VAT remains due on tenant compensation for own fit-out works

In a recently published circular letter (Dutch | French), Belgian VAT authorities maintain that where a landlord compensates the tenant’s own fit out works, VAT is due on this compensation.

Traditional viewpoint: deemed commissionaire

Since 1972, the VAT authorities have taken the position that whenever a landlord (partially) compensates the tenant for his/her fit out works in the leased property, a VAT taxable operation is triggered between the two parties. When completing these works, the tenant was presumed to have acted as a ‘deemed commissionaire’ on behalf of the landlord, with the compensation hence seen as remuneration for the immovable works deemed to have been conducted by the tenant for the property owner’s benefit. Furthermore, it was irrelevant whether compensation consisted of cash payment or another advantage granted by the landlord to the tenant (e.g. rent free period or temporary rental fee reduction). Hence, the tenant needed to provide the landlord with an invoice, to which VAT applied, or that was subject to the reverse charge mechanism if the landlord lodged periodical VAT returns. Where the lease agreement was exempt from VAT, the landlord was not able to recover this VAT.

In 2013 however, the Belgian Supreme Court challenged the (deemed) commissionaire principle’s automatic application. According to the Supreme Court, this viewpoint could only apply to the extent that the tenant in fact acted as
intermediary on behalf of the property owner in completing the works. According to the Court’s ruling, this is not the case where a tenant carried out fit-out works for his/her own purpose, even where he/she was compensated for these works by the landlord.

**Tenant carries out a service**

In a (late) reaction to the Supreme Court’s viewpoint, the circular letter drops the “deemed commissionaire” approach, but maintains that VAT is due on the proprietor’s compensation for works completed by the tenant.

Settled European case law has ruled that a transaction for consideration only requires that there be a direct link between the supply of goods, or provision of services, and the consideration effectively received by the taxable person. Hence, where the property owner agrees to compensate the tenant for works carried out, there is according to the new viewpoint, a “direct link” between the services (works carried out) and remuneration paid, thereby directly constituting a VAT taxable transaction.

**Is the “direct link” always there?**

One could wonder whether the new approach will always stand the “direct link” test. A “direct link” presumes that there is reciprocal activity, whereby remuneration received by the service provider (i.e. the tenant in this approach) constitutes the value actually given in return for the service supplied to the recipient (i.e. the property owner). If the works would purely benefit the tenant’s economic operations, and thus be irrelevant for the landlord, one could therefore question whether there would be any “value” in these works for the landlord. If this is not the case, there seems to be a “missing link” between the remuneration and works completed.

If you want to discuss the content of this alert of the next steps more in detail please contact your usual tax consultant at our Deloitte office in Belgium or:

- Ivan Massin, imassin@deloitte.com, + 32 2 600 66 52
- Joaquim Heirman (Laga), jheirman@laga.be, + 32 2 800 71 27
- Nancy Muyshondt (Laga), nmuysyondt@laga.be, + 32 3 242 42 30
- Danny Stas (Laga), dstas@laga.be, + 32 2 800 70 11

For general inquiries, please contact: bedeloittetax@deloitte.com, + 32 2 600 60 00

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