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

Circular 2020 / C / 89 regarding the amendments made to Royal Decrees 1, 7, 10, 24, 31, 35, 46 and 56 on VAT by the Royal Decree of 07.11.2019

First comment regarding the Royal Decree of 07.11.2019 amending the Royal Decrees Nos . 1, 7, 10, 24, 31, 35, 46 and 56 on value added tax.

value added tax ; sharing economy ; billing ; telecommunication services, radio and television broadcasting services ; electronically supplied services ; curators ; outward processing ; independent grouping of persons ; rental of real estate ; travel agency ; means of transport ; cross-border refund

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General Administration of Taxation - Value Added Tax

Table of contents

1. preface

The Royal Decree of 07.11.2019 on VAT, published in the Belgian Official Gazette of 25.11.2019, amends:

- the Royal Decree No. 1 of 29.12.1992. Regarding the arrangements for the payment of VAT value added

- the Royal Decree No. 7 of 29.12.1992. Regarding the import of goods for the purposes of value added tax
- the Royal Decree No. 10 of 29.12.1992 with regard to the exercise modalities of the choices, referred to in Articles 15, § 2, third paragraph, and 25ter, § 1, second paragraph, 2 °, second paragraph, of the Code of value added tax, declarations of initiation, alteration, cessation of activity and prior notifications of value added tax
- the Royal Decree No. 24 of 29.12.1992. With respect to the payment of VAT value added
- the 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
- the Royal Decree No. 35 of 28.12.1999. To introduce a flat-rate basis for charging the tax on the value added to the profit margin of travel agents
- the Royal Decree No. 46 of 29.12.1992. Governing the declaration of intra-Community acquisition of vehicles and the payment of the applicable tax
- the Royal Decree No. 56 of 09.12.2009. Regarding the refund of tax value added to taxable persons established in a Member State other than the Member State of refund.

Below is a first general comment regarding the changes that this royal decree has introduced into the royal decrees taken in implementation of the VAT Code.

2. Deeleconomie

2.1. Statutory provision

Article 1 of the Royal Decree of 07.11.2019 supplements Article 1 of Royal Decree No 1, cited above, with one paragraph, reading:

"Notwithstanding the first paragraph, the taxpayer referred to in Article 50, § 4, of the Code is exempt from issuing an invoice for the services he performs."

2.2. Comment

The program law of 01.07.2016 has introduced a specific tax regulation, applicable to services (and not to supplies of goods) that a private individual, who does not act in the context of his professional activity, provides to another private individual through the intervention of a recognized electronic platform or an electronic platform organized by a government. The administrative burden is limited for the activities carried out in the context of the sharing economy.

The aforementioned article 40 of the program law has supplemented article 50 of the VAT Code with a 4th paragraph which states that, under certain conditions, the taxable natural persons who are active in the sharing economy are not identified for VAT purposes.

Nevertheless, in accordance with Article 1, first paragraph, of the Royal Decree 1, the aforementioned, such a taxable person would in exceptional cases be obliged to issue an invoice for some services that he provides for the private needs of natural persons, such as: for example, work in immovable state or work on motorized land vehicles for a value of more than 125 euros.

However, such a taxable person would not be able to include on this invoice all the required particulars referred to in Article 5 of Royal Decree No 1, aforementioned, since the essence of the sharing economy simplification scheme is that the taxable persons are not identified for VAT purposes. In addition, issuing invoices is contrary to the spirit of the scheme aimed at relieving the taxable persons concerned of as many administrative obligations as possible.

In the context of the aforementioned simplification, the taxpayers referred to in Article 50, § 4 of the VAT Code are therefore also exempted from issuing invoices for the services intended for the private use of natural persons. Article 1 of this draft supplements Article 1 of Royal Decree No. 1 with a new second paragraph.

3. Billing rules applicable to telecommunications, radio and television broadcasting and electronic services provided to non-taxable persons

3.1. Statutory provision

Article 2 of the Royal Decree of 07.11.2019 supplements Article 5, § 1, 9 °, of the Royal Decree No. 1, with the words ' *and, if the act takes place in another Member State of the community, a statement that the rate and the tax payable or revised concern that Member State* . '

3.2. Comment

Article 53i , § 1, third paragraph, of the VAT Code, inserted by the law of 11.02.2019 amending the VAT Code with regard to the treatment of vouchers and the special regulations for telecommunication services, radio and television broadcasting services or electronic services supplied to non-taxable persons, provides that, in the special arrangements provided for in articles 58 to and 58 quater of the Tax Code, the billing is subject to the rules applicable in the Member State where the service provider or vendor who uses of one of those special schemes has been identified for VAT purposes. This new provision is the transposition of Article 219 bis (2) (b) of Council Directive 2006/112 / EC of 28 November 2006 on the common system of value added tax (VAT Directive).

Pursuant to the entry into force, on 01.01.2019, of Article 53i , § 1, third paragraph, of the VAT Code, Belgium is now the competent Member State regarding billing rules for:

- telecommunications, radio and television broadcasting or electronic services which take place in Belgium or in another Member State and which are performed by a provider established in a third country referred to the special scheme in Belgium in Article 58 to the VAT Code ('non-Union scheme') and identified accordingly for VAT purposes in Belgium,
- the telecommunications, radio and television broadcasting services and electronic services provided in another Member State and provided by a service provider established in Belgium that applies the special scheme referred to in Article 58c of the VAT Code ('Union scheme ').

This power relates both to the obligation to issue an invoice and to the determination of the mandatory invoice entries. With regard to that first point, Article 53, § 2, first paragraph, 1 °, of the VAT Code stipulates that the taxable person who supplies goods or services for a non-taxable legal person must issue an invoice to his co-contractor.

The combination of these provisions means that one in Belgium taxable person identified for VAT purposes using one of the schemes referred to in Article 58 to or 58 quater of the Tax Code and a service to a non-taxable legal person takes place in another Member State, must issue an invoice to that person with the mandatory particulars referred to in Article 5, § 1, of the Royal Decree No. 1, referred to above.

One of those mandatory statements, referred to in Article 5, § 1, 9 °, of the Royal Decree No. 1, referred to above, relates to the rates of the tax and the total amount of the tax to be paid or to be regularized.

Even though it does not make a formal distinction, this provision has always related to the rates of Belgian VAT and to the Belgian VAT charged. Since the entry into force of Article 53i , § 1, third paragraph, of the VAT Code, Belgium is for the first time also a competent Member State with regard to invoicing rules in a situation where a taxable person identified for VAT purposes in Belgium another Member State.

The old wording of Article 5, § 1, 9 °, of the Royal Decree No. 1, aforementioned, thus does not allow to unambiguously guarantee that the aforementioned case is covered by that provision.

As a result, to ensure maximum legal certainty and to ensure that in that particular case, the amount of foreign VAT is correctly charged on the invoice issued by the taxable person identified in Belgium for VAT purposes, Article 5, § 1, 9 °, of the Royal Decree no. 1, aforementioned, adapted to oblige the service provider to include on the invoice he issues to his contracting partner not only the VAT rates and the amount of VAT, but also a statement indicating When the said act takes place in another Member State of the Community, the rate and the tax to be paid or to be regularized concern that Member State.

A simple indication of the Member State concerned on the invoice is sufficient, in addition to that of the rate and / or the amount of VAT in accordance with Article 5, § 1, 9 °, of the Royal Decree No. 1, aforementioned (examples: 'VAT- rate (France): 'or' VAT amount (France) 'or even' VAT amount: xx, xx euros (France) ').

Any other indication that allows to determine on the invoice that the applicable rate or the amount of VAT due or to be regularized relates to a particular Member State, will be considered sufficient for the application of Article 5, § 1, 9 °, New from Royal Decree No 1, aforementioned, words added when the said act takes place in another Member State of the community, to indicate that the applicable rate and the tax to be paid or to be regularized concern that Member State.

As such, this special designation does not constitute an additional statement as such, but merely clarifies the application to the compulsory particulars included in Article 5, § 1, 9 °, of the Royal Decree No 1, cited above (Article 226, 9). and 10) of the VAT Directive), to take into account a very specific and as yet unpublished case (namely the case where the Member State competent to lay down the invoicing rules differs from the Member State in which the tax is due and payable without that a reverse charge mechanism applies). This rule is therefore not incompatible with Article 273 (2) of the VAT Directive.

4. Declaration and payment obligations of the bankruptcy trustees

4.1. Statutory provision

Article 3 of the Royal Decree of 07.11.2019 makes the following changes to the Royal Decree No. 1, mentioned above.

Article 18 of Royal Decree No. 1, referred to above, is supplemented by paragraph 8, which reads as follows:

§ 8. Notwithstanding Article 53, § 1, first paragraph, 2 °, of the Code, the bankruptcy trustee of a bankrupt taxpayer, except in the cases referred to in Article XX.140 of the Economic Law Code, must act in accordance with the modalities. provided in paragraphs 4 and 5 and at the latest on February 28 of the calendar year following that to which it relates, annually a declaration for the taxable transactions which he carries out on behalf of that taxable person with effect from the date of the judgment of bankruptcy.

The curator will pay the tax due no later than April 30 of the calendar year following that to which the declaration referred to in the first paragraph relates.

By way of derogation from the first paragraph, the bankruptcy trustee will file the declaration referred to in the first paragraph at the latest on the last day of the second month following the date of the bankruptcy order.

The bankruptcy trustee will pay the tax due at the latest within three months following the expiry of the period for submitting the return referred to in the third paragraph. '

Articles 4 and 5 amend Royal Decree No 24 of 29.12.1992 with regard to payment of value added tax, as last amended by Royal Decree of 16.02.2017, as follows:

- In Article 1, introductory sentence, the words *"Article 8, § 1* " are replaced by the words *"Articles 8, § 1, and 10, 1 ° / 1"* .
- In Article 10, the following changes are made:

a. the provision under 1 ° / 1 is inserted, reading:
'1 ° / 1 the value added tax, the claimability of which is evidenced by the declaration referred to in Article 18, § 8, first paragraph, of the Royal Decree No 1. of 29 December 1992 with regard to payment of value added tax; ';
b. in the provision under 2 °, the word 'declaration' is replaced by the word 'declarations';
c. in the provision under 3 °, the words 'the same declaration' are replaced by the words 'those declarations'.

4.2. Comment

Article 53j of the VAT Code, inserted by the law of 30.07.2018 containing various provisions regarding value added tax, provides that the trustee is to be substituted for the bankrupt taxpayer in the context of the settlement of the bankruptcy. , for all rights granted and all obligations imposed on the latter by the Code and its implementing decrees. This clarifies that, in the context of the liquidation of the bankruptcy, the bankruptcy trustee will be substituted for the bankrupt taxable person and must fulfill all VAT obligations that would normally be fulfilled by the bankrupt taxable person himself.

Those obligations include, in particular, the issuing of invoices, the keeping of books, the preparation of the statement of its taxable customers, the retention and communication of documents, and also the submission of periodic VAT returns, with the exception of declarations relating to the actions of the bankrupt committed before the bankruptcy judgment that the bankrupt has not yet filed on the day of that judgment.

In order to take into account the specific nature of the clearing activities, a new paragraph 8 was introduced in Article 18 of the Royal Decree No. 1, aforementioned, providing for an annual VAT return for the transactions subject to tax which the trustee in respect of VAT is deemed to be carried out in place of the taxable person (Article 2 of the VAT Code) with effect from the day of the bankruptcy judgment with an adjusted filing and payment date for the VAT due.

As a starting point, in the context of the settlement of the bankruptcy and from the judgment of bankruptcy, the bankruptcy trustee is obliged to file a periodic VAT return (collective return) annually, no later than 28 February following the year to which they relate. has. The tax due arising from that declaration must be paid no later than April 30 of the same year. This payment term is necessary because the payment runs through the release of sums from the deposit and consignment office, which takes a certain time.

By way of transition, the collective declaration to be filed by 28.02.2020, for the bankruptcies opened in 2018, will include the acts performed in 2018 from the date of the bankruptcy judgment and the acts performed in 2019.

The annual periodicity does not apply if the bankruptcy trustee is authorized by the commercial court to continue the activities of the taxpayer after bankruptcy. In that case, the VAT returns will have to be submitted by the bankruptcy trustee in accordance with the normal rules, ie at the same periodicity as the VAT returns submitted by the taxable person before bankruptcy.

On the other hand, when the bankruptcy is closed, the last collective declaration (which relates to the period from 1 January of that year to the judgment closing the bankruptcy) must be submitted at the latest on the last day of the second month following the verdict of closure of the bankruptcy. The tax due arising from that declaration must be paid no later than three months after the expiry of the period for submitting the declaration.

Article 18, § 4, of the Royal Decree No. 1, aforementioned, provides for the submission of the periodic VAT return electronically. This obligation applies without distinction to the trustees in bankruptcy under the aforementioned obligation to file collective VAT returns, subject to the application of paragraph 5 of that provision when they do not have the necessary computerized means to fulfill that obligation. meet.

5. Outward processing

5.1. Statutory provision

Articles 6 and 7 of the Royal Decree of 07.11.2019 make the following changes to Articles 40 and 41 of the Royal Decree No 7, referred to above:

In Article 40, § 1, the words *"Articles 185 and 186 of Regulation (EEC) No 2913/92 of the Council of the European Communities of 12 October 1992 establishing the Community Customs Code" are replaced by the words " Article 259 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 establishing the Union Customs Code .'*

In Article 41:

1 ° paragraph 3 is replaced as follows:

§ 3. The tax due shall be calculated on the value of the goods delivered abroad and of the services which are not performed in the Community in accordance with Articles 21, § 2 and 21bis, § 2, 6 ° c) of the Code plus the sums not already included in that value, which must be included in the taxable amount according to Article 34, § 2 of the Code, and at the rate applicable to the goods imported into Belgium. ';

2 ° in the Dutch text of paragraph 4, 2 °, the words *'were performed' are* replaced by the words *'had taken place'* .

5.2. Comment

Article 88 of the VAT Directive provides that *'for goods temporarily exported from the Community which, after having undergone repairs, treatment, processing or adjustment outside the Community, [shall] take measures to ensure that the treatment with regard to VAT applicable to the goods obtained is the same as that which would have been applied to the goods in question if the abovementioned transactions had been carried out in their territory. '*

Belgium has taken such a measure by introducing a VAT exemption in Article 40, § 1, 2 °, b) of the VAT Code for reimportation , by the person who exported the goods outside the community, of goods that have been repaired, processed, processed or modified outside the community.

The conditions of application of this exemption are defined in Article 41 of Royal Decree No 7 of 29.12.1992 with regard to the import of goods for the purposes of value added tax. Pursuant to Article 41 of the Royal Decree No 7, aforementioned, a re-importation as referred to in Article 40, § 1, 2 °, b) of the VAT Code is partially exempt from tax, subject to the two cases of full exemption included in Article 41, § 4 of the Royal Decree No. 7 aforementioned.

Conceptually, the application of the current provision leads to situations where a double taxation could arise as a result of activities performed outside the community on goods that have been exported from Belgium for this purpose and subsequently reimported into Belgium after those activities.

This problem can be illustrated by the following example (included in circular AOIF No. 20/2010 of 26.02.2010, point 27, example 3).

A, a taxable person established in Belgium who trades for professional purposes, exports substances bought in Belgium under VAT with regard to VAT to be made there by B for coats. A buys the thread, buttons and lining required for the manufacture of the coats from the Chinese trader C and orders the latter to make those supplies available to the contractor B.

When re -importing, A cannot rely on a full VAT exemption on import. After all, B performs custom work that takes place in the community, in particular in Belgium, the country where the taxable person / recipient of the service is established. However, the service was accompanied by a coherent delivery of goods by a third party, C. Therefore, the condition to import the goods with full exemption from VAT in accordance with Article 41, § 4, 1 ° of Royal Decree No. 7, aforementioned. Also, the full VAT exemption provided for in Article 41, § 4, 2 ° of that Royal Decree does not apply, since the custom work in Belgium isis subject to tax and the related supply of goods would be subject to tax if it had been made in Belgium.

When importing the coats, A can therefore only rely on a partial exemption in accordance with Article 41, § 1, of the Royal Decree No 7, referred to above. Article 41, § 3, of the same Royal Decree thus provides, in the example set out above, that the tax due is calculated on the value of the goods supplied and work performed abroad, plus the sums not already included in that value, which according to Article 34, § 2 of the VAT Code must be included in the taxable amount and at the rate applicable for goods imported into Belgium.

This implies that, in the example, the taxable amount for re-importation consists both of the value of the work done by the service provider B and the related supply of goods performed by the supplier C, plus the sums not already included in that value, which according to article 34, § 2 of the VAT Code must be included in the taxable amount.

It should be noted, however, that the work done by service provider B in accordance with Article 21, § 2 of the VAT Code is deemed to take place in Belgium, so that it is already taxed in Belgium under Article 2 of the VAT Code.

In theory, the current provisions thus, in some exceptional cases, have the effect that, even if, for VAT purposes, of course, there are two separate transactions, there is a double taxation, in particular once on the provision of services (custom work) as such which was physically performed. outside the Community but for VAT purposes is deemed to take place in Belgium and once about the (re) importation of the goods in Belgium, the value of the service being included in the taxable amount for VAT purposes (value of the goods at reimportation).

Although the VAT in question will normally be fully deductible for the taxable person who makes the custom work, such a situation would run counter to the objective of Article 88 of the VAT Directive, which requires Member States to take the necessary measures to ensure that VAT the treatment of reimported goods is the same as that which would have been applied to the goods concerned if the repair, processing, processing or adjustment had taken place in the territory of the Member States themselves.

Therefore, Article 41, § 3 of the Royal Decree No 7, aforementioned, was amended in the sense that the taxable amount for reimportation no longer includes all 'work performed abroad', but only those services provided under Article 21. , § 2 and 21bis, § 2, 6 °, c) of the VAT Code do not take place in the community. Therefore, since it concerns services which are not taxed within the Community, the inclusion of their value in the taxable amount on reimportation can no longer lead to double taxation.

The Dutch text of Article 41, § 4, 2 °, of the Royal Decree no. 7, aforementioned, was also amended and the words "had been carried out" were replaced by "had taken place". After all, the first expression was used before the implementation of the new localization rules in 2010, when for services that consisted of a material work relating to a movable property in accordance with Article 21, § 3, 2 °, a), old, of the VAT. Code, the place where the service was deemed to take place for VAT purposes corresponded to the place where the good was located at the time the service was physically supplied, regardless of whether the services were provided to a taxable person ('B2B' situation) or for a non-taxable person (situation 'B2C'). Since 01.01.2010, such services are provided to a taxable person (situation 'B2B'), in accordance with Article 21, § 2 of the VAT Code, it is however deemed to take place where the customer is established. Taking into account the change of the location rules since 01.01.2010, and by analogy with the wording used in Article 41, § 4, 1 ° of the Royal Decree no. 7, aforementioned, it is appropriate to use the terminology 'had taken place' from now on. In this way, finally, an agreement is also established between the French and Dutch language versions of Article 41, § 4, 2 °, of the Royal Decree No. 7, referred to above.

The current amendment of the Royal Decree No. 7, referred to above, was used to amend a reference to regulations that is obsolete in Article 40. Article 40 (1) of the Royal Decree No 7, referred to above, states, with regard to the customs procedure applicable to the return of exported goods, Articles 185 and 186 of Regulation (EEC) No 2913 / 92 of the Council of the European Communities of 12.10.1992, establishing the Community Customs Code '. That Customs Code was the subject of a complete recast which gave rise to the Union Customs Code, through Regulation (EU) No 952/2013 of the European Parliament and of the Council of 09.10.2013 establishing the Customs Code of the Union.

6. Independent groups of persons

6.1. Statutory provision

Articles 8 and 9 of the Royal Decree of 07.11.2019 make the following changes to Articles 1 and 2 of the Royal Decree No 10, as referred to above:

The following amendments are made to Article 1 of Royal Decree No 10, aforementioned:

1 ° the fifth paragraph is replaced as follows:

'Relieved from the obligation to declare referred to in the first paragraph, the person who only carries out activities in the exercise of his economic activity that are exempted in application of Article 44 of the Code and that do not confer any right to deduct him with the exception of the independent groups of persons as referred to in Article 44, § 2bis of the Code. ';

2 ° Article 1 is supplemented by a paragraph, reading:

'The independent grouping of persons referred to in Article 44, § 2bis, of the Code is also obliged, in accordance with Article 44, § 2bis, third and fourth paragraph of the Code, within one month following the commencement of its activity. to submit a list of the name, legal form, address, business number and nature of the activity of its members to the competent department of the administration responsible for value added tax, in paper or electronic format. '

In Article 2 of the same Decree, as last amended by the Royal Decree of 14.04.2009, a paragraph is inserted between paragraphs 1 and 2, reading:

'Notwithstanding the first paragraph, the independent grouping of persons referred to in Article 44, § 2bis, third paragraph, of the Code, in accordance with Article 44, § 2bis, third paragraph, of the Code, on paper or in electronic format, the competent department of the administration shall only be informed of any change, in whole or in part, of its economic activity, within the month following that event. In the event of the entry or departure of a member of an independent grouping of persons referred to in Article 44, §2bis of the Code or if the activity of one of its members changes, the grouping shall be notified in accordance with Article 44, §2bis, third and third parties. paragraph 4 of the Code, within the month following that event, the same service in paper or electronic format thereof. ".

6.2. Comment

The law of 26.05.2016 amending the VAT Code with regard to the exemption of the services provided to their members by independent groups of persons has reformed the regulation of these groups in order to ensure a better transposition of the European regulations.

Article 44, § 2a , new, of the VAT Code exempts the services provided to their members by independent groups of persons from the tax if certain conditions are met.

Paragraphs 3 to 5 of Article 44, § 2a , new, of the VAT Code determine the obligations which, as the case may be, must be observed by any independent group of persons, irrespective of whether or not the acts of this group are not fully exempt from VAT. For example, the group must inform the competent department of the VAT administration of the commencement or pursuit of such an activity and must provide a list of its members and the nature of their activity. The group is also obliged to inform the aforementioned service of any changes concerning its own activity or that of its members.

Under the old legislation, Article 1, paragraph 5, of the Royal Decree No 10, aforementioned, explicitly exempts all taxpayers exempted under Article 44 of the VAT Code from the obligation to inform the administration about the start of such an economic activity. In order to bring this provision of the Royal Decree No. 10, aforementioned, into line with paragraphs 3 to 5 of Article 44, § 2a , new, of the VAT Code, Article 1, paragraph 5, of the royal Decree no. 10, said, as amended by the independent groups of persons referred to in Article 44 § 2 bis , to exclude from the VAT Code this exemption.

Article 1 of the Royal Decree No 10, aforementioned, is supplemented by a member stating that the list of members and the nature of their activity that the autonomous group of persons is obliged to communicate to the administration, on paper or in electronic format can be prepared. The list of members must include the name, legal form, address and company number of those members.

The independent grouping of persons is also obliged, in electronic format or on paper, to inform the competent administration department of the accession or departure of a member or the change of activity of one of its members. This obligation is the subject of a second paragraph, new, inserted in Article 2 of Royal Decree 10, aforementioned.

7. Options under the special scheme applicable to telecommunications, radio and TV broadcasting or electronically supplied services to non-taxable persons and under the optional taxation of rental of immovable property by its nature

7.1. Statutory provision

Articles 10 to 12 of the Royal Decree of 07.11.2019 make the following changes to Royal Decree No 10, referred to above:

In the heading of the Royal Decree No. 10, the words *"Articles 15, § 2, third paragraph, and 25ter, § 1, second paragraph, 2 °, second paragraph" are* replaced by the words *"Articles 15, § 2, third paragraph, 21bis, § 2, 9 °, fourth paragraph, 25ter, § 1, second paragraph, 2 °, second paragraph and 44, § 3, 2 °, d) '.*

An Article 7b is inserted, reading:

Art. 7ter. § 1. Any taxpayer who applies or wishes to apply the special scheme referred to in Article 58quater of the Code makes the choice referred to in Article 21bis, § 2, 9 °, fourth paragraph, of the Code, informed by the administration thereof. to the electronic address created for that purpose by the Minister of Finance or his authorized representative.

The choice made in accordance with the first paragraph by a taxpayer referred to in Article 58quater, § 3 of the Code commences on the day that the special scheme referred to in Article 58quater of the Code applies in accordance with Article 57quinquies of the Implementing Regulation (EU) No. Council Regulation (EC) No 282/2011 of 15 March 2011 laying down measures for the implementation of Directive 2006/112 / EC on the common system of value added tax. In cases where the taxable person already applies that special scheme, the option will take effect on 1 January of the year for which the option was exercised.

The choice made in accordance with the first paragraph applies until December 31 of the second year following that date.

§ 2. The taxpayer referred to in Article 58quater, § 2 of the Code who does not wish to apply the special scheme referred to in Article 58quater of the Code makes the choice referred to in Article 21bis, § 2, 9 °, fourth paragraph, of the Code, by notifying the office of the administration to which it belongs by registered mail of that choice.

That letter should state:

1 ° the name or corporate name of the taxpayer and the address of its administrative or registered office, as well as the identification number assigned to it for the application of value added tax under Article 50 of the Code;

2 ° the Member State or Member States where the services take place in accordance with Article 21bis, § 2, 9 °, first paragraph, of the Code and for which the choice is made;

3 ° the identification number that was assigned to the taxpayer in that Member State or Member States for the application of value added tax;

4 ° the date from which the choice takes effect;

5 ° the date, as well as the name and capacity of the signatory.

The choice made in accordance with the first paragraph commences on the date of the registered mail referred to in the first paragraph and applies until 31 December of the second year following that date.

§ 3. Each taxpayer submits to the competent service of the administration a statement of the exceeding of the threshold referred to in Article 21bis, § 2, 9 °, second paragraph, c) of the Code from the first act, in its entirety considered to cross the threshold.

However, they are released from this statement if such a statement was submitted in the course of the previous calendar year or if in the course of one of the two previous calendar years or in the current calendar year the choice referred to in Article 21bis, § 2, 9 ° (4) of the Code.

The Minister of Finance or his authorized representative determines the form and the way in which the statement is made. '.

An Article 7c is inserted, reading:

Art. 7quater. § 1. The option for taxation referred to in Article 44, § 3, 2 °, d) of the Code is exercised by means of a statement dated and signed by the landlord and the tenant, at the latest when the lease has effect between the parties.

This statement contains the following statements:

1 ° the name or corporate name, address and VAT identification number referred to in Article 50 of the Code, of the landlord and the tenant;

2 ° the identification of the building or part of the building, including, if applicable, the associated land, the rental of which is taxed;

3 ° the living will of the parties to tax the rental;

4 ° the date on which the option takes effect.

§ 2. The inclusion of the statements referred to in paragraph 1, second paragraph, in the deed that constitutes the title of the lease contract between the parties, is equated with a statement referred to in paragraph 1.

§ 3. In the event of tacit renewal of a taxable lease contract under option, no additional statement must be made between the parties. "

7.2. Comment

7.2.1. Option under the special scheme applicable to telecommunications, radio and TV broadcasting or electronically supplied services to non- taxable persons

In accordance with Article 21a , § 2, 9 °, first paragraph, of the VAT Code, which was replaced by the Law of 11.02.2019 following the transposition of Article 1, point 1) of Directive 2017/2455 / EU that Article 58 of the VAT Directive, telecommunications, radio and television broadcasting and electronic services provided within the Community to non-taxable persons are deemed to take place in the Member State where the recipient of the service is established.

However, the second paragraph of Article 21a , § 2, 9 ° of the VAT Code provides for an exception to that basic rule. The intention is to allow micro-enterprises providing such services, under certain conditions (and in particular up to a certain threshold), to tax such services in their Member State of establishment (instead of in the Member State of establishment of the customer).

In this way, the VAT that may be payable on those services can be paid via the national VAT return. This avoids the need to pay VAT in a Member State where that micro-enterprise is not established, if necessary by means of the special scheme ('EU scheme') referred to in Article 57a (2) of the Implementing Regulation (EU). No 282/2011 of 15.03.2011 laying down measures for the implementation of Council Directive 2006/112 / EC of 28.11.2006 on the common system of value added tax.

Article 21a , § 2, 9 °, second paragraph, of the VAT Code, provides that, by way of derogation from the basic rule of the first paragraph of that article, the telecommunications, radio and television broadcasting services and electronic services provided within the community were carried out for non-taxable customers, are deemed to take place in the Member State of establishment of the service provider when:

- the service provider is established in only one Member State;
- the services are provided to non-taxable persons who are established in a Member State other than the Member State of establishment of the service provider,
- the total amount of the services referred to, excluding VAT, in the current calendar year does not exceed EUR 10,000, nor has this amount been exceeded in the course of the previous calendar year.

Pursuant to the fourth paragraph of Article 21a , § 2, 9 ° of the VAT Code, the taxpayers concerned may, however, choose to waive that derogation from the basic positioning rule for the services concerned, and thus their services to take place immediately in accordance with that basic rule in the Member State where the customer is established. This choice then applies for a period of at least two calendar years.

Article 21a , § 2, 9 °, fifth paragraph, of the VAT Code empowers the king to determine the modalities of application of that optional scheme and in particular the formal conditions that must be observed with regard to the communication of information with regard to the crossing the threshold and the declaration of choice.

The Royal Decree no. 10, aforementioned, was amended to take into account, on the one hand, the choice referred to in Article 21a , § 2, 9 °, fourth paragraph, of the VAT Code and, on the other hand, the option for the taxation of rental immovable property of its nature, as referred to in Article 44, § 3, 2 °, d) of the VAT Code (see 7.2.2. below).

A new Article 7b was introduced in Royal Decree No. 10, aforementioned, to provide the exercise modalities with the choice referred to in Article 21a , § 2, 9 °, fourth paragraph, of the VAT Code as well as the information that must be notified to the administration regarding the crossing of the threshold of 10,000 euros referred to in Article 21a , § 2, 9 °, second paragraph, c) of the VAT Code.

More concretely, this new article makes a distinction between, firstly, in paragraphs 1 and 2, with regard to the modalities for making the choice referred to in Article 21a , § 2, 9 °, fourth paragraph, of the VAT Code. taxable persons, depending on whether or not they make use of the special EU scheme referred to in Article 58c of the VAT Code to pay VAT on the services which, pursuant to their declaration of choice, will immediately take place for VAT purposes in the Member State of recipient of the services concerned.

On the one hand, the taxpayers who want to make the choice to have the aforementioned services take place in the recipient's Member State of establishment in accordance with Article 21a , § 2, 9 °, fourth paragraph, of the VAT Code and who also use them will make the special arrangement referred to in Article 58c of the VAT Code, obliged to inform the administration that they wish to make this choice at the electronic address created for that purpose by the Minister of Finance or his authorized representative (moss@minfin.fed.be).

The choice will take effect on the first day that the taxpayer may apply the special scheme referred to in Article 58c of the VAT Code, ie in principle, in accordance with Article 57d of Implementing Regulation (EU) No 282/2011 of the Council of 15.03.2011 adopting measures to implement Directive 2006/112 / EC on the common system of value added tax, on the first day of the quarter following the request for registration in that special scheme. It is logical that if the taxpayer commences his economic activity and exercises both choices at the same time, those choices will also have effect at the same time.

RELATED DOCUMENTS

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CHARACTERISTICS

Title: Circular 2020 / C / 89 regarding the amendments made to Royal Decrees 1, 7, 10, 24, 31, 35, 46 and 56 on VAT by the Royal Decree of 07.11.2019

Summary: First comments regarding the Royal Decree of 07.11.2019 amending Royal Decrees Nos 1, 7, 10, 24, 31, 35, 46 and 56 on value added tax.

Keywords: sharing economy , trustee , invoice , telecommunications service , radio and television broadcasting service , outward processing , electronic service , independent grouping , travel agency , outward processing concerning VAT , real estate rental tax , refund, vehicle , refund in another Member State

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In those cases where the taxpayer already applies that special scheme referred to in Article 58c of the VAT Code, no link can be found with Article 57d of Implementing Regulation (EU) No 282/2011 before the date of the elaboration of the choice . of 15.03.2011 which only supervises the situation in which a taxpayer commences his activity. In that case, the option will therefore take effect on 1 January of the year for which the competent administration department was notified of the choice. In this way, more specifically, it can be ensured that the taxable persons benefiting from the special scheme referred to in Article 58cof the VAT Code already applied before 01.01.2019 and which continue to apply after that date, should not be identified for VAT purposes in all Member States in which their customers are established, if they wish to tax all their services in those Member States.

On the other hand, the taxable persons who wish to make the choice to have the aforementioned services take place in the recipient's Member State of establishment in accordance with Article 21a , § 2, 9 °, fourth paragraph, of the VAT Code, but who do not wish to use of the special scheme referred to in Article 58c of the VAT Code, is also obliged to inform the service of the administration in charge of the value added tax under which they report by registered mail. The information to be provided is mainly intended to inform the administration of the VAT identification in the Member State (s) concerned for the aforementioned services.

Then clarifies paragraph 3 of the new Article 7 on the modalities for the declaration to be made to the administration regarding the exceeding of the threshold of 10,000 euros provided for in Article 21 bis , § 2, 9 °, paragraph c) , of the VAT Code: each taxpayer referred to in paragraph 1 submits annually to the competent administration department a statement of threshold crossing from the first act, considered in its entirety, as a result of which that threshold is exceeded.

However, that declaration should not be made if the taxable person concerned:

- *has* already made such a declaration during the preceding calendar year, or
- *has made* the choice referred to in Article 21a , § 2, 9 °, fourth paragraph, of the VAT Code (in accordance with the modalities included in Article 7b , paragraphs 1 and 2, new, of the Royal Decree No 10, aforementioned), in the course of one of the two preceding calendar years or in the current calendar year.

The Minister of Finance or his representative will determine the modalities of that statement, in particular its form and the way in which it is made.

7.2.2. Option under the optional taxation of rental of immovable property by its nature

Article 44, § 3, 2 °, d), fifth paragraph, of the VAT Code provides that the king, with regard to the optional taxation of the rental of a building or part of a building, and, where applicable, with associated terrain, introduced by the law of 14.10.2018, determines the time at which the option is to be exercised as well as the modalities to be observed under that option.

A new Article 7c was inserted in Royal Decree No 10, aforementioned, specifying in paragraph 1 of its paragraph 1 that that tax option is exercised by means of a joint statement by the contracting parties, dated by them and signed. Moreover, that provision specifies that the statement must be drawn up at the latest when the lease contract that is taxed has effect between the parties. In the present case , the fact that the lease contact may or may not be registered has no impact, since in this respect the agreement has the force of law between the parties, irrespective of any formality relating to the enforceability of the lease contract.

Article 7c , § 1, second paragraph, new, of the Royal Decree No. 10, aforementioned, specifies the information that must at least be included in the optional statement:

1 ° the name or corporate name, address and VAT identification number referred to in Article 50 of the VAT Code, of the landlord and of the tenant (for the latter, if applicable, the company number is sufficient if he is not identified for VAT purposes));

2 ° the identification of the building or part of the building, including, if applicable, the associated land, the rental of which is taxed;

3 ° the living will of the parties to tax the rental;

4 ° the date on which the option takes effect.

The way in which the intention to tax a rental of real estate by its nature or the terms used in it are expressed is of minor importance, provided that the living will is expressed unambiguously. It goes without saying that, for example, an explicit reference to Article 44, § 3, 2 °, d) of the VAT Code constitutes an unambiguous expression of will on the part of the parties to exercise the option for taxation.

The explanatory memorandum of the law of 14.10.2018 introducing the optional tax on the rental of real estate by its nature states that *'it is accepted that a specific statement pro fisco in the lease, confirming the will of the parties to the exercising the option will suffice to demonstrate to the administration that the option was actually exercised jointly by the landlord and the tenant.* 'In the same vein, Article 7quater, § 2, new, of the Royal Decree No. 10, aforementioned, states that the inclusion of the statements referred to in paragraph 1, second paragraph, in the deed constituting the lease contract between the parties is equated with a statement referred to in paragraph 1 of that provision.

In order to avoid excessive formalism, Article 7c , § 3, new, of the Royal Decree No. 10, aforementioned, specifies that in case of tacit renewal of a rental contact that is taxed in accordance with Article 44, § 3, 2 °, d) of the VAT Code, no additional option statement is required by the parties for the period that the agreement is renewed. In accordance with the applicable tenancy law, the tacit extension, unless otherwise stipulated, results in the further application of the same contractual conditions between the parties. This also applies to the levying of VAT on the rental fees owed by the tenant to the landlord.

As it concerns an application modality of Article 44, § 3, 2 °, d) of the VAT Code, the entry into force of which was established on 01.01.2019, in accordance with Article 15 of the Law of 14.10.2018, the new Article 7c of the Royal Decree No. 10, aforementioned, also in effect from 01.01.2019.

8. Travel agencies

8.1. Statutory provision

Article 13 of the Royal Decree of 07.11.2019 replaces, in the introductory sentence of Article 1 of Royal Decree 35, the aforementioned, the word 'traveler' with the word 'customer'.

8.2. Comment

Articles 306 to 310 of the VAT Directive establish a special tax regime for the transactions carried out by travel agents when they act in their own name with regard to the traveler.

Pursuant to Article 35, second paragraph, of the VAT Code, the king is authorized to determine a standard taxable amount for the service provided by the travel agents, referred to in Article 18, § 2, second paragraph, of the VAT Code. Just like the VAT Directive, the said Article 35, second paragraph, as it was in force before the amendment of the law of 02.05.2019, referred to the services provided by the travel agency to the traveler.

Belgium has received a request for information from the services of the European Commission regarding the application of the special scheme for travel agents, following the judgment of the Court of Justice of the European Union of 08.02.2018, Commission v Federal Republic of Germany, C- 380/16, which confirms in particular the existing case-law of the Court of Justice of the European Union, Commission v Spain, C-189/11, of 26.09.2013 .

In that question, the European Commission emphasizes that, in view of the differences between the language versions of the VAT Directive on this point, the Court relies on an approach based on the concept of customer (and not traveler). It follows that the special scheme for travel agents should apply to trips intended for any category of customers. The special scheme for travel agents therefore applies not only to trips provided to travelers-natural persons, but also to trips sold to travel agencies that destine trips for resale and also to legal persons who have purchased the trip for the purpose of travel and residence of their staff, managers or directors.

Article 1 of the Royal Decree No 35 of 28.12.1999 introducing a standard taxable amount of the value added tax on the profit margin of travel agents is therefore amended by replacing the term *'traveler (s)'* with the term *'traveler (s)'* . term *'customer (s)'* that more adequately reflects this interpretation, notwithstanding the term *'traveler'* in the Dutch version of the aforementioned articles 306 to 310 of the VAT Directive further is retained. Articles 18, § 2, second paragraph, 29, § 2, 35, second paragraph, and 45, § 4 of the VAT Code have already been similarly amended by the Law of 02.05.2019 containing various provisions on taxation about the added value and to amend the tax reduction for donations (Belgian Official Gazette of 15.05.2019).

9. Declaration and payment of the VAT due in respect of the acquisition of means of transport

9.1. Statutory provision

Article 14 of the Royal Decree of 07.11.2019 replaces in Article 5 of the Royal Decree 46, aforementioned, paragraph 2 as follows:

§ 2. The provisions of paragraph 1 do not apply if the person liable is liable to pay the tax in respect of the intra-Community acquisition of the means of transport or an equivalent transaction in the declaration referred to in Article 53, § 1, paragraph 1, 2 °, of the Code, has been granted permission by the Minister of Finance or his authorized representative to transmit the vignette establishing the Community character of that means of transport via the electronic data exchange procedure to the Vehicle Registration Service (DIV). '

9.2. Comment

In accordance with Article 5, § 1, of Royal Decree No 46 of 29.12.1992 regulating the declaration of the intra-Community acquisition of means of transport and the payment of the VAT due in this respect, the persons who pay the tax due on the intra-Community acquisition of a new means of transport may comply in a declaration which is not to be lodged with a customs office, nevertheless obliged to present to the customs office of choice the invoice issued by the supplier for the delivery of the vehicle as well as all documents proving that the statements on the invoice and the information included in the declaration are correct.

However, that rule does not apply to those persons who were authorized by or on behalf of the Minister of Finance to fill in the vignette establishing the Community status of the vehicle themselves in the name of a Belgian customs office or, instead of filling in that vignette, via the procedure of electronic data exchange, the replacement signal by sending it to the Vehicle Registration Service.

The aforementioned vignette is a paper vignette (vignette no. 705) which must be affixed to the application for registration of land vehicles.

In the course of 2018, the General Administration of Customs and Excise started a digitization project for that vignette. From the implementation of the new procedure, the self-adhesive vignette will always be replaced by an electronic signal to the Federal Public Service for Mobility and Transport.

Taking this digitization into account, Article 5, § 2, of the aforementioned Royal Decree 46, was amended to retain only the sending of that vignette to the DIV by means of an electronic data exchange procedure.

10. Expiry date on the cross-border refund of value added tax

10.1.Statutory provision

Article 15 of the Royal Decree of 07.11.2019 replaces the provision under 1 ° in Article 13, § 1, of the Royal Decree no. 56, aforementioned:

1 ° the tax levied on the supply of goods and services for which an invoice was issued in accordance with Article 53, § 2 of the Code, during the refund period, provided that the tax has become due and payable before or at the time of the issue of the invoice, or in respect of which the tax has become due during the refund period, provided that an invoice was issued for those transactions in accordance with Article 53, § 2, of the Code, before the tax has become due and payable;

10.2.Comment

If a taxpayer is unable (in the absence of any indication of fraud or abuse) to exercise his right of refund within the due period provided for this purpose, as provided for in Council Directive 2008/9 / EC of 12.02.2008 establishing laying down detailed rules for the refund of value added tax provided for in VAT Directive to taxable persons who are not established in the Member State of refund but who are established in another Member State, a Member State may not refuse that right because the expiry period laid down in its regulations envisaged for the exercise of that right would have started to run from the date of the tax due and expired before the taxpayer could submit his application for a refund.

This view stems from the recent case law of the Court of Justice (Court of Justice of the European Union, Volkswagen AG, case C-533/16, of 21.03.2018).

In that case, the court was confronted with the rules of a Member State that denies a non-established taxable person the right to a refund of VAT invoiced to him several years after the delivery of the goods in question, due to the fact that the expiry period provides for relevant regulations for the exercise of that right would have started to run from the date of delivery and expired before the refund application was made.

The Court recalled that the right to a refund of VAT in favor of a taxable person who is not established or identified for VAT purposes in the Member State of consumption, based on the provisions of the aforementioned Directive 2008/9 / EC, counterpart form of the right to deduct input VAT paid in a Member State where a taxable person submits periodic VAT returns.

The court also reminds that who wants to exercise a right to deduct both material conditions (being a taxpayer and purchasing goods and services from another taxable person for his own transactions that grant a right to deduct) and formal conditions (being in possession of a regular invoice).

However, the Court emphasizes that under Articles 180 and 182 of the VAT Directive a taxable person may be allowed to make the VAT deduction even if he did not exercise his right during the period in which it arose, provided that whereas the conditions and rules established by national laws have been fulfilled without, however, that rule creating legal uncertainty by admitting a right to deduct without any time-limit.

Thus, the Court of Justice in itself accepts the principle of the lapse of that right of deduction as a sanction for the under-advancing taxpayer, provided that the principle of equivalence (which requires that that period applies in the same way to similar rights in tax matters under national and Union law)) and the principle of effectiveness (which requires that the period does not render the right to deduct impossible or excessively difficult) complied with.

The Court of Appeal therefore departs from the principle that the right to deduct cannot lapse as long as the material and formal conditions are not effectively fulfilled on the basis of the person who wishes to exercise that right, irrespective of the moment when the tax to be deducted is due. albeit subject to cases of fraud, abuse or careless behavior.

In Belgium, the right to a refund of VAT in respect of taxable persons who are established in a Member State other than Belgium and who are not obliged in Belgium to file periodic VAT returns, is exercised in accordance with Article 76, § 2 of the VAT Code .

The terms of that refund are included in the Royal Decree No. 56 of 09.12.2009 with regard to the refund of value added tax to taxable persons established in a Member State other than the Member State of refund.

The Royal Decree no. 56, aforementioned, provides, like the aforementioned Directive 2008/9 / EC, in Article 12 (1), an expiry period for the submission of the application for a refund that materializes the exercise of the right to a refund. In accordance with Article 11 of that Decree, that period is set on 30 September of the year following the relevant refund period (which is calculated in calendar months and relates to a minimum period of 3 months and a maximum of one year).

In accordance with Article 1, 3 ° of the Royal Decree no. 56, aforementioned, 'refund period' is understood to mean the period to which the refund application relates. Article 13, § 1, 1 °, of the same decree provides that the refund application concerns the tax levied on the transactions for which an invoice was issued and for which the tax has become due during the refund period. The second paragraph of that provision states that the request may also cover invoices that have not yet been the subject of a refund application if they relate to transactions made during the calendar year of the refund period.

Article 14 (1) (a) of the aforementioned Directive 2008/9 / EC, on the other hand, provides that the refund application refers to *the acquisition of goods or purchases of services invoiced during the refund period, provided that VAT is paid before or at the time of billing is due, or for which VAT is due during the refund period, provided that the off-take has been invoiced before the tax becomes due.* 'A more transposal of that provision in accordance with the Directive allows, under the conditions laid down by that Directive, to retain the exercise of the right of refund in the case referred to in the aforementioned judgment of the Court of 21.03.2018.

Article 13, § 1, 1 °, of the aforementioned Royal Decree 56, was amended to ensure a more transposal of the article in accordance with the directive, while at the same time bringing the article into line with the recent case law of the court.

11. Technical adaptations regarding European legislation

11.1.Statutory provision

Article 16 of the Royal Decree of 07.11.2019 replaces in Article 1 of Royal Decree 31, aforementioned, paragraph 1 as follows:

§ 1. A taxable person not established in the Community shall have a liable representative recognized in accordance with the provisions of this Decree, unless he has been discharged from it pursuant to Article 55, § 1, second paragraph, of the Code, before:

1 ° to supply goods or to provide services other than those for which, in accordance with Article 51, § 2, first paragraph, 1 °, 2 °, 5 ° and 6 ° of the Code, the tax is payable by the contracting partner;
2 ° import goods, carry out an intra-Community acquisition of goods or perform an act for which he is a debtor of the tax pursuant to Article 51, § 2, first paragraph, 3 ° and 4 ° of the Code;
3 ° to perform an act of placing goods under a bonded warehouse other than a bonded warehouse which is not subject to tax.

The taxable person not established in Belgium, established in the Community, or referred to in Article 55, § 1, second paragraph, of the Code, may, before performing an act referred to in the first paragraph, have a liable representative recognized in accordance with the provisions of this decision.

If he is released from the recognition of a liable representative, no VAT identification number shall be assigned to the taxable person referred to in paragraph 1. "

11.2.Comment

The first subparagraph of Article 204 (1) of the VAT Directive provides that where, under the provisions of that directive, the person liable for payment of the tax is a taxable person who is not established in the Member State where the VAT is due, the Member States may allow him to designate a tax representative as a person liable for payment of the tax.

The second subparagraph of Article 204 (1) of the VAT Directive further provides that in the case of a taxable transaction carried out by a taxable person who is not established in the Member State where the VAT is chargeable, and with the country of the head office whether the establishment of this taxable person is not a legal instrument of mutual assistance, the scope of which is the same as that of Directive 76/308 / EEC (currently Directive 2010/24 / EU on mutual assistance in the recovery of VAT claims) and Regulation (EC) No 1798/2003 (currently Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of VAT), Member States may provide that this taxable person is to appoint a tax representative for the purpose of paying taxable persons. tax.

Belgium has made use of these options by means of Article 55 of the VAT Code.

Thus, Article 55 of the VAT Code does not, in its current wording, provide an exception to the obligation to appoint a liable representative for the benefit of taxable persons who, although not established in the Community, are in a country with a legal instrument of mutual assistance the scope of which is similar to that of Directive 2010/24 / EU on mutual assistance in the recovery of VAT claims and Regulation (EU) No 904/2010 on administrative cooperation and combating VAT fraud.

Because Belgium thus falls short in this way of the obligations arising from Article 204 of the VAT Directive, Article 55 of the VAT Code was amended by the law of 02.05.2019 to the extent of the obligation to appoint a liable representative to limit taxable persons who are established outside the Community but who are debtors of VAT in Belgium to those cases where this is possible in accordance with the aforementioned article of the VAT Directive.

A similar adjustment in Article 1 of the Royal Decree No 31 of 02.04.2002 with regard to the arrangements for applying value added tax to the transactions performed by taxable persons not established in Belgium has therefore been realized.

12. Final provisions

12.1.Statutory provision

Article 17 of the Royal Decree of 07.11.2019 provides as follows:

'Taxable persons who have concluded a rental contract with regard to a building or a part of a building, with the associated land, if applicable, that takes effect before the date of entry into force of this Decree and that no later than the date of entry into force of that agreement had the intention to tax the lease, exercise the option for taxation referred to in Article 44, § 3, 2 °, d) of the Code at the latest on the last day of the second month after the month in which this decision operation has occurred in one of the following ways:

1 ° by drawing up the statement referred to in Article 7quater, § 1, of the Royal Decree No. 10 of 29 December 1992 with regard to the exercise modalities of the choices, referred to in Articles 15, § 2, third paragraph, and 25ter , § 1, second paragraph, 2 °, second paragraph, of the Value Added Tax Code, declarations of commencement, alteration, cessation of activity and prior notifications regarding value added tax as inserted by Article 12 of this Decree, in accordance with the modalities provided for in that Article; 2 ° by adding, to the deed that constitutes the title of the rental contract between the parties, an addendum containing the statements of the declaration referred to in 1 °. '

Article 18 of the Royal Decree of 07.11.2019 provides as follows:

"Article 12 has effect as of January 1, 2019. Article 14 has effect as of February 4, 2019."

12.2.Comment

A transitional arrangement has been made regarding the exercise of the option for taxation of the real estate rental of real estate of its nature in accordance with Article 44, § 3, 2 °, d) of the VAT Code.

Taking into account that the scheme in question already takes effect on 01.01.2019, taxable persons who previously had the intention to subject the lease to VAT are granted an additional period to complete the formalities for the exercise of the aforementioned. option correctly.

Data subjects will have until the end of the second month following the month in which this decree entered into force, ie the tenth day after its publication in the Belgian Official Gazette.

Within the aforementioned period, they will either be able to draw up the declaration referred to in Article 7quater of the Royal Decree No 10, referred to above, or add an addendum to the deed that constitutes the title of the rental contract between them, including the statements that must are included in the aforementioned statement.

In accordance with the date of entry into force of the law of 14.10.2018, which, in the Code, inter alia, introduced article 44, § 3, 2 °, d) with regard to the optional taxation of real estate by its nature, the entry into force of Article 7c , new, of the Royal Decree No 10, regarding the option for the taxation of the rental of real estate by its nature established on 01.01.2019 subject to the application of the transitional arrangement.

The amendments to Article 5 of Royal Decree 46 regarding the vignette 705 will take effect from 04.02.2019 in line with the date of elaboration of the regulations on customs and the implementation of the digitization of the application concerned. This will allow those concerned to enjoy the benefits of the new procedure from that date.

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