



VAT alert Belgium

Catering cost for commercial event: VAT deduction allowed

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The VAT Administration confirmed a change in policy whereby the VAT deduction on catering expenditure for commercial events will be accepted. With this new viewpoint, the VAT authorities have aligned themselves with Supreme Court case law and as such have abandoned their previous position (Decision n° 124.247 dd. 13 March 2015).

Supreme Court allows recovery

The discussion goes back to 2005 when the Supreme Court ruled that the VAT on “reception and entertainment costs” incurred for an event could be deducted by a taxpayer, provided the event was aimed to promote products sold by the taxpayer organising the event. In essence, these costs could be considered as publicity costs of a “strictly professional nature”, and not as reception and entertainment costs for which the VAT recovery is not allowed (art. 45 § 3, 4° VAT Code).

The VAT authorities adhered to the Court's decision but also indicated that this position did not extend to the VAT incurred on “food and catering” expenditure covered by another exception rule on the general deductibility of VAT (article 45 § 3, 3° of the VAT Code). Hence, VAT on catering and accommodation expenses could not be recovered, despite the event's “strictly professional” nature.

However, in 2010 and again in 2012, the Supreme Court also allowed the VAT recovery on such catering costs incurred for an event that was organised mainly to inform potential buyers on a certain product or service, with the aim of promoting the sale of this product or service. In its reaction to this new case law, the VAT Administration decided *not* to align its viewpoint with this Supreme Court ruling. The VAT Administration considered that the Supreme Court only took the “purpose” of these costs and not their “nature” into account, whilst VAT recovery was blocked specifically due to the nature of these costs.

New position allows deduction

However, in a decision published on 18 March 2015, the VAT Administration abandoned its previous strict position and now allows VAT recovery for such catering expenditure, when incurred for a commercial event organised for existing or new customers and is “mainly and directly” aimed at promoting the sale of certain products or services. These costs are to be considered as publicity costs of a professional nature. However, the VAT taxable person will need to demonstrate, case by case, that the costs are incurred within the framework of such an event.

Although the decision is tacit on this point, this new position can also be applied to the past. This will allow taxpayers who decided not to deduct such VAT in the past or who were assessed based on the old administrative viewpoint, to claim for this VAT deduction or refund. It should be kept in mind

that the deduction should be based on a valid invoice issued by the caterer and is limited to a 3 year prescription period.

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