



VAT alert Belgium

Public bodies' VAT status: administrative viewpoint published

A wealth of tax information
within your fingers' reach
Discover Deloitte's apps



Belgium app



Global tax app

The VAT administration recently published an updated version of its administrative guidelines regarding the VAT status of public bodies (see administrative circular letter number 42/2015 dated 10 December 2015 – [Dutch](#) | [French](#)). As a result of Belgian and European case law, an update on previous administrative guidelines was already pending for a long time. The new circular letter also discusses in detail the VAT obligations with schematic overviews of different types of cases. The new

administrative guidelines are applicable as from 1 July 2016. What follows is an overview of the most important updates.

Starting point: a public body qualifies as a non-taxable person

As far as they perform activities or transactions “as public authority”, only public bodies are excluded from the scope of VAT. However, it is not always straightforward to determine whether a public body is acting “as public authority”. Therefore, the VAT administration is of the opinion that public bodies in Belgium, in principle, always act “as public authority” and consequently qualify as non taxable persons.

Exception: significant distortion of competition or specific activities not carried out on such a small scale as to be negligible

Public bodies are however considered as VAT taxable persons when they perform activities for which a treatment as a non-VAT taxable person would cause “significant” distortion of competition as well as for a limited list of activities mentioned in article 6, third indent of the VAT code, as far as these activities are “not carried out on such a small scale as to be negligible”.

In order to determine whether there is a distortion of competition, reference is made to the criteria developed by the European Court of Justice in its case law, meaning a potential (real and not purely hypothetical) distortion of competition in the disadvantage of private competitors or the public body itself.

Additionally, the new circular letter links the notions of “significant” and “not carried out on such a small scale as to be negligible” to a threshold which equals the current maximum threshold for the application of the exemption for small enterprises. As a result, the VAT administration will assume that, for a certain activity, there is no significant distortion of competition or that a certain activity is carried out on such a small scale as to be negligible, when the yearly turnover of that activity does not exceed the EUR 25,000 threshold.

VAT status of public bodies with VAT exempt activities

The VAT administration assumes that performing activities that are exempt by article 44 of the VAT code (e.g. the exploitation of a retirement home by a public social welfare center, the exploitation of sport infrastructure by a municipality, schools for community education, etc.) by a public body causes, in principle, a potential distortion of competition. Also in this case, the EUR 25,000 threshold is applied in order to determine whether this distortion of competition is “significant” and consequently leads to a (exempt) VAT status for the public body. The public body can prove the contrary.

As the activities mentioned in article 44 of the VAT code are exempt from VAT, the (exempt) VAT status does not result in the obligation to apply VAT on the outgoing transactions nor does it result in a right to deduct input VAT. Nevertheless, in certain situations, the capacity of exempt VAT taxable person can trigger VAT obligations (as per below).

VAT obligations

The circular letter describes in detail the VAT obligations depending upon the type of VAT status of the public body (non-VAT taxable person, partial VAT taxable person).

For a public body qualifying as a partial VAT taxable person because it performs activities as public authority on the one hand (transactions outside scope for VAT) and activities as mentioned in article 44 of the VAT code on the other (significant distortion of competition, activities inside scope of VAT but exempt), this implies:

- That the public body is considered as a VAT taxable business (B2B) for the application of the place of supply rules for services. This implies that the public body will have to pay Belgian VAT (via a special VAT return) on all services purchased from not in Belgium established suppliers and which are deemed to take place in Belgium for VAT purposes (regardless of whether this purchase is linked to the activity outside the scope of VAT or the VAT exempt activity);
- That the public body has to pay VAT on work on immovable goods (other than repair, maintenance and cleaning) performed with its own staff. This only applies for the work on immovable goods performed in the framework of the VAT exempt activity for which the public body is considered an exempt VAT taxable person.

Taking into account the fact that, going forward, the VAT status of the activities referred to in article 44 of the VAT code is clear, the tolerance that public bodies do not have to report these exempt activities in box 00 of their periodical VAT return also expires.

B2G tax point rules

Once it is established that a public body is considered a VAT taxable person for certain activities and that these activities cannot be exempt by article 44 of the VAT code, the public body will have to charge VAT on the price received and will have to pay the VAT to the Belgian state (via a periodical VAT return). In this case, the public body also has the right to deduct VAT paid on goods and services purchased with respect to these activities. As a result of the new tax point rules that apply as of 1 January 2016 in B2G-relations (Business to Government), the public body can only deduct the VAT charged on the purchase invoice upon its payment. For further details with respect to the new B2G tax point rules, reference is made to the [VAT alert of 2 December 2015](#).

To do's

The mandatory application of the new administrative guidelines as of 1 July 2016 allows public bodies to conform to the new guidelines. At this moment, the VAT administration is still completing a list of frequently asked questions (FAQ) with specific cases.

Therefore, it is recommended for every public body to (re)evaluate its VAT status by 1 July 2016, particularly with respect to the following topics:

- Mapping of activities for which a treatment as non-VAT taxable person could cause a significant distortion of competition;
- Evaluating the impact of the VAT taxable status as a result of performing VAT exempt activities on the purchase of services outside Belgium, work on

immovable goods performed with own staff, etc., in order to ensure a timely and correct remittance of Belgian VAT.

Contacts

If you have any questions concerning the items in this alert, please contact your usual tax consultant at our Deloitte office in Belgium or:

- Kris Eeckhout, keekhout@deloitte.com, + 32 9 393 75 39
- Joris Rasschaert, jrasschaert@deloitte.com, + 32 3 800 86 21

For general inquiries, please contact:

bedeloittetax@deloitte.com, + 32 2 600 60 00

Be sure to visit us at our website: <http://www.deloitte.com/be/tax>



Deloitte Belgium

Berkenlaan 8A, 8B, 8C
1831 Diegem
Belgium

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. Please see www.deloitte.com/about for a more detailed description of DTTL and its member firms.

Deloitte provides audit, tax, consulting, and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries and territories, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte’s more than 200,000 professionals are committed to becoming the standard of excellence.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the “Deloitte Network”) is, by means of this communication, rendering professional advice or services. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

[Subscribe](#) | [Unsubscribe](#)

© 2016. For information, contact Deloitte Belgium.