the competent authority (intended under Title 5, point A) as a distribution platform within the meaning of this circular ;
- it must not pursue a profit-making objective and it only engages in activities directly related to charity ;
- it has a social raison d'être, which is apparent, inter alia, from its objective of providing assistance to needy persons. This must also be apparent from the articles of association or deed of incorporation of the distribution platform ;
- it has concluded in advance an **agreement** with the competent authority , in which a representative of the government confirms that the distribution platform:

- * is known as a distribution organization aimed at distributing material assistance to needy persons ;
- * is able to correctly collect, transport, store and store the goods donated by the taxable donors and then offer them to the beneficiaries referred to in Title 5 ;
- * is able to distribute the donated goods for free (or at a small contribution, see Title 7 below) in good conditions to the beneficiaries intended under Title 5, who in turn will distribute the goods to the most deprived ;
- * undertakes not to use the goods in question for commercial purposes and to actually distribute them free of charge (or for a small fee, see Title 7 below) **exclusively to the beneficiaries referred to** in Title 5.

This agreement must be dated and signed by the parties involved and must be kept by them.

6.2 COOPERATION AGREEMENTS

The distribution platforms conclude a cooperation agreement with, on the one hand, the taxpayer donors and, on the other, the beneficiaries to whom they will distribute the goods.

6.2.1 Cooperation agreement with taxpayer donors

A distribution platform hands over a **copy of the agreement referred to under title 6.1** to every taxpayer donor with whom it will cooperate.

Furthermore, the distribution platform enters into a **cooperation agreement** with each taxpayer donor in which:

- it is confirmed that the taxpayer donor will always deliver the goods to the distribution platform free of charge with a view to a subsequent distribution by the platform to beneficiaries under Title 5 ;
- the distribution platform confirms that it will only distribute the donated goods free of charge (or for a small fee, see Title 7) to the beneficiaries intended under Title 5 with which it has entered into a cooperation agreement.

As a rule, this agreement also includes provisions in which both parties agree on how the goods will be transferred to the beneficiaries (collection in depot, delivered to the beneficiary...).

The aforementioned cooperation agreement must be drawn up in **duplicate** , of which each party declares to have received its own and must be **dated** and **signed** by the parties involved . Each party keeps a copy.

6.2.2 Cooperation agreement with other beneficiaries

The distribution platform will hand over a **copy of the agreement referred to under Title 6.1** to the beneficiaries intended under Title 5 with which it will cooperate.

The distribution platform first concludes a **cooperation agreement** with the beneficiaries.

In that agreement , the distribution platform undertakes :

- receive the goods free of charge from taxable donors ;
- properly store the donated goods and;
- in a controlled manner the recipient informing them of the available goods.

As a rule, this agreement also includes provisions in which both parties agree on how the goods will be transferred to the beneficiary (collection in depot, delivered to the beneficiary ...).

The aforementioned cooperation agreement must be drawn up in **duplicate** , of which each party declares to have received its own and must be **dated** and **signed** by the parties involved . Each party keeps a copy.

7. The free nature of the gifts and exceptions

The basic premise remains that the distribution of the non-food products from the taxpayer donor to the needy persons is free of charge at all stages of the distribution.

Under no circumstances may the **taxpayer donor** request compensation, not even for certain administrative or logistical costs. Otherwise it would simply be a simple delivery of goods and not a donation.

It follows from the *ratio legis* of the provision that the donated goods are no longer sold for a fee. The **beneficiary** referred to under Title 5 may therefore, in principle, not demand compensation from the needy persons who represent (part of) the value of the goods. It is accepted that a limited contribution is requested, covering at most the costs of transport, packaging and storage.

Taking into account the objective of this new legal provision and the factual circumstances in which the goods referred to in Title 3 are distributed **by social grocers**, it is accepted that social grocers distribute the goods at low contribution to the needy persons and sell them on an ancillary basis to others. natural persons insofar as the income from these sales is used exclusively to finance the charity activities of the social grocer. Only social grocers that fall under the exemption of Article 44, § 2, 2° of the VAT Code are intended here.

The **distribution** platforms referred to under Title 6 may ask a subsequent beneficiary within the meaning of Title 5 for a limited contribution for the general expenses borne by the platform. The contribution charged by the platform, together with the financial gifts it receives, must allow the platform to carry out its activities of distribution platform. Under no circumstances should the platform pursue profit. Any financial surpluses should be limited and should under no circumstances be distributed. In the event of dissolution of the distribution platform, any remaining assets must accrue to a disinterested purpose.

8. VAT obligations and VAT formalities

Article 12, § 1, third paragraph, of the VAT Code provides that the King regulates its conditions of application by means of a decision.

Pending the publication of a royal decree, the administration will not invoke the application of the presumption of Article 64, § 1 of the VAT Code in respect of a VAT taxable person and assumes that the goods were not delivered under conditions under which the tax becomes due, insofar as the provision for charitable purposes of certain vital non-food products takes place under the conditions provided for in this circular.

8.1 PRINCIPE

As proof that the taxpayer-donor has donated the goods in question free of charge to a beneficiary intended under Title 5, a document must, in principle, be drawn up between the taxpayer-donor and the beneficiary, **on a donation** that takes place :

- in which the beneficiary:

* confirms that the goods in question were obtained free of charge, and ;

* undertakes not to use the goods obtained for commercial purposes and to distribute them free of charge (or for a small fee, see Title 7) only to persons in need of social assistance .

- and that each donation must contain at least the following information:

* the date on which the beneficiary took possession of the goods ;

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

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

* a complete and correct description of the donated goods ;

* the quantities donated (by number).

The aforementioned document must be drawn up in **duplicate**, of which each party declares to have received its own and must be dated and signed by the parties involved. The document must be drawn up no later than the fifteenth day of the month following that in which the donation took place .

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

8.2 ADMISSION: THE COLLECTIVE DOCUMENT

In addition, the Administration accepts on a trial basis that, if desired, a single **collection document**, **compiling** all donations from the previous month, is drawn up no later than the fifteenth day of each month . The collection document may only contain donations made during the month to which it relates.

The collection document shall contain, by donation, the particulars referred to in Title 8.1, with the exception of the dates on which the beneficiary took possession of the goods. Those dates may be replaced by a global reference to the month to which the document relates.

The aforementioned collection document therefore has a date, but a reference in the collection document to the actual date of the donations concerned is not strictly required. The taxpayer donors are obliged to keep the detailed data of the donations in question on the basis of which the collection document was drawn up.

The collection document must be drawn up no later than the fifteenth day of the month following that in which the donations were made.

This collection document replaces for the taxpayer donor the document establishing the withdrawal within the meaning of Article 3 of Royal Decree No. 1 and refutes the legal presumption of Article 64, § 1 of the VAT Code.

8.3 COMPLIANCE WITH FORMALITIES BY THE DISTRIBUTION PLATFORMS

Distribution platforms referred to under Title 6 are an intermediary between a taxpayer donor on the one hand and a beneficiary who will distribute the goods among the needy persons on the other. They can distribute goods classified as vital and unsustainable (see Title 3 above) as well as other goods.

It is therefore necessary to be able to properly monitor the flows of goods and to avoid distortion of competition in cases where the taxpayer donor invokes the application of Article 12, § 1, first paragraph, c) of the VAT Code.

Pending the publication of an implementing order, in order to ensure the follow-up of the distribution chain of the donated goods and to prevent the creation of parallel sales channels, the administration will not dispute that the donations to distribution platforms by Article 12, § 1, first paragraph, c) of the VAT Code are contemplated when the parties involved in the chain to the conditions provided in this circular compliance including the hereinafter following formalities.

8.3.1 In the relationship with the taxpayer donor

As proof that the taxpayer-donor has donated the goods in question free of charge to the distribution platform intended under title 6, a **document must** in principle be drawn up between the taxpayer-donor and, on the other hand, the distribution platform, **per donation** that takes place :

- in which the distribution platform:

* confirms that the goods in question were obtained free of charge, and ;

* undertakes not to use the acquired goods for commercial purposes and to distribute them, free of charge (or for a small fee, see Title 7), exclusively to beneficiaries under Title 5 with which the distribution platform has a cooperation agreement.

- and that each donation must contain at least the following information:

* the date on which the distribution platform took possession of the goods ;

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

* the (social) name, address and company number of the distribution platform ;

* a complete and correct description of the donated goods ;

* the quantities donated (by number).

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

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

The administration accepts on a trial basis that in the relationship taxpayer-donor-distribution platform a collection document as provided under title 8.2 is drawn up.

8.3.2 In the relationship with another beneficiary intended under Title 5

As the report on parliamentary work shows, the necessary measures must be taken to avoid the risks of parallel circuits and distortions of competition. It is therefore necessary that the goods distributed via a distribution platform can be followed up.

When the goods are distributed, a document is drawn up:

- in which the beneficiary:

* confirms that the goods in question were obtained free of charge from the distribution platform (or, if a small contribution was paid, the amount of that contribution, see Title 7), and ;

* undertakes not to use the acquired goods for commercial purposes and to distribute them free of charge (or for a small fee, see Title 7) only to persons in need of social assistance.

- and that each donation must contain at least the following information:

* the date on which the beneficiary took possession of the goods ;

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

* the (social) name, address and company number of the distribution platform ;

* a complete and correct description of the donated goods ;

* the quantities donated (by number).

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

The Administration accepts on a trial basis that a collection document as provided under Title 8.2 shall be drawn up in the distribution platform - beneficiary relationship .

8.3.3 Registers to be created and kept by the distribution platform

In addition to the documents to be retained in Titles 8.3.1 and 8.3.2, the distribution platform must keep records that allow the goods flow to be monitored. This is done using a detailed register for incoming goods (received from taxable donors) and a detailed register for distributed goods (intended for beneficiaries under Title 5).

More generally, it is recalled that under Article 60, § 4 of the VAT Code, the books and other documents (other than the invoices and copies of invoices as referred to in § 3 of the same article) that the VAT regulations hold, the drafting or distribution of the prescriptions must be kept for seven years from 1 January of the year following their closure for books or on their date for other documents.

9. Entry into force

This circular will enter into force on 16.05.2019.

10. Attachments

[Appendix 1 Parl.St. Room 2018-2019 no. 3559.1](#)

[Appendix 2 Parl.St. Room 2018-2019 no. 3559.2](#)

[Appendix 3 Parl.St. Room 2018-2019 no. 3559.3](#)

[Appendix 4 C.R. IV Chamber 2018-2019 session of 28.03.2019 no. 54-PLN-278](#)

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