



FSI tax alert Belgium

Cost sharing associations: VAT exemption regime changes on 1 July 2016

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The Belgian government introduced a draft law in Parliament that changes the VAT rules for cost sharing associations ("CSA's"). The main modifications include that CSAs will be allowed to render services to non-members and to provide services to members which are not VAT exempt. These will not affect the VAT treatment of other services

CSAs carry out for their members and which meet the conditions for VAT exemption. The new rules will enter into force on 1 July 2016.

Current VAT exemption regime : exclusivity approach

The purpose of a CSA is to pool costs and resources needed for common services to its members in order to increase efficiency and realise scale benefits, without creating VAT costs. In order for a CSA to benefit from the VAT exemption scheme under the current rules, its members should be either non-VATable persons (eg. public bodies) or VAT exempt businesses (eg. hospitals). Members with limited taxable activities are permitted as long as these do not exceed 10% of the turnover. Also, a CSA is only allowed to carry out services to its members, for which it is remunerated on cost-basis. If these conditions are not met, the CSA will lose the benefit of VAT exemption for its entire activity, which means that all of its services will be subject to VAT (incurring a cost for the members involved). The current regulation therefore entails that the CSA is necessarily a fully VAT exempt taxable person and is not able to recover any input VAT.

Non-members allowed

The draft law drastically changes the current regulation.

- Members partially subject to VAT (i.e. they also have a non-exempt business) will be allowed, provided that their non-taxable or exempt operations remain dominant in their overall activity. The former 10% threshold is substantially increased and VAT exemption for the CSA may still apply if the annual VATable turnover of each member is less than 50%.
- The CSA will only be able to exempt its services to members to the extent the members use these services for their exempt activity. If members have a taxable activity and use CSA services within that activity, the CSA will have to apply VAT. Given the link with the taxable activity of the member, this VAT should, in principle, not be a cost for the member.
- The CSA will also be allowed to render services to non-members, provided the CSA's activities predominantly consist of services to its members. This means that more than 50% of the CSA's turnover should be realised vis-à-vis its members. Also, fees charged to non-members should follow the same methodology as fees charged to members, which means they should equally be based on the costs incurred, without margin. If these conditions are not met, the entire activity of the CSA will be excluded from the benefit of VAT exemption.

The draft law also emphasises that the CSA's services should be 'specifically linked' with and 'essential' for the members' operations. Hence, 'non-core' services (eg. catering for its members) will not benefit from the VAT exemption. Under the current rules, the VAT exemption only applies to services, not to the supply of goods (unless embedded in the rendered services).

Mixed VAT person

The new regulation entails that a CSA will, in many cases, qualify as a mixed VATable person (contrary to today's situation where the CSA is fully exempt). This means that CSAs will be registered for VAT and will be entitled to partially recover upstream VAT incurred on their expenditure. The input VAT recovery will have to be determined on

the basis of the normal rules (general pro-rata or the direct allocation method). In addition, this may entail a partial recapture of the VAT incurred on capital goods.

Notification

If a CSA is VAT exempt, it should notify the competent VAT office at the start of its activities. This notification should also contain a list of the members. Also, at the moment of entry and exit of members, and in the case of change of activity, the VAT office should be notified. Existing CSAs will have to notify their VAT office in the course of the month of July.

Entry into force

If adopted by Parliament, the new rules will enter into force on 1 July 2016. It is expected that the Ministry of Finance will allow existing CSAs a transition period of 6 months, until 1 January 2017, during which they can opt to apply former rules.

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