



VAT alert Belgium

Catering services: Supply of goods or services?



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The Belgian VAT administration recently published an administrative decision (E.T. 100.714, dd. 24.06.2014) commenting on the VAT qualification and possible VAT consequences of a number of types of restaurant and catering services.

Supply of goods versus supply of services

Making reference to the ECJ Manfred Bog case, where the court ruled that the activities of a party catering service constitute the supply of a service unless the party catering service does no more than deliver standard meals without any additional elements of supply of services, or in which other special circumstances show that the supply of the food represents the predominant element of a transaction, the Belgian VAT authorities now lists the activities which, in their view, qualify as restaurant and catering *services* (subject to the 12% Belgian VAT rate, excluding beverages):

- the supply of meals including its serving to the table;
- the supply of prepared meals including the putting at the disposal of an infrastructure (tables, chairs, plates, glasses, etc.) in view of its immediate consumption (e.g. fastfood- and self service restaurants);
- the supply of prepared meals including a material intervention at the client's premises (preparation of the meals, serving, the putting at the disposal of plates, glasses, etc.).

The administrative decision confirms that the supply of meals is to be qualified as a supply of goods in case the above material intervention is performed by a person other than the one supplying the actual meals, but explicitly makes reference to the anti-abuse clause of article 1, § 10 of the Belgian VAT Code: *"Specifically, in case two persons are related (shareholder, control, ...) the supply of meals can be regarded as being a supply of a service. This is for instance the case if a catering service provider establishes a subsidiary whose sole activity is to serve the meals prepared by the mother company"*.

The putting at the disposal of catering infrastructure

In case the client puts their kitchen and/or other rooms at the disposal of the catering provider **for consideration**, whereby the catering provider limits its activities to the mere preparation of the meals, the Belgian VAT authorities explicitly accept the qualification as a supply of goods and thus the application of the reduced 6% VAT rate for foodstuffs (yet again referring to the anti-abuse rules).

In case the client puts their kitchen and/or other rooms at the disposal of the catering provider **for free**, the activities performed by the catering provider qualify as a supply of services.

As to the taxable base of this last service, the Belgian VAT authorities accept that the costs related to the actual use of the infrastructure are *not* to be included into the taxable base for the provision of the service (as these costs are already borne by the client directly and should hence not be subject

to VAT for a second time). The fact that the client puts their kitchen and/or other rooms at the disposal of the catering provider for free and bears a number of costs directly (without output transaction) will, under these circumstances, *not* have a negative effect on his right to recover input VAT. The latter however only applies if and to the extent that the catering provider renders activities to the client themselves. In case the catering provider also uses the same kitchen for serving other clients, the owner of the kitchen should limit their input VAT recovery on a pro rata basis.

Entry into force

The above decision will enter into force on 1 October 2014. As the date of entry into force is “*still relatively far away*”, the decision explicitly states no administrative tolerances will be granted.

The entry into force date does not seem to take into account existing contracts.

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