TAXATION / Value added tax / Administrative guidelines and comments / VAT Comment

# VAT Comment - Chapter 6. Taxable amount (Update on 01.06.2020)

[ Table of contents of the VAT Comment ]

BOOKWORK I I: Determination of the taxable basis and the applicable rate

## Chapter 6 : Taxable h effing of tax

Updated according to the state of the legislation applicable on **01.0 6.2020**

[ Version 01.07.2018 ]

TABLE OF CONTENTS

*Structure*



*Full table of contents*

[ Table of contents of this chapter ] - [ Table of contents of the VAT Comment ]

# Section 1 - Legislative framework

## 1. Overview of provisions of the VAT Code

Article 36
Article 58

## 2. Overview of provisions for implementing decisions

Royal Decree No 7 of 29.12.1992 regarding the import of goods for the purposes of the value added tax

Royal Decree No 8 of 12.03.1970 determining the method of rounding the value added tax, the deductible or the refundable value added tax

Royal Decree no. 13 of 29.12.1992 regarding the tobacco products scheme in the field of value added tax

Royal Decree no. 35 of 28.12.1999 introducing a standard taxable amount of value added tax on the profit margin of travel agents

Royal Decree No 51 of 14.04.1993 regarding the simplification scheme for intra-Community acquisition of excise products in the field of value added tax

[ Table of contents of this chapter ] - [ Table of contents of the VAT Comment ]

# Section 2 - Principles

The taxable amount is the amount by which VAT is to be calculated for each transaction at the rate applicable to that transaction.

This chapter can be summarized as follows:

- for the supply of goods and services, the tax is calculated on anything that the supplier of the good or service provider obtains or is required to obtain in return from the person to whom the good is supplied or the service is provided, or from a third party, including: the subsidies directly related to the price of those transactions (Article 26, § 1, first paragraph, of the VAT Code, additional clarifications are provided in the second and third paragraphs of this article, see section 3, title 1 and titles 3 to 6)

  However:

  - Article 26, § 2 of the VAT Code provides that the taxable amount for the supply of goods or services provided with regard to a multiple-use voucher is equal to the consideration paid for the voucher or, in the absence of information on that consideration, the monetary value stated on the multi-use voucher itself or in the accompanying documentation, less the amount of the tax on the goods supplied or services rendered (see section 8)
  - certain special situations must be taken into account as regards operating assets (see Section 3, Title 2)
  - Article 28 of the VAT Code excludes certain elements from the taxable amount (see Section 3, Title 8).
- for the conversion of a price expressed in a foreign currency, please refer to Article 27 of the VAT Code (see section 3, title 7).
- if the consideration does not or does not consist exclusively of a sum of money, that benefit is calculated for the calculation of the tax at its normal value (Article 33, § 3, of the VAT Code; see section 4).
- Articles 33, § 2 and 36 of the VAT Code, on the other hand, impose a minimum taxable amount for certain transactions, being the normal value of these transactions (see section 5).
- there are also acts equivalent to a supply or a service for consideration. The taxable amount for such transactions is determined by Article 33, § 1 of the VAT Code (see section 6).
- the taxable amount for services by a travel agency is set at a percentage of the total of the amounts that the travel agency charges within the meaning of Article 1, § 7, first paragraph, 2 °, of the VAT Code (see article 35, second paragraph, of the VAT Code and section 7)
- Article 58, §§ 1, *1a* and 4 of the VAT Code, on the other hand, concern special provisions with regard to certain types of goods (see section 9).
- any rounding of the amount of the tax, deductible or refundable tax or of the total amount payable by the customer is subject to Section 10
- Finally, the provisions relating to intra-Community acquisitions of goods (Articles *26a* and *33a* of the VAT Code, see section 11) and the import of goods (Article 34 of the VAT Code, see section 12) are discussed.

[ Table of contents of this chapter ] - [ Table of contents of the VAT Comment ]

# Section 3 - The consideration only consists of a sum of money

## 1. Basic rules

When the consideration consists only of a sum of money, the tax is calculated on anything that the supplier of the good or the service provider obtains or must obtain in return from the person to whom the good is supplied or the service is provided, or from a third party, with including subsidies directly related to the price of those transactions (Article 26, § 1, first paragraph, of the VAT Code).

The taxable amount includes, among other things, the sums charged by the supplier or service provider to the person to whom the good is supplied or the service is provided as commission, insurance and transport costs, whether or not this is charged separately the debit document is made or pursuant to a separate agreement (Article 26, § 1, second paragraph, of the VAT Code).

Taxes, duties and charges must also be included in the taxable amount (Article 26, § 1, third paragraph, of the VAT Code).

However, some amounts that are charged to the contracting partner, including the VAT itself, do not form part of the taxable amount (Article 28 of the VAT Code).

# 2. Special situations with regard to company assets

## A. Sale by a taxpayer of an asset that is only partially recognized in its operating assets

In the case of the sale by the taxpayer of an asset that is only partially included in its operating assets, only the sale of that portion is subject to tax (see circular AAFisc No. 36/2015 (No. ET 119.650) of 23.11. 2015 , points 2.1.3. And 2.5.1.).

### a. Taxable legal person

It is part of the established administrative doctrine that business assets that a legal person obtains can only belong to business assets, since a legal person has no private assets (see circular no. AOIF no. 5/2005 (no. ET 108.691) of 31.01.2005 , point 3.7 .).

### b. Taxable natural person

A taxable individual, however, has the option to take over all or part of the equipment in his business or even to not record it (see thereabouts Court of Justice of the European Union Judgment Bakcsi Case C-415/98 from 08.03.2001 ). The intention to include an asset in operating assets must be assessed on the basis of the amount included in schedule 83 of the periodic VAT return, as that amount establishes the final ratio of the recognition to operating assets (see notes to filling in the periodic VAT return of 01.01.2014 , marginal 160).

In the case of partial recognition in the business assets by such a taxable person, only the part that was included in the business assets falls within the scope of VAT.

In accordance with Article 2 of the VAT Code, as interpreted in the light of the Backsi judgment , the sale of an asset by this taxable person with a right of deduction is, in principle, as follows:

- fully subject to tax when the good is fully included in its operating patrimony.
- subject to tax only to the extent of the portion of that good which was included in the operating portfolio, when that good was only partly included in that asset.

## B. Sale by a taxable person of a vehicle as referred to in Article 45, § 2, first paragraph, of the VAT Code that he has used as a business asset

With regard to the sale of vehicles referred to in Article 45, § 2, first paragraph, of the VAT Code, which were initially used as operating assets, reference is made to circular AAFisc No. 36/2015 (No. ET 119.650) of 23.11.2015 point 2.5.3.

Taking into account the principles of fiscal neutrality and proportionality, the administration accepts that VAT on the sale of such a means of transport as referred to in Article 45, § 2, first paragraph, of the VAT Code is only levied on half of the requested amount. amount, without it having to be determined whether the deduction was originally limited on the basis of Article 45, §§ 1 or *1d* , or Article 45, § 2, first paragraph, of the VAT Code.

This concession applies to means of transport intended for the transport of persons and / or goods by road, as referred to in Article 45, § 2, first paragraph, of the VAT Code (right to deduct a maximum of 50% of the tax paid). .

In order for a taxable person to be able to rely on that concession, it is important that he was charged VAT when he purchased the means of transport (which he alienates) and that he has enjoyed a right of deduction.

This condition therefore excludes that concession:

- the car vehicles that were purchased without applying VAT (for example, purchase from a private person)
- the motor vehicles for which no right to deduct could be exercised (for example, purchase using the profit margin scheme referred to in Article 58, § 4 of the VAT Code).

## C. Note

The above mentioned under sections A and B also applies if the consideration does not or not exclusively consist of a sum of money (see section 4).

# 3. Price

## A. Principles

In the majority of commercial transactions, it is the price paid by the customer that constitutes the consideration.

It should be noted that, in accordance with the Code of Economic Law, Book VI on Market Practices and Consumer Protection (Article VI.4), the indicated price or rate must be the total price to be paid by the consumer or the total rate at which VAT, all other taxes as well as the costs of all the services which are obligatory to be paid by the consumer are included.

On the other hand, the drinking money (tip) paid on top of the price for the service to some service providers (for example, services of hotel and restaurant owners, of hairdressers) is, in principle, not compulsory and the customer is left free to choose.

It is therefore not normally a constituent of the price to be included in the taxable amount.

However, with regard to the services of taxis, the drinking money (tip) is mandatory and included in the price indicated on the taximeter (Law of 27.12.1974 and Ministerial Decree of 29.12.1975).

## B. Understanding price

For the purpose of calculating the taxable amount, the price to be taken into consideration is the cash equivalent of a supply of a good or the provision of a service, as determined between the parties at the time when the tax becomes due.

The prize may be expressed globally by a single amount or broken down into its distinct components by adding up multiple amounts charged separately.

Example:

*A construction contractor, entrusted with the construction of a building, can make a global fixed price or, if he works in direction, separately charge the price of the materials, the hourly wages, the transport costs, the rental costs of the equipment. , the travel costs of the staff, the expertise costs ...*

*In the second case, the various amounts claimed separately form the components of the construction price, the sum of which constitutes the price to be taken into account for this single global service. They should not be considered separately as the price of specific actions.*

It is only important to consider whether certain of those amounts should not be regarded as advances within the meaning of Article 28, 5 ° of the VAT Code (see Title 8, Section E, below).

They form part of the price and are therefore included in the taxable amount:

- the compensation granted to the supplier because he delivered the good or provided the service before the agreed period expired
- the additional fee owed by the tenant of a video film or DVD for exceeding the originally agreed rental period, regardless of the name of that additional fee or the way in which it is presented.

## C. Additional supplies or services

Certain amounts claimed for supplies of goods and services appear to be closely related to the performance of a main act of which they are incidental. These are considered to be elements of the price of those transactions.

European case-law states that a service must be regarded as additional to a main service if it is not an end in itself for customers, but only a means of making the main service of the service provider as attractive as possible (see in particular Court of Justice of the European Union, Card Protection Plan, Case C-349/96, 25.02.1999 ).

Form elements of the price and thus form part of the taxable amount:

- the amount of the postage stamps that the supplier charges to the customer for the shipment of a package
- the amount that may be requested from purchasers of bottled gas for the provision, maintenance, inspection and repair of the container
- the amounts that companies in the water, gas, electricity and cable distribution sector ask their subscribers for various incidental services (connection costs, costs of approval, control or relocation of installations, of use, maintenance, repair or reinforcement of meters, normal administration costs, costs for drawing up the invoices...) (see notice no. 65/1971 of 27.04.1971 and decision no. ET 84.570 of 29.05.1997 )
- the amount requested for the supply of electricity in the context of a service consisting in the provision of a camping pitch to a camper (see decision no. ET 5.835 of 27.05.1971 and written parliamentary question no. 137 by Mr Volksrepresentative André Bourgeois of 31.01.1984 )
- the amount charged by a animal feed trader to farmers for making silos available for their storage in their undertaking ( decision No ET 16.966 of 10.04.1974 )
- the copyrights owed by the cable distribution companies to SABAM and the television networks for the programs which they provide to the public, which are charged to subscribers. They form part of the fees charged by those companies, even if they are charged separately to subscribers ( Written Parliamentary Question No 343 by Mr Delhaye, Member of Parliament, 06.07.1984 )
- the amounts paid by the State to construction contractors above the contract price, which these contractors are required to pay to their workers as an additional compensation under a collective labor agreement ( decision no. ET 15.647 of 03.08.1973 )
- the minimum lump sum that is requested in any case, irrespective of the number of communications from the customer, by the operator of a telephone network ( Written Parliamentary Question No. 412 by Mr People's Representative Yvan Ylieff dated 09/09/1983 and Written Parliamentary Question No. 254 by Mr Representative

André Baudson from 22.03.1985 )

- the fee that the issuer of credit cards charges the seller when, in the context of a sales transaction, the price of the goods or services is paid by the buyer by means of a credit card; VAT is therefore due on the full price paid by the customer, as charged by the credit card company to the customer ( Written Parliamentary Question No 422 by Mr MP Emmanuel Desutter of 23.01.1990 and Court of Justice of the European Unie, Judgment Chaussures Bally SA v Belgian State, Case C-18/92, 25.05.1993 )
- the recycling tax due under the take-back obligation for electrical and electronic equipment ( written parliamentary question No. 745 by Ms deputy representative Trees Pieters of 05.07.2001 )
- the amounts requested by notaries, bailiffs and lawyers for the costs they have incurred and passed on to their customers, including the taxes and charges of which they are the debtor (compare Title 8, section E, below) and that of them advanced and this regardless of whether or not they are charged separately ( decision no. ET 121.923 of 03.04.2012 , point 3.2., first paragraph, decision no. ET 122.121 of 08.03.2012 , point 3.2., first and fifth paragraph , circular AAFisc No. 47/2013 (No. ET 124.411) of 20.11.2013 (update of 01.04.2017 ) , marginal 90)
- the amount withheld by the co-contracting party of a taxpayer for the withholding tax paid by him in the circumstances envisaged by Article 228, § 3, of the CIR 1992 ( written parliamentary question no. 44 by Mr. Frank Wilrycx of 07.11.2014 ).

## D. Costs of the price

Amounts charged above the price by the supplier or service provider to his co-contractor must be included in the taxable amount.

This is in particular the case for the amounts owed by the supplier or the service provider to a third party, the payment of which to which he imposes on that third party, for example a creditor of the seller's trade debt, to his customer.

Example:

*Sale of goods for the price of 750 euros, as well as the obligation for the buyer to pay a trade debt of the seller in the amount of 250 euros.*
*Tax base: 1,000 euros.*

When the charge does not consist of an obligation to pay a sum of money (for example, the sale of a good for a sum of money and the obligation for the buyer to perform certain activities on behalf of the seller), the taxable amount is the normal value of all the consideration (see section 4).

## E. Elements of the prize or charge of the prize

It is not always easy to determine whether the amounts charged are elements of the price or are a burden on the price. However, the distinction is irrelevant since all amounts charged by the supplier or the service provider to its co-contractor above the price, irrespective of whether they are referred to as elements of price or charge of the price, must in principle be included in the taxable amount are understood, except when it concerns amounts as referred to in Article 28 of the VAT Code, such as in particular advances (see Title 8 below).

# 4. Part of the price or compensation

## A. Principe

Certain amounts due to or by a taxable person may be compensation not subject to VAT where payment is caused by the correction of an error.

It is therefore a matter of compensation and not of the consideration of a supply of goods or of a service.

This is particularly the case for:

- the amounts that someone pays to a telecom operator to reimburse them for the costs of moving or removing cables, poles and other installations belonging to it, made necessary by the work he wants to carry out.
- the amount that an intermunicipal association charged with the construction of a motorway pays to SNCB as compensation for the costs caused by the displacement works of railway installations ( decision no. ET 16.532 of 08.03.1974 ).

## B. Contractual relations

It is also possible that the supplier of a good or the service provider, or his customer, will have to compensate the other party in the performance of an agreement if it suffers damage (compare article 1382 of the Civil Code and following).

Such damages fall outside the concept of price and therefore escape the application of VAT without affecting the amount of the taxable amount of the transaction carried out.

### a. Damages owed by the customer

The following are considered as compensation:

- the waiting costs claimed by the SNCB from the customer due to the unloading of the rail cars in time

- the costs that a supplier of ready-mixed concrete claims from the customer due to the shutdown of the delivery equipment if this must remain on the construction site longer than the time determined for the pouring
- the amount that a telecom operator asks from a subscriber who is liable for the damage caused to its installations
- the amount to which a beet planter is entitled if, due to the fault of the sugar factory, his deliveries of beet are to be spread over eight weeks; the amount due to the beet planter for failure to collect the beets from the sugar factory on time ( notice no 123/1971 of 05.08.1971 , marginal 4)
- the amount that the client pays to the contractor in application of Article 1794 of the Civil Code , due to the breach by his sole will of the contract, insofar as this compensation covers the loss of profit of the contractor for the work that he has not performed ( decision no. ET 18.762 of 13.09.1974 )
- de bedragen aangerekend als herinneringskosten of kosten voor ingebrekestelling, als kosten voor de tweede aanbieding van de kwijting, als kosten voor verbreking wegens het niet nakomen van de verplichtingen, met inbegrip van de kosten voor de afsluiting van het distributiepunt wegens niet-betaling en als vervolgingskosten voor de invordering van onbetaalde facturen (beslissing nr. E.T. 84.570 van 29.05.1997)
- de bedragen die als voorgeschoten bedrag zijn aangerekend in het kader van overeenkomsten inzake hoteldiensten, in gevallen waarin de klant gebruik maakt van zijn recht van annulering en de hotelexploitant de bedragen behoudt (Hof van Justitie van de Europese Unie, Arrest Société thermale d'Eugénie-les-Bains, zaak C-277/05, van 18.07.2007).

### b. Schadevergoeding verschuldigd door de leverancier of dienstverrichter

Het spreekt voor zich dat de bedragen die de leverancier of dienstverrichter specifiek betaalt om schade te herstellen die zijn klant ondervindt, de aard van een schadevergoeding hebben.

Het kan bijvoorbeeld gaan om schade aan de woning of aan de installaties van de klant bij de uitvoering van werken in onroerende staat door een aannemer.

The amounts specifically paid by the supplier in order to repair the damage suffered by his customer as a result of a delay in the execution of the works also have the nature of compensation and do not affect the taxable amount.

Such an option may even be provided for in the contract from the time of its conclusion.

In this regard, reference is made to circular No. 2017 / C / 65 (No. ET 132.342) of 25.10.2017 .

In the situations referred to in this subsection (b), the penalties for delay, which serve both a dissuasive and a remedial function, should in no way be regarded as price reductions in the transaction carried out by the supplier.

## 5. Other amounts included in the taxable amount

## A. Grants directly related to the price

### a. Concept of subsidy

The grant may be described as financial assistance provided by the State or a public or private legal person directly or indirectly supported by the State to a natural or legal person, to finance activities that are deemed useful, inter alia, for the common good, under the condition that the use of the funds received must be justified and that it must be possible to monitor their use ( Parliamentary Question No 300 by Mr Deputy Richard Fournaux , 23.02.1996 ).

### b. Subsidy directly related to the price

For the subsidy to be included in the taxable amount, it is also required to be directly related to the price.

That condition is fulfilled and the subsidy granted must therefore be included in the taxable amount of VAT where it meets the following three requirements:

- the grant must constitute a consideration or an element of the consideration of the supply or service; This is the case, inter alia, when the subsidy is granted to companies whose sales price of their products is below the profitability threshold or when the subsidy is granted to the supplier or service provider as a direct compensation for a sales price imposed on the latter.

  It must always be proven that there is a direct link between the grant and the price of the goods and services supplied by the subsidized body, so that it can be clearly demonstrated that the costs to be paid by the purchaser of the good or by the recipient of the service price is reduced in function of the amount of the subsidy granted to the seller of the good or the service provider. The subsidy thus co-determines the price requested by the latter ( Court of Justice of the European Union, Office des produits wallons , Case C-184/00, 22.11.2001 )
- the subsidy must be paid to the producer, the supplier or the service provider
- the subsidy must be paid by a third party, in the sense that the acts for which a government grants subsidies may not be performed for the latter.

Such grants do not affect the exercise of the right of deduction by the taxpayer concerned, unless it would be a taxpayer with partial right to deduct, in which case the grants would amount to the amount of transactions giving entitlement to deduct or those not entitled increase the deductible in proportion, depending on whether the subsidies directly related to the price relate to the transactions giving entitlement to deduct or the transactions which do not confer deduction.

Example:

*A specialized company, which is entrusted by the government with carrying out a study that may interest the citizens and which therefore has to be published in the form of a brochure for this purpose, receives from the government EUR 1.00 per brochure it sells . When the price asked for the buyers is 1.50 euros excluding VAT per brochure, the VAT will be*

*owed on: 1.50 euros + 1 euros (except if otherwise stated, the subsidy amounts to an amount including VAT) = 2.50 euros .*

### c. Andere subsidies

On the other hand, subsidies which are not directly related to the price do not form part of the taxable amount, although they may have an impact on the final cost of a product or service. This is the case, inter alia, with regard to operating allowances, which cover part of the taxable person's operating costs.

## B. Transport costs

The transport costs must, when applying Article 26, § 1, second paragraph, of the VAT Code, be included in the taxable amount as soon as they are charged to the customer by the supplier of the good or the service provider, regardless of whether or not this is done with a separate debit note or under a separate agreement.

The following cases can be distinguished:

- When a sale is made ' carriage paid ', that is to say, if the supplier does not charge any separate amount to his customer for the costs of the transport, the carriage paid price is taxable since the transport costs have already been included in the price. It may happen that the transport costs were paid by the buyer on behalf of the seller upon receipt of the goods and that the supplier deducts the costs paid on the invoice from the carriage paid price. In that case too, this franc price is the taxable amount.
- Where the transport costs have been charged to the customer for a separate amount, those costs shall be added to the price for determining the taxable amount, even if the supplier or service provider, in addition to the contract for the supply of the goods or service, has entered into a separate transport contract with its customer. That transport contract is not taxed separately.
- If the transport is carried out by the buyer himself or on his behalf by a third party, who invoices the transport costs directly to the buyer, the seller will normally not charge transport costs to his buyer, nor should the transport costs borne by the buyer be charged. included in the taxable amount for the sale (the transport costs relating to the transport performed by a third party on behalf of the buyer are, of course, taxed in the relationship between the carrier and the buyer). However, the seller may charge transport costs on his invoice because he has paid those costs to the carrier but only as agent of the buyer (ie in his name and on his behalf), so that he only charges those costs. has advanced.
- Transport costs may relate to several groups of goods that are taxable at different rates. In principle, these costs must be apportioned pro rata to the price of the goods belonging to each tariff group. However, in order to facilitate the construction of the invoice, the administration accepts a simplification consisting in that the transport costs are uniformly taxed at the lowest rate applicable to the invoiced goods, provided that it is commercially customary that the lowest rate taxed goods are transported and delivered by the taxable person with the other goods at the same time. If those separately invoiced costs relate only to the transport of goodsbelonging to a particular tariff group, it goes without saying that these costs must be taxed at that tariff.

## C. Insurance and commission costs

The same rules apply to insurance and commission costs as apply to transport costs.

This also applies to the insurance premium that is wholly or partly passed on to the buyer in the context of the additional guarantee ( decision no. ET 65.063 of 23.12.1992 ).

## D. Taxes, duties and charges

### a. The supplier or service provider is the debtor

If the supplier or service provider is a debtor of taxes, duties and charges other than VAT and recovers them from his customer, these taxes, duties and charges, pursuant to Article 26, § 1, third paragraph, of the VAT Code, belong to the taxable amount for calculating the VAT due on the goods supplied and the services rendered, even if they are charged separately to the customer for the correct amount.

This is the case, among other things, with regard to the following taxes, duties and charges:

- the environmental tax, which is payable as a result of the removal and destruction of waste, is part of the taxable amount of VAT with regard to the service performance regarding the collection, collection, depositing, disposal, destruction, processing and the like of waste.
- the residence tax or the tax on rooms for rent applicable to hoteliers and payable by the latter to the competent authority, is included in the taxable amount of the VAT on the accommodation service. The same regulation applies with regard to the annual tax that is charged by some municipalities from operators of camping grounds and weekend stays.
- the municipal tax that is charged to the owner or holder of a billboard which is intended for putting posters and which the owner or holder by invoice to the person on whose behalf he, through posters, run the advertising campaign.
- the calibration wage claimed by the Metrological Service of the FPS Economy of water meter sellers under the provisions of the Law of 16.06.1970 and charged to the buyers by the latter ( decision no. ET 40.140 of 21.04.1982 ) .
- the amount of tax paid by the concessionaire of the gas distribution network to the municipalities for the use of the public domain of those municipalities and subsequently passed on by that company to another company in charge of gas sales must be included in the taxable amount of the supply of services by the first to the second of those undertakings, that is, the use of the infrastructure of the network for the supply of the gas to the consumer ( Court of Justice of the European Union, Lisboagas, Case C-256 / 14, from 11.06.2015 ).

### b. The customer is the debtor

If the customer owes taxes, duties and charges other than VAT, but these are paid on behalf of that customer by the supplier or service provider, who requests the correct amount to be repaid to that customer, these are advances that escape the application of VAT (see Title 8, Section E, below).

# 6. Special cases

## A. Provisional price

If the price has not yet been determined at the time of delivery because, according to the agreement, the price depends on an unknown fact (for example, the outcome of an expertise or the market prices), the tax is calculated on a provisional taxable amount which must be be revised as soon as the final price is known, which may then involve either an additional payment of VAT or a refund of VAT.

## B. Sale on installment or hire purchase

In the case of installment sales or hire purchase (see Book I: Tax Obligation and Taxable Operations - Chapter 3: Services), VAT is not calculated on the amount of the cumulative installments or fees, but on the price that would have been paid in cash, provided that the invoice issued or the document valid as such states the cash price (see note 02/1983 of 08.02.1983 ).

## C. Deferment of payment

Overeenkomstig de rechtspraak van het Hof van Justitie van de Europese Unie (Hof van Justitie van de Europese Unie Arrest Muys' en De Winter's bouw, zaak C-281/91, van 27.10.1993) verstrekt een leverancier van goederen of diensten die zijn klant tegen vergoeding van interesten uitstel van betaling verleent, in beginsel een krediet (van de belasting vrijgestelde handeling, zie Boekwerk II: Bepaling van de belastbare basis en het toepasselijke tarief - Hoofstuk 9: Vrijstellingen beoogd door artikel 44 van het Btw-Wetboek).

If the supplier grants such an extension only until the time of delivery of the good or until the service has been provided, such interest does not constitute the reimbursement for credit, but an element of the consideration obtained by the supplier.

Such interest should not be confused with interest due for late payment. The latter interests escape the application of VAT (see Title 8, section C).

## D. Goods or services subject to different rates

### a. Principe

Where the transaction concerns goods (or services, which is less common in practice) that are subject to a different rate, the taxable amount should be determined per rate. After all, the tax must be calculated per rate.

Example:

*Sales of fertilizers (6%) at the price of 250 euros, of coal (12%) at the price of 500 euros and of fuel oil (21%) at the price of 375 euros.*
*The tax is calculated as follows:*

| | |
|---|---|
| *250 euros at 6%* | *= 15 euro* |
| *500 euros at 12%* | *= 60 euro* |
| *375 euros at 21%* | *= 78,75 euro* |
| | *153,75 euro* |

### b. Global price

When goods that are taxable at different rates are sold at a single price, the seller must split the price for levying VAT, unless the whole is charged as such, which is the case for pocket pharmacies and first-aid kits subject to the rate of 6 % pursuant to heading XVII, number 3, of table A of the annex to the Royal Decree 20 of 20.07.1970, determining the rates of value added tax and classifying the goods and services by those rates .

If this split does not occur, the levy is only regular if the whole is taxed at the rate that applies to the part of the whole that is subject to the highest rate.

Example:

*Sale for a single price of 50 euros of a whole consisting of various food (value 15 euros, rate 6%) and spirits (value 35 euros, rate 21%).*
*If the seller does not split the price for the various objects that make up the whole, the levy must be made at the rate of 21% (rate applicable for spirits) over 50 euros.*

### c. Packaging that is not ordinary or usual

If a good is supplied in a packaging which is not to be regarded as ordinary and usual packaging (see Title 8, section D) but as a separate good, that packaging must be taxed separately if it is charged at a different rate than that of the delivered well is subject.

Regarding the split, see subsection b above.

### d. Surprise bags

In view of the low value of the confectionery items, it has been decided that in the case of so-called surprise bags (consisting entirely of a bag filled with a little candy and a small toy), no breakdown of the sales price of these articles should be made for the levying of VAT. and therefore the rate of 6% may be applied uniformly, provided that the consumer price does not exceed 1.25 euros ( decision no. ET 49.210 / 4 of 23.07.2012 ).

This decision also applies to all confectionery whose consumer price does not exceed that amount and which is offered as a snack along with a gift that has nothing to do with the candy but which is packed in the same bag (dots, pictures, colored pictures, medals, key rings, dolls ...), or together with an article that serves as a container or as a support for the snack (pipe with a cup filled with candy, baby bottles with sugar balls, lollipop with a stick replaced by a figurine ...).

### e. Import

With regard to what is stated under heading D, it is noted that with regard to imports, the rules as applied by the General Administration of Customs and Excise must be followed.

## E. Deliveries and services offered without price increase

In the case of a delivery of one or more additional goods without payment of an additional cost (for example 6 goods for the price of 5), the tax is, in accordance with Article 26, § 1 of the VAT Code, payable to the purchaser price asked. This also deviates from Article 12, § 1, first paragraph, 2 °, of the VAT Code ( written parliamentary question No. 311 by Ms Senator Clotilde Nyssens of 22.12.1999 ).

It is interesting to compare this answer with European case law (see section 5, title 1).

In any event, in that view, it is in principle assumed that the price charged for the meal or consumption also includes the drink offered when an operator of a drink establishment, a restaurant or similar establishment offers a spirit or other drink to a customer on the occasion of the provision of a meal or consumption for consideration. Consequently, this free offer does not result in a revision of the deduction or any taxable deduction ( decision no. ET 93.887 of 30.08.2000 ).

However, it should not be forgotten that the taxpayer must provide proof of the special circumstances in which this was offered to the customer, in order to establish the presumption included in Article 64, § 1 of the VAT Code, which allows the administration to to tax such goods or services as were provided at the price usually requested.

## F. Joint offering of products or services to consumers

Pursuant to Article I.8, 21 °, of the Code of Economic Law, Book I - Definitions, there is a joint offer when the procurement, free of charge or otherwise, of products, services, all other advantages or titles with which products, services or other advantages can is tied to the acquisition of other, even equal, products or services.

With regard to VAT, a distinction should be made between the following two cases:

- the supplier of a good or a service within the meaning of the VAT Code jointly offers, with that good or service, at one price, one or more goods or services which are also referred to in the VAT Code
- the supplier of a good or a service within the meaning of the VAT Code offers together with that good or service a title that is not a good within the meaning of the Code but with which a good, a service or other advantage can be obtained.

For the solution of these two cases, reference is made to Note 85/1972 of 31.07.1972 , amended by Note No 22/1975 of 29.09.1975 .

It may, however, be the case that when a good is delivered or a service is provided, titles are offered to consumers whose delivery is contrary to the above-mentioned Code.

This is the case with titles that do not have a monetary value and that give the right to obtain goods or services that are not the same or similar to the main product or service.

In that case, marginal numbers 18 and 19 of the aforementioned registration no. 85/1972 of 31.07.1972 apply.

## G. Joint offering of products or services between traders

This refers to the case in which not a consumer but a trader enjoys the joint offer.

Although the Code of Economic Law, Book VI on market practices and consumer protection, does not apply to joint offers between traders, the rules contained in letter no. 85/1972 of 31.07.1972 , as amended by letter no. 22/1975 of 29.09.1975 , shall be applied by analogy whenever it concerns a case of joint offer for which that notice would provide a solution if the recipient had been a consumer.

However, the latter extension does not apply to the rules referred to in marginal 20, a and c of letter 85/1972 of 31.07.1972 , as amended by letter 22/1975 of 29.09.1975 , when it concerns titles obtained by a taxable person in respect of supplies or services rendered to him in that capacity.

Therefore, when these titles are exchanged for goods or services, VAT is due on their normal value, in accordance with marginal 19 of Letter No 85/1972 of 31.07.1972 .

## H. Surrender to the Contractor

If the client is obliged to leave the damaged goods due to a treatment error by the contractor and demands a certain amount as the value of the goods, the VAT is due in respect of that transfer at the time that the contractor obtains ownership of the goods. under the arrangement made by the parties.

In that case, VAT must be calculated on the normal value (see section 4) of the damaged goods in the state in which they are at that time. If the amount paid by the subcontractor exceeds normal value, the surplus should be regarded as compensation for misconduct that is therefore not taxable with VAT.

## I. Claim by or on behalf of the government

In the event of a claim or expropriation by or on behalf of the government, the fee is deemed to be the price to be taxed, with the exception of the reinvestment fee that is not part of the taxable amount (Article 31 of the VAT Code).

## J. Relationship of principal to commission agent (Article 29, § 1 of the VAT Code)

In the relationship between the supplier of a good or the service provider and his broker (or intermediary designated as such by articles 13, § 2, and 20, § 1 of the VAT Code), the commission awarded to the broker is not included in the taxable amount. The tax is thus calculated on the amount for which the supplier or service provider (principal) debits the broker, that is, on the price of the sale or service to the customer, after deduction of the commission paid by the principal to the broker granted.

In the relationship between the acquirer of a good or the recipient of a service and his broker (or intermediary designated as such), the commission is added to the price for the calculation of the tax. The tax is thus calculated on the amount for which the broker debits the principal, that is, the price of the good or service plus the commission.

It goes without saying that the normal rules for determining the taxable amount apply in the relationship between the broker and the contracting partner.

# 7. Conversion of a price expressed in a foreign currency

## A. Importation of goods (Article 27, § 1 of the VAT Code)

Reference is made to section 12.

## B. Transaction other than an import of goods (Article 27, § 2 of the VAT Code)

If the elements for determining the taxable amount for a transaction other than an import of goods (including an intra-Community acquisition referred to in Section 11) are expressed in the currency of a third country or of a Member State that does not have the euro the applicable exchange rate for the conversion between this currency and the euro is:

- the latest euro exchange rate published by the European Central Bank
- for currencies for which the European Central Bank does not publish an indicative exchange rate, the last euro exchange rate published by the National Bank of Belgium.

When an exchange rate is agreed between the parties, or when an exchange rate is stated in the contract, invoice or replacement, and the price actually paid has been paid in accordance with that rate, the agreed rate is taken into account.

## C. Special case (Article 27, § 3 of the VAT Code)

When the elements for the determination of the basis for charging an in Articles 58 *to* and 58 *c*of the provision of services referred to in the VAT Code (with regard to the special arrangements applicable to telecommunications, radio and television broadcasting or electronic services provided to non-taxable persons) are denominated in the currency of a third country or of a Member State euro, notwithstanding Article 27, § 2 of the VAT Code for the conversion between this currency and the euro, the exchange rate applicable on the last day of the declaration period for the European Central Bank for that day shall apply. announced or, failing that, the exchange rate for the next day of publication.

# 8. Amounts not included in the taxable amount (Article 28 of the VAT Code)

The following amounts are exempt from the taxable amount.

## A. The sums that can be deducted from the prize as discount (1 °)

This refers to the amounts that may be deducted by the customer as a discount for cash payment under the contract.

The arrangement applies regardless of whether or not the customer pays before the due date and thus regardless of whether or not he obtains the discount.

## B. The price reductions granted by the supplier or the service provider to the customer and obtained by the latter at the time when the tax becomes due (2 °)

### a. Terminologie

These price reductions can be granted under any name (bonus, commission, discount, discount ...) and must have been obtained by the customer at the time when the VAT becomes due.

For example, if a dairy company charges an amount in proportion to the number of liters of milk supplied on its periodic statement with a milk supplier for the use of its milk jugs, that amount should be regarded as a price reduction for the milk supplied and thus not be charged as a rental price ( decision no. ET 12.463 of 06.02.1973, published with no. 389 ).

Likewise, the amount that grain traders charge to farmers for drying and storing grain supplied by farmers may be regarded as a reduction in the price of the grain rather than as a fee for services that grain traders provide to farmers ( Decision No ET 14,391 of February 22, 1973 ).

The fact that the price reductions are payable only after a certain period of time does not preclude an immediate reduction of the taxable amount, but requires the customer to have an acquired right at the time of delivery.

### b. Other price reductions

In the case of price reductions that have not yet been obtained by the customer when the VAT becomes due, VAT must be levied on the full price. Of course, the tax will be returned to the appropriate course, when a price reduction is obtained by the customer after the time when the tax becomes chargeable (see Article 77, § 1, 2 ° of the VAT Code and Book IV: Satisfaction of the tax - Chapter 14: Refund of the tax).

This is the case, for example, when the supplier allows a year-end discount to his customer.

In this regard, it is noted that if the supplier has committed to allow a discount to the buyer provided that the amount of his purchases reaches a predetermined minimum at the end of the year, the full price supplies will be taxable as long as the intended minimum has not been reached. If the minimum is reached during the year, so that it is certain that the buyer will receive the bonus, the deliveries will from that moment on be taxable only on the price of the delivery less the discount obtained for that delivery .

The situation is different when the supplier has undertaken to allow the buyer a discount provided that the amount of his purchases reaches a predetermined minimum at any time of the year (customer card).

The deliveries are taxed on the total price, but once the predetermined minimum has been reached, the subsequent delivery will only be taxed on the price less the discount obtained, in function of the previous purchases, by the customer, without prejudice. to levy VAT on these supplies.

### c. Discount coupons and money back coupons

The scheme applicable to discount coupons (coupons exchanged by the consumer at the retailer and refunded to the latter by the manufacturer or by a counting agency appointed for this purpose) and 'money back' coupons (coupons refunded directly to the consumer by the manufacturer or by a counting agency appointed for this purpose) is the subject of Notice No 08/1997 of 27.08.1997 , drawn up on the basis of the case-law of the Court of Justice of the European Union ( Court of Justice of the European Union, Elida Gibbs, Case C-317/94, 24.10.1996 ).

It states that, in the relationship between the retailer and his customer, the taxable amount of the delivery of the good is the value of the good, ie the amount paid increased by the value of any voucher exchanged. For more clarification, reference is made to the aforementioned notice.

For more information, reference is made to the aforementioned statement.

## C. Interest due for late payment (3 °)

This refers not only to the interest charged by the supplier or the service provider because the contract payment deadline specified in the contract was not observed, but also to the agreed interest payment in installments after the delivery of the good or contract. completion of the service.

On the other hand, where there is only a deferment of payment until the time of delivery of the good or the completion of the service, VAT is due on the agreed interest charged by the supplier (see Title 6, section C).

## D. The costs for ordinary and usual packaging, if the supplier agrees to reimbursement if the packaging is returned (4 °)

As normal and usual packaging means can generally be considered the packaging means of which the shape as well as the materials of which they are composed meet a necessity (ordinary boxes, boxes, bottles, casks, bags...).

In any case, however, the administration notices as ordinary and usual packaging the content of objects with a value not exceeding half that of the content, that is to say one third of the value of the whole.

Of course, this practical measure does not apply to packaging materials that are really necessary (for example milk bottles, gas bottles).

The supplier must agree to the reimbursement to his customer in the event of the packaging being returned, but no distinction should be made as to whether or not they are actually returned. Even if the customer does not return them, so that he has to bear the costs charged definitively, these costs are not included in the taxable amount, provided that packaging materials are usually returned to the supplier.

The amount that the seller charges to the buyer for the use of ordinary and usual packaging materials that can be returned, but which must be paid despite the return, does not matter the price of a rental, but should simply be considered a element of the selling price of the content.

The situation is different if the amount referred to only has to be paid if the buyer does not return the packaging within a predetermined period. In that case, the amount charged for late return should be considered as compensation for temporary unuse of the packaging which, as such, escapes tax. Nevertheless, a certain time-limit unrelated to reality is not sufficient to avoid the tax.

Proof that the packaging materials may or must be returned and that the customer is entitled to a refund may arise from the statement 'deposit' or a similar statement, which will appear on the invoice for the amount charged for packaging materials ( decision no. ET 12.114, 30.04.1974 ).

If the contract does not provide for any return (lost packaging), the cost of ordinary and usual packaging should be included in the taxable amount, even if the packaging is actually returned and the supplier allows a refund.

In that case, however, in accordance with Article 77, § 1, 2 ° of the VAT Code, the repayment may entitle to a refund of VAT if the supplier credits his co-contractor for that return (see Book IV: Settlement of the tax - Chapter 14: Tax refund).

It is noted that what was said under Title 5, heading B, in fine, regarding the assessment of joint transport costs also applies to the packaging costs included in the taxable amount which relate to goods subject to different tariffs.

For the purposes of the tax, the other packaging means, such as certain decoration boxes or bottles, must be classified as separate goods, so that they must be taxed separately under the system of their own, not only when their price is charged separately, but also when they are sold at a single price together with the goods they hold; in the latter case, the price must be split if the content and content are subject to different rates (see Title 6, Section D, subsection c).

## E. The sums advanced by the supplier or the service provider for expenditure which he has incurred in the name and on behalf of his co-contractor (5 °)

### a. These amounts are better known as advances

Where such expenditure relates to supplies of goods or to services supplied by a supplier to a third party **in the name and on behalf** of his contracting partner, they may be regarded as an advance only if the price of the supply or service is provided by the third party billed in the name and on behalf of the co-contractor.

A tax or tax paid by the supplier or the service provider can only be regarded as an advance if the payment was made on behalf of the customer who is personally debtor to the competent authority and charged on to the latter for the correct amount. (see Title 5, Section D, subsection b above).

Amounts that are general expenses of the supplier (travel costs, correspondence, telephone ...) are in no way advances, even if they are charged separately to the co-contractor. These costs form part of the taxable amount.

### b. Advances are in particular:

- transport costs advanced by the supplier on behalf of and for the account of his co-contractor (compare Title 5, section B above)
- the annual fee for a patent advanced by a patent council on behalf of an inventor to protect his invention
- the amounts that an entrepreneur of removals for insurance costs charges to his customers, insofar as the insurance contract is concluded directly between the insurance company and the customer of the mover through the mover and the premium set in the contract by the mover separately and for the correct amount will be charged ( decision no. ET 12.853 of 24.01.1974 )
- the correct amount of the postage or other postage, separately stated by a shipping company on the invoice he issues to his customer, on behalf of whom he has sent printed matter to third parties, regardless of whether the addresses were provided by that customer or not ( decision no. ET 96.920 of 31.08.2000 )
- de uitgaven die betrekking hebben op kosten die een notaris, een gerechtsdeurwaarder of een advocaat maakt in naam en voor rekening van zijn klant, op voorwaarde dat de prijs van deze diensten door de derde-dienstverrichter rechtstreeks op naam en voor rekening van de klant wordt gefactureerd.

Overigens kan een door een notaris, een gerechtsdeurwaarder of een advocaat betaalde taks, recht of belasting slechts als een voorschot worden beschouwd wanneer de betaling werd gedaan in naam van de klant die er persoonlijk ten aanzien van de bevoegde overheid schuldenaar van is en voor het juiste bedrag aan laatstgenoemde wordt doorgerekend.

Of de klant al dan niet schuldenaar is van de taksen, rechten of belastingen blijkt uit de betreffende wetten, decreten, ordonnanties en regelgeving (beslissing nr. E.T. 121.923 van 03.04.2012, punt 3.2. tweede lid en verder; beslissing nr. E.T. 122.121 van 08.03.2012, punt 3.2. tweede en verder; circulaire AAFisc nr. 47/2013 (nr. E.T. 124.411) van 20.11.2013, randnummers 90 tot 94)

- de federale bijdragen voor gas en elektriciteit wanneer zij door de leveranciers van elektriciteit en gas worden doorgerekend aan hun klanten (beslissing nr. E.T. 125.293 van 22.05.2014).

## c. Sector van de verhuur van automobielen

In the sector of the rental (including financing rental) of motor vehicles, the full payment that the lessor (lessor) receives or must receive from the lessee during the contract is in principle subject to VAT.

Under certain conditions that are clarified below and must be strictly complied with under subsections d and e, the amounts paid by the service provider for the benefit of the tenant are considered advances within the meaning of Article 28, 5 ° of the VAT Code, which as such are not included in the taxable amount for VAT due in respect of the rental.

## d. Insurance, roadside assistance

The amounts that the lessor charges to his tenant as insurance costs or breakdown assistance can only be regarded as an advance if the following conditions are met:

- the insurance contract and, where applicable, the breakdown assistance contract must be concluded directly between the insurance company or breakdown assistance service and the lessee, which does not, however, prevent the lessor from concluding the contract as agent, in other words in the name and on behalf of the tenant, may act
- the premiums (contributions) established in the contract are charged by the landlord separately and for the correct amount to the tenant. The correct amount is taken to mean the insurance premium (contribution) actually claimed by the insurance company ( roadside assistance service ).

It must therefore be demonstrated on the basis of the insurance or breakdown assistance contract that the lessee has actually acted as a co-contractor in this agreement and as such has concluded the insurance contract ( breakdown assistance contract ) and is therefore in that capacity to pay the insurance premium (contribution). kept. With regard to insurance contracts, in particular from the provisions of such contracts, it must be unambiguously clear that the lessee is the policyholder, so that the payment of compensation to the lessor must be regarded as a payment method agreed by the lessee with the insurance company.

If, on the other hand, one of the aforementioned conditions is not met, in principle the costs charged as an insurance premium to the tenant are included in the taxable amount for calculating the VAT payable on the rental fee.

## e. The tax on the registration tax and road tax

Under the said Article 28, 5 ° of the VAT Code makes the tax on the registration tax and road tax not included in the taxable amount of VAT in respect of the lease of an automobile if this rented vehicle code of the service entrusted with the registration of the vehicles is registered in the name of the lessee or lessee, so that the latter is the actual debtor of the registration and traffic tax, and these taxes are charged separately by the lessor for the correct amount the tenant is charged.

However, if the vehicle is registered in the name of the lessor, it is the debtor of the above taxes. In accordance with Article 26, § 1, third paragraph, of the VAT Code, these taxes, even if they are separately and for the correct amount passed on, form the taxable amount for the calculation of the VAT due in respect of the lease.

## F. The value added tax itself (6 °)

VAT is not included in the taxable amount. When the price including VAT has been determined, the VAT must be taken from that price to determine the taxable amount.

In practice, proceed as follows:

- VAT is first calculated according to the formula: P x (t / (100 + t))
  where : P = price including VAT and t = VAT rate
- the result of that operation is rounded up, if necessary, to the higher or lower cent (see Section 10, Title 1)
- any rounded amount is deducted from the price, including VAT, and the difference constitutes the taxable amount.

Example:

Price 25 euros, including 6% VAT
VAT: 25 euros x (6/106) = 1.415, rounded 1.42 euros
Tax base: 25 - 1.42 = 23.58 euros.

[ Table of contents of this chapter ] - [ Table of contents of the VAT Comment ]

# Section 4 - The consideration does not or not exclusively consist of a sum of money

# 1. Principe

When a supply or service provides a consideration that does not or not exclusively consist of a sum of money, the tax must be calculated on the normal value of the consideration.

## A. Normal value

Normal value is considered:

- the full amount
- that a customer is in the commercial phase in which the delivery of the goods or service is performed
- in fair competition, should pay to an independent supplier or service provider in the territory of the country where the transaction is taxable
- to obtain the relevant goods or services at that time (Article 32, first paragraph, of the VAT Code).

As far as the trading phase is concerned, the value will be assessed differently depending on whether it is a manufacturer, a wholesaler or a retailer.

As for the condition of fair competition, the amount to be paid should not be affected by commercial or financial relationships between the parties.

## B. Minimum normal value

If no comparable transaction is available, the normal value may:

- of a delivery of goods are not less than the purchase price of the goods or similar goods or, if there is no purchase price, the cost price, calculated at the time when that delivery is made
- and of a service are not less than the expenses incurred by the taxpayer for the provision of that service (Article 32, second paragraph, of the VAT Code).

# 2. Mutual supplies or services

## A. Principles

### a. Principe

This refers to the situation in which contracts are concluded between two parties whereby reciprocal supplies or services are stipulated, ie contracts in which, for example, A commits to supply a good or to provide a service to B, which in turn undertakes to good or provide a service to A.

Where A and B are taxable persons with a deductible, VAT is due on both the supply or service provided by A and the amount supplied by B. A must calculate the tax due on a taxable amount equal to the normal value of the consideration provided by B and vice versa.

The exchange and distribution are typical examples of such contracts (see Book I: Tax Duty and Taxable Transactions - Chapter 3: Services).

### b. Opleg

It happens that the mutual deliveries or services are not equivalent under the contract, and that, in order to make the mutual performances equivalent, one party pays another sum of money (imposed) to the other.

The party who pays this amount will tax the supply or service provided by it on an amount equal to the normal value of the performance of the other party less the sum of money to be paid.

Conversely, the party receiving the sum of money will tax the performance it has performed on an amount equal to the normal value of the other party's supply or service plus the amount of money received.

## B. Examples

### a. Manufacturing work with distance from waste

An industrial worker has a contractor work a good for the price of 250 euros. In addition, the contractor obtains ownership of the waste materials (normal value 25 euros) obtained through the execution of the work.

The tax on the custom work (a service) is payable on a value equal to the normal value of the waste (25 euros) plus the agreed price (250 euros), i.e. about 275 euros.

The tax related to the disposal of the waste by the industrialist (delivery of a good) is due on the normal value of the service less the amount paid. In fact, this will amount to a taxable value of 25 euros (275 euros - 250 euros) in this respect, since under the contract the reciprocal performance is considered equivalent.

It should also be noted that if due to a handling error the contractor is obliged to leave the damaged goods and demands a certain amount as the value of the goods, this delivery is subject to VAT according to the normal rules (see section 3, Title 6, section H).

## b. Demolition of a building and removal of waste

Another example is found in the notice No. 3/1972 of 07.01.1972 . This is the case in which a contractor undertakes to perform an activity consisting of cleaning up or removing rubbish, waste, rubble, etc., or in the demolition of a building, while the client transfers ownership of the cleaned up or removed materials or of the degradation materials.

To determine the taxable amount of VAT that is owed in respect of the service provided by the contractor and of the VAT that may be owed in respect of the delivery by the client, the following distinction must be made:

- The contractor receives a sum of money.
  As far as the service provided by the contractor is concerned, VAT should in principle be levied on the amount paid by the client, plus the normal value of the materials or materials transferred. This normal value corresponds to the price that the client could obtain for those substances or materials in the condition they are in before their removal or before the demolition of the building.
  However, since these are goods the possession of which usually appears as a burden on the client, the administration accepts that the value of the materials is neglected and that the levy is limited to the price in money.
  In the same vein, no VAT has to be levied due to the distance of the waste or degradation materials.
  However, this concession does not apply when it is clear from the contract concluded between the parties that they have given an important value to the substances or materials, in other words when the amount paid is abnormally low compared to the normal cost of the work performed by the contractor

- The contractor does not receive a sum of money.
  In this case it is clear that a value has been assigned to the substances or materials.
  With regard to the service provided by the contractor, VAT is payable on the price that the client could obtain for those substances or materials in the condition in which they were before their removal or the demolition of the building. In practice, the administration is satisfied with a charge on the normal cost of the work that the contractor performs.
  If the client is a taxable person, VAT is due on the waiver of the materials or materials on the taxable amount applicable to the service provided by the contractor

- The contractor pays a sum of money.
  With regard to the service provided by the contractor, the taxable amount is equal to the price that the contractor would have asked assuming that he did not acquire ownership of the substances or materials.
  In the event that the client is a taxable person, the VAT is levied on the taxable amount for the provision of services plus the amount paid by the contractor in respect of the waiver of the substances or materials.

## c. Standard exchange related to parts or mechanical organs of motor vehicles

This situation is explained in Note 119/1972 of 28.12.1972 .

Here, the case is envisaged where the garage owner or repairer re-transfers ownership of a properly repaired part or mechanical device to the owner of the car and, if necessary, repositions it in the car. The owner of the vehicle, for his part, pays the garage owner or repairer a certain amount and transfers ownership of a part or organ similar to the repaired part or organ.

That act is an exchange.

The supply, with or without installation, of a repaired part or organ is a supply of goods that makes tax due on the amount paid in cash plus the normal value of the defective part or organ that is surrendered in exchange .

The surrender of the defective part or organ also makes the tax payable when the owner of the vehicle is a taxable person with a deductible tax acting in the course of his economic activity.

By way of derogation from the foregoing, as of 01.01.1973, a special arrangement was introduced for the standard exchange in respect of motor vehicles other than heavy vehicles (trucks, buses, coaches, road tractors...), when the parties do not explicitly agree on the purchase price of have identified the defective part or organ.

This special arrangement means that for the calculation of the tax due in respect of the delivery with or without placing of the repaired part or body, the repairman or the repairer at the net amount, excluding VAT, which he charges to the owner of the vehicle , adds an amount equal to 10%. of that amount.

This amount represents the value assigned to the defective part or organ in a flat-rate manner. This tax excludes the claim for tax on the surrender of the defective part or organ and no invoice is due because of that surrender, even if the owner of the vehicle is a taxable person with a deductible tax exercising his economic activity.

The application of this special scheme is subject to the following conditions:

- the supplier of the repaired part or organ is obliged to issue an invoice to the owner of the vehicle, irrespective of the amount of the stipulated sum of money and the value of the part or organ donated in exchange
- this invoice must explicitly state that the act performed is a 'standard exchange' as defined in the above sentence and it must also include: an accurate indication of the repaired part or organ and of the part or organ taken back, the price , exclusive of VAT, which is charged to the owner of the vehicle for the supplies, where applicable, the placement of the repaired part or organ, the value attributed to the part or organ that has been taken back, and the amount of VAT that is charged to the owner of the vehicle will be charged.

This arrangement applies not only to the standard exchange that takes place between a garage owner or a repairer of vehicles and the owner of the vehicle, but also to the standard exchange that takes place between the supplier of the repaired parts or repaired mechanical devices and a garage owner or repairer of motor vehicles.

### d. Works in immovable state carried out by a taxpayer who rents the building

Two situations are distinguished:

- the tenant bears the full cost of the works that directly or indirectly benefit the landlord (no act for consideration)

  The intended situation is the one where the tenant does not receive any compensation, in any form whatsoever, from the landlord for the cost of the works: we are outside the scope of VAT, as referred to in Article 2 of the VAT Code.
- the landlord repays the rented part or all of his costs

  When the lease and / or its performance has a direct link between the works and the benefits granted by the landlord, it may be decided that the tenant carries out an act for the lessor for consideration. It is irrelevant whether the permitted benefits cover the full economic value of those works. The taxable amount consists of the monetary compensation that the tenant obtains (possibly in the form of a financial contribution, a reduction or exemption from the rent or the waiver of an increase in the rent) or, where applicable, the normal value of the consideration obtained or to be obtained.

Voor een uitgebreide toelichting met betrekking tot dit onderwerp wordt verwezen naar de circulaire 2019/C/22 van 13.03.2019 die de beslissing nr. E.T. 9.284 van 27.01.1972 vervangt.

## C. De tegenprestatie bestaat niet of niet uitsluitend uit geld, goederen of diensten

Wanneer een levering van een goed of een dienst als tegenwaarde een prestatie heeft die bijvoorbeeld geheel of gedeeltelijk bestaat uit aandelen, obligaties of andere onlichamelijke roerende waarden, dient voor het bepalen van de maatstaf van heffing met betrekking tot de levering van het goed of de dienst rekening te worden gehouden met de normale waarde van de verkregen aandelen, obligaties of roerende waarden. Dit zal met name het geval zijn wanneer een belastingplichtige een goed in een vennootschap inbrengt, en deze inbreng in natura wordt vergoed door toekenning van maatschappelijke rechten.

---

[Inhoudstafel van dit hoofdstuk] - [Inhoudstafel van de Btw-Commentaar]

# Afdeling 5 – Minimummaatstaf van heffing

## 1. The customer for the delivery of goods or the provision of services is connected to the supplier of goods or the service provider

### A. European jurisdiction

It is clear from the case-law of the Court of Justice of the European Union ( Court of Justice of the European Union, Scandic , Case C-412/03, 20.01.2005 ) that there is no act equivalent to a the supply of goods or the provision of a service for private purposes, when a consideration is paid for the delivery of the good or the provision of the service, even if this consideration is lower than the cost price of the delivered good or service.

This case concerned meals provided by a taxable person to his servants.

### B. VAT Code

Taking this judgment into account and in order to prevent abuses and to avoid a loss of tax revenue, Article 33, § 2 of the VAT Code deviates from Article 26, § 1 of the VAT Code in that the criterion the levy for the supply of goods or services is the normal value as determined by Article 32 of the VAT Code (see Section 4 - Title 1), when:

- the consideration is lower than the normal value
- the customer for the delivery of goods or the service does not have a full right to deduct the tax owed
- the customer is connected with the supplier of the goods or the service provider:
  - pursuant to an employment contract, including their family members up to the fourth degree
  - as a partner, member or director of the company or legal entity, including their family members up to the fourth degree.

Article 33, § 2 of the VAT Code is discussed in marginal 37 to 45 of circular AFZ No. 3/2007 (AFZ / 2006-0362 - AFZ / 2006-0718) of 15.02.2007 .

### C. Provision of goods by a taxpayer to a manager, a director or a staff member

The determination of normal value when making a business asset or other good available to a manager, a director or a staff member is detailed in circular AAFisc No. 36/2015 (No. ET 119.650) of 23.11.2015 , point 3.4.

# 2. Means of transport

Article 35, first paragraph, of the VAT Code stipulates that the King can determine a minimum taxable amount for the supplies, the intra-Community acquisition and the import of:

- motor vehicles, motorcycles and other land transport vehicles, and their trailers
- yachts and pleasure boats
- airplanes, seaplanes, helicopters and other similar appliances, and sailplanes.

There is currently no royal decree on this subject.

# 3. Real estate sector

## A. Delivery of buildings

Pursuant to Article 36, § 1, a) of the VAT Code, the taxable amount with regard to the goods referred to in Article 1, § 9 of the VAT Code, which have been alienated with payment of VAT, may not lower than the normal value as determined by Article 32, first paragraph, of the VAT Code. 'Normal value' means the full amount that a customer would have to pay in fair competition to an independent supplier or service provider in the territory of the country where the transaction is taxable in fair competition. , to obtain the relevant goods or services at that time (see Section 4, Title 1).

This value, which is verified by the General Administration's Patrimony Documentation, is the sales value of that building, that is, the value that is normally requested and obtainable for that property.

To determine that normal value, either an amicable agreement can be made by the owner and the administration, or the estimation procedure provided for in Article 59, § 2, of the VAT Code (see Book VII: Checking and recovering the tax - Chapter 17 Means of evidence) are instituted.

When it is found that VAT has been paid on an insufficient standard, the additional VAT is due by the person against whom the valuation procedure must be instituted, that is, the acquirer of the building that has been disposed of with VAT.

This provision also applies to the transfer of the bare ownership of a building ( decision no. ET 20.368 of 12.11.1975 ). However, it does not apply to the establishment of real rights other than property rights.

## B. Working in immovable state

Pursuant to Article 36, § 1, b) of the VAT Code, the taxable amount with regard to work in real estate relating to a **building to be erected may** not be lower than the normal value of that work as determined by Article 32, first paragraph, of the VAT Code, that is to say the full amount that a customer in the commercial phase in which the service is provided, on 1 January of the year of the commissioning of the newly erected building, in fair competition must pay to an independent service provider in the territory of the country where the transaction is taxable in order to obtain the relevant services at that time (see Section 4, Title 1).

When the client **enters** into **more than one contract** for the construction of the building, the total taxable amount on those contracts may not be less than the normal value of the joint works.

Even if works in immovable state relate **to the completion of a building obtained with payment of VAT,** the total **taxable** amount may not be less than the normal value of the joint works (see Article 36, § 2, second paragraph, of the VAT Code.

Determination of the normal value for which the management of the SME center in whose jurisdiction the newly erected building is located must be determined, taking into account the prices applicable in the construction sector, the installed and processed building materials and the nature of the the construction.

The possibility of concluding an amicable agreement or claiming an expert estimate for determining the normal value and the consequences of insufficient levy are the same as those for the disposal of buildings with VAT paid (see section A above).

## C. Real estate rental

With regard to the taxable rental of buildings resulting from the exercise of the option for taxation, the VAT is, in principle, calculated on the effective consideration, being the amount of the requested rental compensation, if necessary increased by the costs charged to the tenant.

Nevertheless, the taxable amount is the normal value corresponding to the market price for a rental in similar circumstances, if the following cumulative conditions are met:

- the consideration is lower than the normal value
- the tenant is not fully entitled to deduct the VAT due
- the tenant is connected to the landlord on the basis of an exhaustive list of personal, financial or organizational ties. The contracting parties involved are, for example, a director and his company.

(see circular 2019 / C / 25 of 21.03.2019 regarding the law of 14.10.2018 amending the VAT Code in the field of real estate rental - FAQ; question no. 10).

[ Table of contents of this chapter ] - [ Table of contents of the VAT Comment ]

# Section 6 - Acts assimilated to acts for consideration

Some transactions involving goods or services are equated with transactions for consideration and are therefore subject to VAT, although they are not contracts.

## 1. Actions related to goods

### A. Intended actions

It concerns the following actions:

- the withdrawal of a movable property from his business by a taxable person for his private or private purposes from his staff and, more generally, for purposes other than that of his economic activity, where that property or its components are entitled to full or partial deduction of the tax has arisen (Article 12, § 1, first paragraph, 1 °, of the VAT Code)
- the withdrawal of a property (movable or immovable) from its business by a taxable person free of charge, where that good or its components have been subject to a full or partial deduction of tax, with the exception of those that are done with a view to:
  - the provision of commercial samples or commercial gifts of low value (Article 12, § 1, first paragraph, 2 °, a) of the VAT Code)
  - the provision for charity of foodstuffs for human consumption, with the exception of spirit drinks, the intrinsic characteristics of which no longer allow them to be sold, in any link of the regular economic circuit, at the original commercialization conditions (Article 12, § 1 , first paragraph, 2 °, b), of the VAT Code)
  - the provision for charitable purposes of vital non-food products, other than goods that can be used sustainably, the intrinsic characteristics of which prevent them from being sold at any link of the economic circuit at the original commercialization conditions (Article 12, § 1 , first paragraph, 2 °, c), of the VAT Code)
- the commissioning by a taxable person, as a business asset, of a property (movable or immovable) which he has set up, has manufactured, has manufactured, acquired or imported, other than as a business asset, or for which, with the application of the tax to his benefit rem within the meaning of Article 9, paragraph 2, of the VAT Code were established or were transferred to him or re-transmitted when that good or its components wholly or partly deductible tax has arisen (Article 12, § 1, first paragraph, 3 °, of the VAT Code)
- the putting into service by a taxable person, other than as a business asset, of a movable property manufactured by him, for the performance of transactions for which there is no full entitlement to tax deduction, if the components of that good are entitled to full or partial deduction of the tax tax has arisen (Article 12, § 1, first paragraph, 4 °, of the VAT Code)
- the possession of a property (movable or immovable) by a taxable person or his rightful claimants in case he ceases to carry on his economic activity, if that good or its components are entitled to full or partial deduction of the tax (Article 12 , § 1, first paragraph, 5 °, of the VAT Code)
- the withdrawals that a taxpayer as referred to in Article 12, § 2 of the VAT Code is expected to perform, being:
  - the withdrawal that a taxpayer, who regularly alienates new buildings (or parts of new buildings) for consideration, is deemed to carry out a new building (or part of a new building) which he has erected or have erected or with the satisfaction of the tax and that he has not alienated by 31.12 of the second year following the year of first occupation or first occupation, if this building (or part of a building) has not yet been the object of the commissioning as referred to in Article 12, § 1, first paragraph, 3 °, of the VAT Code (Article 12, § 2, first paragraph, of the VAT Code)
  - the withdrawal that a taxpayer, who regularly establishes commercial rights as referred to in Article 9, second paragraph, 2 °, of the VAT Code for new buildings (or parts of buildings) for consideration with regard to a new one building (or part of a new building) that it has erected or has erected or that has been paid with VAT, and that it has not been alienated by December 31 of the second year following the year of first commissioning or the first occupancy, if this building (or part of a building) has not yet been the object of commissioning as referred to in Article 12, § 1, first paragraph, 3 °, of the VAT Code at that time (Article 12, § 2 (2) of the VAT Code)
  - the withdrawal that a taxpayer as referred to in the two preceding sub-bullets in whose favor a real right as referred to in Article 9, second paragraph, 2 °, of the VAT Code was settled with payment of the tax, is deemed to perform with regard to that law was not transmitted or re-transmitted by 31 December of the second year following the year of the first use of the first seizure when this building (or part of a building) at that time still not has been the subject of commissioning as referred to in Article 12, § 1, first paragraph, 3 °, of the VAT Code (Article 12, § 2, third paragraph, of the VAT Code)

  In the aforementioned cases, the taxpayer is also deemed to withdraw the associated land for his own needs, if a right to full or partial deduction of the tax has arisen for this.
- the issue of a good as a consumer loan, and the refund under such a loan (Article 10, § 3, of the VAT Code), although these are not purely material acts since they arise from a contract.

### B. Determination of the taxable amount

#### a. Principe

The transactions referred to in section A, above, are taxed on the purchase price of the goods or similar goods, or, if there is no purchase price, on the cost price, if applicable, taking into account the second and third paragraph of Article 26, § 1, second and third paragraphs and with Article 28 of the VAT Code at the time when those acts are performed (Article 33, § 1, 1 ° of the VAT Code, compare Article 32, second paragraph, of the VAT Code) .

It is pointed out that it appears from the wording and structure of Article 33, § 1, 1 ° of the VAT Code, that there is a logical order or ranking between the different reference values that are taken into account for determining the taxable amount:

- First , it is necessary to determine whether a purchase price has been determined for the good which is the subject of a supply for consideration. This reference value applies when the intended goods are purchased from a third party.

- Assuming that there is no purchase price (because the good was not purchased from a third party), the purchase price of similar goods should then be used as the reference value for the taxable amount. This is the case when it is well produced or made by the taxable person himself or by his staff.
- Finally , if no purchase price is available for the good or a similar good, the taxable amount must necessarily be determined on the basis of the cost price.

## b. Opmerkingen en verduidelijkingen

- Rubriek A, eerste en tweede opsommingstekens (artikel 12, § 1, eerste lid, 1° en 2°, van het Btw-Wetboek).

  Men is steeds van oordeel geweest dat, rekening houdend met de beperking van artikel 45, § 2, van het Btw-Wetboek (aftrek beperkt tot 50%, zie 'Boekwerk III: Recht op aftrek van de voorbelasting - Hoofdstuk 11: Recht op aftrek'), de heffing van een belasting bij de onttrekking voor privédoeleinden op grond van voornoemde principes voor de in voornoemd artikel bedoelde autovoertuigen overdreven is. Daarom werd dan ook beslist dat de verschuldigde belasting dient berekend te worden over een bijzondere maatstaf van heffing die in feite gelijk is aan 50% van de normale maatstaf van heffing (aanschrijving nr. 3/1981 van 26.01.1981, randnummers 35 tot en met 44, hoofdstuk II).

- Rubriek A, derde opsommingsteken (artikel 12, § 1, eerste lid, 3°, van het Btw-Wetboek).

  Wanneer het gaat om een gebouw dat de belastingplichtige heeft doen oprichten, heeft het Hof van Justitie van de Europese Unie heeft voor recht verklaard dat de maatstaf van heffing voor de berekening van de btw gelijk is aan de aankoopprijs die op het tijdstip van deze bestemming gold voor gebouwen waarvan de ligging, de omvang en de andere wezenlijke kenmerken te vergelijken zijn met die van het betrokken gebouw (Hof van Justitie van de Europese Unie, Arrest Property Development Company, zaak C-16/14, van 23.04.2015).

  Voor het bepalen van de kostprijs van een roerend goed dat een belastingplichtige zelf heeft vervaardigd en als bedrijfsmiddel in gebruik heeft genomen, worden de kosten voor intellectueel werk uitgevoerd door hem of zijn personeel met betrekking tot het ontwerpen, het monteren en het bedrijfsklaar maken van dat goed, niet in aanmerking genomen (beslissing nr. E.T. 34.032 van 30.10.1979).

- Rubriek A, zesde opsommingsteken (artikel 12, § 2, van het Btw-Wetboek).

  Beslissing nr. E.T. 41.665 van 27.02.1992 stelt dat, ten aanzien van de onttrekking door een belastingplichtige als bedoeld in artikel 12, § 2, van het Btw-Wetboek, van een door of voor hem opgericht gebouw, de maatstaf van heffing gelijk is aan de kostprijs, dit is de oprichtingsprijs van het betreffende gebouw op het tijdstip van de onttrekking.

  Rekening houdend met voornoemd arrest *Property Development Company*, dat intrinsiek ook betrekking heeft op dit type onttrekkingen, blijft deze beslissing slechts van toepassing wanneer er geen aankoopprijs is en het onmogelijk is om de aankoopprijs van een soortgelijk goed te bepalen.

- Er wordt nog opgemerkt dat het bedrag van de maatstaf van heffing wordt bepaald rekening houdend met de staat van het goed op het moment dat de onttrekking plaatsvindt.

  Wanneer een belastingplichtige aan zijn voorraad goederen kledingstukken onttrekt die gedemodeerd zijn om ze in het kader van een hulpactie om niet te verstrekken aan een caritatieve instelling (het gaat om goederen die niet bedoeld worden door de uitzondering van de met de levering onder bezwarende titel gelijkstelde goederen als bedoeld in artikel 12, § 1, eerste lid, 2°, c), van het Btw-Wetboek), wordt de btw die ten aanzien van die onttrekking is verschuldigd aldus berekend over een maatstaf van heffing die gelijk is aan de aankoopprijs die de belastingplichtige bij de aankoop van dergelijke gedemodeerde goederen op het tijdstip van die onttrekking zou moeten betalen (beslissing nr. E.T. 33.875 van 02.10.1979).

# 2. Handelingen die betrekking hebben op diensten

## A. Bedoelde handelingen

Het betreft de navolgende handelingen:

- het gebruiken van een tot het bedrijf behorend goed ander dan dat bedoeld in artikel 45, § 1*quinquies*, van het Btw-Wetboek voor privédoeleinden van de belastingplichtige of van zijn personeel of, meer algemeen, voor andere doeleinden dan deze van de economische activiteit van de belastingplichtige, wanneer voor dat goed recht op volledige of gedeeltelijke aftrek van de belasting is ontstaan (artikel 19, § 1, van het Btw-Wetboek).

  Artikel 19, § 1, van het Btw- Wetboek beoogt zowel de roerende als de onroerende goederen, maar enkel indien die goederen niet beoogd worden door artikel 45, § 1*quinquies*, van het Btw-Wetboek, dit wil zeggen wanneer het gaat om goederen die de aftrekbeperking van laatstgenoemd artikel niet hebben ondergaan.

  Er wordt verwezen naar circulaire AAFisc nr. 36/2015 (nr. E.T 119.650) van 23.11.2015, die geldt voor handeling die vanaf 01.01.2016 zijn verricht (voor de periode ervoor en het overgangsstelsel, wordt verwezen naar randnummer 194 van deze circulaire).

  Voor de goederen die een beperking van het recht op aftrek krachtens artikel 45, § 1*quinquies*, van het Btw-Wetboek hebben ondergaan, kunnen enkel de regels met betrekking tot de herziening van aftrek van toepassing zijn
- de uitvoering door een belastingplichtige van een werk in onroerende staat voor de doeleinden van zijn economische activiteit, wanneer, ingeval dergelijk werk wordt verricht door een andere belastingplichtige, hij geen volledig recht op aftrek van de belasting zou hebben (artikel 19, § 1, eerste lid, 1°, van het Btw-Wetboek), met uitzondering van:
  - werk dat bestaat in de oprichting van een gebouw door een in artikel 12, § 2, van het Btw-Wetboek bedoelde belastingplichtige
  - herstellings-, onderhouds-, en reinigingswerk (artikel 19, § 2, tweede lid, van het Btw-Wetboek).

  With regard to the latter works, several administrative concessions already existed, in particular as regards public-law entities, mixed taxpayers and taxpayers whose economic activity is fully exempt under Article 44 of the VAT Code (see Written Parliamentary Question No 233 of Mr People's Representative Christian Brotcorne of 20.01.2011 , Written Question No. 121 by Mr People's Representative François-Xavier de Donnea of 07.03.2013 and Circular AAFisc No. 42/2015 (No. ET 125.567) from 10.12.2015 , marginal 29 to 35).

  However, Mr. Minister had decided to no longer require the application of Article 19, § 2, of the VAT Code, from 01.07.2016, for the work consisting in repairing, maintaining or cleaning an appliance. nature of the property that a taxable person carries out himself or with his own staff for the purposes of his economic activity ( decision no. ET

130.422 of 05.07.2016 ).

- the performance by a taxable person of a work in immovable state for his private purposes or that of his staff and, more generally, for no or other purposes than those of his economic activity (Article 19, § 2, first paragraph, 2 °, of the VAT Code).

# B. Determination of the taxable amount

## a. The use of any property belonging to the company for purposes other than those of its economic activity

The taxable amount for the transaction referred to under heading A, first bullet, (Article 19, § 1, of the VAT Code) is the expenditure incurred by the taxable person (Article 33, § 1, 2 °, of the VAT Code). , compare with Article 32 (2) of the VAT Code).

This provision should include to be seen in the light of the case law of the Court of Justice of the European Union ( Judgment Mohsche , Case C-193/91 of 05.25.1993 and the Opinion of Advocate General Jacobs in this matter).

In this case, the Court of Justice has ruled that Article 6 (2) (a) of the Sixth Council Directive 77/388 / EC of 17.05.1977 on the harmonization of the laws of the Member States concerning turnover taxes -Common system of value added tax: uniform basis (compare Article 26 (1) (a) of Directive 2006/112 / EC), transposed into the VAT Code by Article 19, § 1, to be interpreted as meaning that no tax may be levied on the use for private purposes of a good belonging to the company for the supply of which the taxable person has been able to deduct the turnover tax, insofar as this use involves services provided by the taxable person by third parties for the maintenance or use of the had it done properly without being able to deduct the input tax.

Only expenditure incurred which does not contain residual VAT (for example, expenditure for which there is a full or partial right to deduct, expenditure consisting of wage costs) may thus be taken into account for taxing the use of the good for transactions outside the economic activity of the taxpayer.

For vehicles that are part of the business assets and that are made available free of charge to a manager, driver or staff member (or that are used by the taxpayer for purposes other than the economic activity) and that do not have a deduction limitation from Article 45, § *1d* of have undergone the VAT Code (because they were used exclusively for professional purposes from the beginning or because they were purchased before 01.01.2013 and the taxpayer has linked the maximum VAT deduction of 50% to taxing the benefit in kind), Article 19, § 1 of the VAT Code will only be applied if it is used for purposes other than those of the economic exceeds 50% and only to the extent of that exceedance ( circularAAFisc No. 36/2015 (No. ET 119,650) of 11/23/2015 , marginal 29).

## b. The execution of a work in immovable state

The taxable amount for the transactions referred to in section A, second bullet, above (Article 19, § 2, first paragraph, 1 °, of the VAT Code) is the **normal value** of the service (Article 33, § 1, 3 ° of the VAT Code), as that value has been determined in accordance with Article 32 of the VAT Code (see Section 4, Title 1).

When Article 19, § 2, first paragraph, 1 °, of the VAT Code applies to a work in immovable state that a member of a VAT unit carries out for another member of that VAT unit, the price that the member who asks for the work he carries out is deemed to correspond to the normal value of the work, insofar as that price corresponds, of course, to the price that is usually used by the member for this type of work (otherwise the normal value to be taken).

For the transactions referred to in section A, third bullet, above (Article 19, § 2, first paragraph, 2 °, of the VAT Code), the taxable amount is the expenditure incurred by the taxable person (Article 33, § 1, 2 ° of the VAT Code). Expenditure specifically incurred for that work is therefore included in the taxable amount, such as:

- purchased materials
- materials taken from the taxpayer's stock
- the depreciation value of tools taking into account the duration of use
- the work performed by members of staff engaged by the taxable person (which always constitutes an expenditure incurred which forms the basis for assessment of VAT).

For the transactions referred to in Article 19, § 2, first paragraph, 2 °, of the VAT Code, no VAT is due on the work performed by:

- the taxable natural person himself
- the director or manager of the taxable company if this is not compensated by the company for that specific work.

For a detailed explanation with regard to this subject, reference is made to circular 2019 / C / 19 of 01.03.2019 .

[ Table of contents of this chapter ] - [ Table of contents of the VAT Comment ]

# Section 7 - Travel agents and the standard taxable amount

Article 13 of the Royal Decree amending Royal Decrees 1, 7, 10, 24, 31, 35, 46 and 56 on value added tax of 07.11.2019 has replaced the term 'traveler' by the term 'customer'.

The Royal Decree no. 35 , aforementioned introducing a standard taxable amount of the value added tax on the profit margin of travel agents, was the subject of an update published on 25.11.2019 in the Belgian Official Gazette.

As of 05.12.2019, Article 1 of the aforementioned Royal Decree has been amended as follows:

*'The taxable amount of the service subject to value added tax, which a travel agency within the meaning of Article 1, § 7, first paragraph, 2 °, of the VAT Code , is deemed to perform under Article 18, § 2, second paragraph, of this Code, is determined, as the case may be, at the aforementioned percentage of the price to be paid by the customer:*

*1 ° 18 pc. with regard to the supply, at a global price, of a series of related acts of transport, accommodation, food and drink to be consumed on the spot, entertainment or the like, of a stay at a fixed sum, which in particular includes accommodation, of a touristic tour, of several services which form part of one of these units or which are in the same line, when this supply is the work of a travel agency which, either exclusively through intermediaries in travel referred to in Article 1, § 7, second paragraph, 2 °, of the Code, either through the intermediary of such intermediaries or acting alone;*

*2 ° 6 pc. with regard to the units or parts of units intended in 1 °, when their delivery is effected through an intermediary as referred to in Article 1, § 7, second paragraph, 2 ° of the Code, which is established abroad;*

*3 ° 8 pc. with regard to discussing accommodation, the price of which is not included in a global price;*

*4 ° 13 pc. in all other cases. "*

---

[ Table of contents of this chapter ] - [ Table of contents of the VAT Comment ]

# Section 8 - The VAT treatment of vouchers

## 1. Definition of 'voucher'

We speak of a ' voucher ' if the following conditions are met:

- There is an obligation to accept the voucher as full or partial consideration for supplies of goods or services
- The goods or services to be provided and / or the identity of the potential providers must be stated on the 'voucher' itself or in the accompanying documentation, including the conditions for using the voucher.

## 2. Distinction between 'single use voucher' and 'multiple use voucher'

### A. 'Single use voucher'

A ' single-use voucher ' (also known as a ' single- purpose voucher ' or ' SPV ' ) is a ' voucher ' where the following information is known at the time of issue:

- The place of the delivery of goods or services to which the 'voucher' relates
- The amount of VAT payable on those goods or services (meaning that the taxable amount and the applicable VAT rate or, where applicable, the applicable exemption are known).

With regard to single-use vouchers, the issue and subsequent transfers by a taxable person acting in his own name are subject to VAT.

No special provision has been made for the determination of the taxable amount for those taxable transfers of single-use vouchers.

The fee for the sale of single-use vouchers is determined in accordance with the general rules for the taxable amount, which are included in Article 26 of the VAT Code.

The issuer and each subsequent transferor will therefore be liable to pay VAT on anything that he obtains or must obtain in return from the person to whom the voucher is transferred.

### B. 'Multiple use voucher'

The ' voucher for multiple use ' , (also known as " multi-purpose voucher" or "MPV"), each ' voucher ' which is not a voucher for single 'use.

These are 'vouchers' for which, at the time of issue or sale, it is not yet clear where the goods or services will be provided against exchange of the voucher and / or the amount of VAT that will be due on the goods or service (which means that the taxable amount and the applicable VAT rate or, where applicable, the applicable exemption are not known).

Only the actual handover of the goods or the actual provision of the services against exchange of a 'multiple use voucher' accepted as total or partial consideration by the supplier or service provider concerned is subject to VAT.

On the other hand, any prior transfer of such a 'voucher' (for example to a distributor or to a consumer) is not subject to VAT.

With regard to that taxable supply of goods or service, in accordance with Article 26, § 2 of the VAT Code, the basic principle is that VAT is due on everything paid in return for the voucher to the last transferor in the distribution chain, less the amount of the tax on the goods supplied or the services rendered.

However, if the taxable person concerned who carries out the actual supply or service does not have information on what has been paid by the consumer for the relevant multi-use voucher, the taxable amount of the goods or services supplied for the voucher is, the monetary value stated on the voucher itself or in the accompanying documentation, less

the amount of tax on the goods supplied or services rendered.

Example:

A trader A in kitchen accessories (taxed with 21% VAT) and delicacies (taxed with 6% VAT) sells a multi-use voucher redeemable with him to a consumer for 100 euros.

The face value of this voucher is also 100 euros.

This consumer exchanges the voucher at trader A for delicacies. Since the consumer paid 100 euros for the voucher (taxable person A knows this value), the taxable amount is 94.34 euros and the VAT charged is 5.66 euros.

Now suppose that merchant A does not sell the multi-use voucher directly to a consumer, but distributes the vouchers through an intermediary. The respective distributor pays 90 euros for this voucher. The distributor then sells the voucher to a consumer for 100 euros.

If the consumer redeemes the voucher at merchant A for delicacies, then merchant A may not know how much the consumer has paid for the voucher. In that case, the taxable amount is equal to the nominal value on the voucher (less the included VAT). Since the face value in this example is equal to the amount paid by the consumer for the voucher, the taxable amount is again EUR 94.34 and the VAT charged is EUR 5.66.

In the latter situation, if no nominal value is stated on the voucher and this nominal value is not stated in the documentation accompanying the voucher either, the total value of the consideration charged for the supply or service will be charged, not including VAT, must be determined on the basis of all facts and circumstances.

For a detailed explanation on this subject, reference is made to circular 2018 / C / 127 of 07.12.2018 .

[ Table of contents of this chapter ] - [ Table of contents of the VAT Comment ]

# Section 9 - Special provisions

## 1. Tobacco products

Reference is made to Article 58, § 1, of the VAT Code and Royal Decree No 13 of 29.12.1992 regarding the regulation of manufactured tobacco in the field of value added tax .

With regard to manufactured tobacco, which were the subject of an intra-Community acquisition or which were produced here, the tax is levied in accordance with Article 58, § 1, of the VAT Code whenever, in accordance with the law, for those manufactured goods. - whether regulations concerning Belgian excise duty must be complied with.

De belasting wordt berekend op de prijs vermeld op het fiscale bandje, of indien geen prijs is bepaald, over de maatstaf van heffing van de accijns.

Tabakssurrogaten zijn met tabaksfabrikaten gelijkgesteld, telkens wanneer die gelijkstelling bestaat voor de heffing van de accijns.

De aldus geheven belasting is de belasting verschuldigd ter zake van de invoer, de intracommunautaire verwerving en de levering van de tabaksfabrikaten.

De belasting wordt door de schuldenaar van de accijns betaald aan de ontvanger die bevoegd is voor de heffing van de accijns, onder andere door de fabrikant bij de aanschaffing van de fiscale bandjes. Die gelijktijdige heffing vergemakkelijkt de controle daar deze terzelfder tijd wordt uitgeoefend als die op de accijns. Deze 'heffing aan de bron' brengt ook mee dat alle aftrek van btw geheven van tabaksfabrikaten uitgesloten is.

De levering van tabaksfabrikaten wordt dus altijd gefactureerd tegen een prijs inclusief btw. Op de factuur moet de vermelding voorkomen: 'Tabaksfabrikaten: btw voldaan bij de bron en niet aftrekbaar'.

It is noted that, in accordance with Article 58, § 1, second paragraph, of the VAT Code, VAT is not levied on deliveries to passengers on board a ship, aircraft or train during intra-Community passenger transport when the place of delivery pursuant to Article 14, § 4, of the VAT Code is not located in Belgium, that is to say when the place of departure of that transport is not located in Belgium (see 'Book I: Tax liability and taxable transactions - Chapter 2: Supplies of goods').

## 2. Excise products, other than manufactured tobacco

Reference is made to Article 58, § *1a* of the VAT Code and Royal Decree 51 of 14.04.1993 regarding the simplification scheme for intra-Community acquisitions of excise products in the field of value added tax .

### A. Intra-Community acquisitions for consideration

When excise products referred to in Article 1, § 6, 4 °, a) and b) of the VAT Code (energy products, alcohol and alcoholic beverages) are the subject of intra-Community acquisitions for consideration for a member of the ' group of four ( 3 ), the general principle of taxation on acquisition always apply, even if the threshold for intra-Community acquisitions of 11,200 euros (Article 25 *in* § 1, subsection 2 °, b) and c) , of the VAT Code) was not exceeded.

*(3) Belong to the group of four:*

- *small companies subject to the tax exemption regulation of Article 56bis of the VAT Code*
- *taxable persons who only supply goods or services that are exempt in accordance with Article 44 of the VAT Code*
- *agricultural entrepreneurs subject to the special agricultural regulation of Article 57 of the VAT Code*
- *the non-taxable legal persons*

When, for goods other than new means of transport and excise products, a member of the 'group of four' exceeds or has exceeded the threshold of EUR 11,200 during the current or previous calendar year or has opted to tax all his intra-Community acquisitions and he therefore has a valid VAT identification number for his intra-Community acquisitions , VAT is levied on the submission of the special declaration referred to in Article 53 *to* the VAT Code).

If, on the other hand, the member of the 'group of four' does not exceed or exceed the threshold of EUR 11,200 during the current or the previous calendar year and has not opted for, VAT is levied and, where applicable, returned by the competent official with at least at least one title of attaché appointed by the Administrator General of Customs and Excise.

Since taxation is insured under the reporting obligations excise, taxable and non-taxable entities are covered by the derogation in Article 25 *in* § 1, paragraph 2, of the VAT Code is applicable, thus not obliged to be identified for VAT because of their intra-Community acquisitions of excise products.

The declaration for consumption in the field of excise duty serves as a declaration for the payment of value added tax as well as an application for exemption from this tax (Article 5 of Royal Decree 51 , aforementioned).

The exemption from VAT is allowed under the same conditions as the exemption from excise duty.

### B. Note

Article 26, § 1, third paragraph, of the VAT Code, to which Article *26a* , first paragraph, of the VAT Code refers, explicitly states that taxes, duties and charges must also be included in the taxable amount. These include, in particular, excise duties.

As regards the excise products acquired by a member of the 'group of four', excise duties are in principle levied both in the Member State of departure and in the Member State of arrival. Consequently, where applicable, the taxable amount of the intra-Community acquisition should include both the excise duties of the Member State of departure and Belgian excise duties.

The taxable amount of the intra-Community acquisition may nevertheless be subsequently reduced by the amount of excise duties levied in the Member State of departure, insofar as the supplier has repaid them to his customer. This gives the buyer a right to a refund as a result of the VAT levied on the part of the taxable amount that relates to the duty paid back (Article 77, § 1, 1 ° of the VAT Code, see 'Book IV: Settlement of the tax - Chapter 14: Refund of the tax').

## Second-hand goods

Reference is made to Article 58, § 4 of the VAT Code and 'Book work V: Special schemes - Chapter 15: Special schemes'.

[ Table of contents of this chapter ] - [ Table of contents of the VAT Comment ]

# Section 10 - Completion

## 1. Amount of VAT due

If the amount of the tax due contains a fraction of one euro with more than two decimal places, that fraction must be rounded up to the higher or lower cent, depending on whether the third decimal reaches 5 or does not reach 5 (Article 1 of the Royal Decree No 8 of 12.03.1970 determining the method of rounding the value added tax, the deductible or the refundable value added tax ).

That rounding is done:

- each, when the amount of the tax must be stated either on an invoice or other document drawn up in implementation of the VAT Code, or in one of the books referred to in Article 14 of Royal Decree No. 1 of 29.12.1992 relating to the system of payment of value added tax
- per box, as appropriate, in the declarations referred to in:
  - Article 53, § 1, first paragraph, 2 °, of the VAT Code, this is the periodic monthly or quarterly declaration
  - Article 53 *for* , 1 ° of the VAT Code, which is the special VAT return
  - Article *53h* , § 1 of the VAT Code, this is Special Declaration No 446 concerning the intra-Community acquisition of new means of transport.

With regard to the invoiced transactions, however, for accounting reasons, rounding may be done per good or service, per tariff or otherwise (per invoice line...), provided that this is done in accordance with the above and the method followed is applied uniformly.

## 2. Amount of deductible or refundable tax

Must also be completed in accordance with the provisions of Title 1:

- the result of the calculation whereby the part of the tax that is deductible pursuant to Articles 45 to 49 of the VAT Code is determined
- the amount of the refundable tax that is stated either on the corrective document referred to in Article 4, § 1, 1 °, of the Royal Decree No. 4 of 29.12.1969 with regard to the returns on value added tax , or in the refund application.

# 3. The total amount to be paid by the customer

## A. Legal notices

Reference should be made to Circular 2019 / C / 123 of 26.11.2019 which cancels and replaces decision No. ET 125.703 of 02.02.2016 .

As a result of an amendment to Book VI of the Code of Economic Law by the law of 02.05.2019 containing various provisions regarding economics, Article VI.7 / 1 of this Code provides that **from 01.12.2019** , companies, as the case may be, obligation or have the option to round the total amount payable to the nearest multiple of 5 cents.

Article VI.7 / 1, § 1 of the Economic Law Code states that "each company rounds the total amount paid by the consumer in cash to the nearest multiple of five cents". This means that rounding is mandatory for cash payments.

Paragraph 2 of the same article states that 'the company is also allowed to round off the total amount if the payment is made in a manner other than cash'. In other words, it is possible to opt for rounding for all payments other than in cash (choice for all payments and not per transaction).

## B. Principe

If the company is obliged to round off the total amount to be paid in whole or in part or if it chooses to do so and if this amount is effectively rounded off in whole or in part, the VAT must in principle be levied in function of the price actually claimed from the customer, namely the rounded price.

Example:

*On 01.12.2019 a private individual buys in a supermarket:*

- *a good A, subject to the VAT rate of 6%, at a price of 10.04 euros (= 9.47 + 0.57 (VAT))*
- *a good B, subject to the VAT rate of 6%, at a price of 13.77 euros (= 12.99 + 0.78 (VAT))*
- *a good C, subject to the normal VAT rate of 21%, at a price of 24.13 euros (= 19.94 + 4.19 (VAT))*
- *a good D, subject to the normal VAT rate of 21%, at a price of 15.98 euros (= 13.21 + 2.77 (VAT))*

*The supermarket must apply the rounding or opt for this. The total amount of 63.92 euros is therefore rounded to 63.90 euros.*

*The application of the VAT rules requires that the tax is levied on the price actually received from the customer, which results in the rounding of the total amount paid of 0.02 euros (= 63.92 - 63.90) on the different goods must be converted according to 'the rule of three'.*

*The amount of rounding will therefore be 0.00745 euros on goods A and B subject to 6% (representing 37.25% of the total purchase amount) and of 0.01255 euros on goods C and D subject to 21% (representing 62.75% of the total purchase amount).*

*By the way, the same principles apply in case of refund of items.*

Example:

*Same data as the above example. On 03.12.2019, the supermarket pays back the good A and the good C, which were defective, to the private individual.*

*The supermarket must apply the rounding or opt for this. Consequently, the total amount of the repayment of EUR 34.17 (= EUR 10.04 (= 9.47 + 0.57 (VAT) + EUR 24.13 (= 19.94 + 4.19 (VAT))) is rounded to 34.15 euros.*

*The application of the VAT rules requires that the tax be returned on the price actually refunded to the customer, resulting in the rounding of the total amount paid of -0.02 euros (= 34.15 - 34.17) the various goods must be converted on the basis of 'the rule of three'.*

*The amount of rounding will therefore be -0.005876 euros on good A subject to 6% (representing 29.38% of the total amount repaid) and of -0.014124 euros on good C subject to 21% (that 70 Represents 62% of the total amount refunded).*

## C. Tolerance

The Administration allows, through administrative tolerance, that the VAT is calculated on the total amount payable per VAT rate group prior to rounding under the strict condition that the undertaking using this simplification measure does this systematically for all amounts payable that be rounded up or down.

The choice made in this way is considered final.

[ Table of contents of this chapter ] - [ Table of contents of the VAT Comment ]

# Section 11 - Intra-Community acquisition of goods

RELATED DOCUMENTS

› VAT Commentary, Chapter 6 in PDF

CHARACTERISTICS

**Title:** VAT Comment - Chapter 6. Taxable amount (Update on 01.06.2020)

**Summary:** VAT Comment - Taxable amount

**Keywords:** compensation ,

- The criteria used to determine the taxable amount for an intra-Community acquisition of goods are the same as those used for the delivery of similar goods in Belgium (Article *26a* (1) of the VAT Code).

  The amount of excise duty payable or payable by the person who carries out the intra-Community acquisition of an excise product must be included in the taxable amount.

  If, after the intra-Community acquisition of goods takes place in Belgium, the customer receives a refund of the excise duty paid in the Member State of departure of the dispatch or transport of the goods, the taxable amount for the intra-Community acquisition will be reduced accordingly.

  This is the situation where the purchaser of excise products has paid the excise duties owed in the Member State of departure of those goods and from which he can subsequently receive a refund if he proves that the excise duties have also been paid in Belgium.

  Since in this case the customer makes an intra-Community acquisition of those goods in Belgium, where the excise duties paid in the Member State of departure are included in the taxable amount, the refund of those excise duties should lead to a revision of the taxable amount for that intra-Community acquisition.

  With regard to the conversion of a price expressed in a foreign currency, reference is made to Section 3, Title 7, Section B.
- The taxable amount for a shipment or destination which is assimilated to an intra-Community acquisition of goods for consideration consists of the purchase price of these or similar goods, or in the absence of a purchase price, of the cost, which is set at the time when these acts occur (Articles *33a* and 33, § 1, 1 ° of the VAT Code).

[ Table of contents of this chapter ] - [ Table of contents of the VAT Comment ]

# Section 12 - Imports of goods

## 1. General rule - Customs value

Article 34, § 1, of the VAT Code provides that for imported goods the taxable amount is calculated according to the applicable Community rules for the determination of the customs value even if the imports relate to goods which for any reason are not subject to duties are subject to import.

That rule therefore applies to imports not only of goods which are not in free circulation (non-Union goods), but also of goods coming from parts of the customs territory that do not belong to the VAT territory of the Community (Union goods). (for example imports of goods from the Canary Islands).

The customs valuation rules are set out in Articles 69 to 74 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 09.10.2013 establishing the Union Customs Code .

## 2. Definition of the customs value

The customs value is the value to be determined for the application of the rates of customs duties or other import taxes and is the taxable basis for *ad valorem* duties.

## 3. Determination of the customs value

### A. Rule: the transaction value

The primary basis for the customs value of goods is the transaction value, which is the price actually paid or payable for the goods when sold for export to the customs territory of the Community, adjusted where necessary.

The price actually paid or payable is the total payment made or due to be made by the buyer to the seller or by the buyer to a third party on behalf of the seller for the imported goods, and includes all payments that are a condition of the sale of the imported goods are or must be actually carried out.

In order to determine the customs value, the price actually paid or payable for the imported goods is adjusted positively or negatively with a number of elements.

For example, the transaction value should be increased by (see Article 71 of the Customs Code ):

- the following elements, insofar as they are borne by the buyer and are not included in the price actually paid or payable for the goods:
  - commissions and brokerage, with the exception of purchasing commissions
  - costs of packaging materials which are deemed to form a whole with the goods for customs purposes
  - costs of packaging, including both labor and material
- the appropriately imputed value of the goods and services listed below, if they are supplied, directly or indirectly, free of charge or at a reduced price, by the buyer to the seller for use in the production and sale for export of the imported goods, provided that they are value is not included in the price actually paid or payable:
  - materials, constituent parts, components and the like that are incorporated in the imported goods
  - tools, dies, molds and similar items used in the production of the imported goods
  - materials consumed in the production of the imported goods
  - engineering, development, works of art and designs, drawings and sketches, performed or produced elsewhere than in the customs territory of the Union and necessary for the production of the imported goods
- royalties and license rights in respect of the goods of which the value is to be determined, which the buyer, as a condition of the sale of these goods, must pay directly or indirectly, insofar as these royalties and license rights are not included in the price actually paid or payable are understood

compensation other than in cash , price , criterion of levy , compensation , incidental action , business , item of the price , sale on installment , hire purchase , deferral of payment , joint offer, transfer , packaging , import , receivable by the government , subsidy related to the price , advance , normal value , discount discount , coupon , minimum , taxable , amount , custom work , price reduction , agent, commissioner , mutual deliveries or services , work work in immovable state , intra-community transaction , price in foreign currency , excise product , travel agency , second-hand goods , commission , customs value

**Date of the document:** 22/06/2020

**Publication date:** 06/22/2020

**Effective date:** 01/06/2020

**Datum Fisconet *plus* :** 22/06/2020

- the value of each portion of the proceeds from any subsequent resale, transfer or use of the imported goods that directly or indirectly benefits the seller
- the following costs up to the place where the goods are brought into the customs territory of the Union:
  - the cost of transport and insurance of the imported goods, and
  - the transport-related costs of loading and handling the imported goods.

The air freight costs to be added to the customs value may be determined on a flat-rate basis (see Annex 23.01 of Commission Implementing Regulation (EU) No 2015/2447 of 24.11.2015 laying down detailed implementing rules for certain provisions of the Customs Code of the Union) .

The place where goods are brought into the customs territory of the Union means (see Article 137 of Implementing Regulation (EU) 2015/2447) :

- for goods transported by sea: the port where the goods first arrive in the customs territory of the Union
- for goods purchased by sea without transshipment and then inland waterways are transported : the first port eligible for release
- for goods transported by rail, inland waterway or road: the place where the customs office of entry is located
- for goods transported by other modes of transport, the place where the border of the customs territory of the Union is crossed.

However, the following elements should not be included in the customs value (see Article 72 of the Customs Code ):

- costs of transporting the imported goods after their entry into the customs territory of the Union
- costs of construction, installation, erection, maintenance or technical assistance related to imported goods, such as industrial installations, machinery or equipment, carried out after their entry into the customs territory of the Union
- Interest payable under a financing agreement concluded by the buyer in connection with the purchase of imported goods, regardless of whether the financing is provided by the seller or by another person, when that financing agreement is in writing and the buyer can demonstrate, if requested Which:
  - those goods are actually sold at the price declared as the price actually paid or payable, and
  - the requested interest rate is not higher than in the country in which and at the time when financing took place for such transactions is customary
- the cost of obtaining the right to reproduce the goods imported into the Union
- purchasing commissions
- import duties and other taxes payable in the Union on account of the import or sale of the goods;

In summary, it can be stated:

- the customs value is usually equal to the price paid or payable for the goods for export to the customs territory of the Union
- this price should be adjusted with some elements to be added because they are taxable or to be deducted from it because they are not taxable
- the taxable elements should only be added to the price if they are not included
- the non-taxable elements can be deducted from the price if they are included in the price and can be distinguished from it.

The valuation is mainly based on the transaction value of the imported goods.

## B. Exception: other methods

Where the customs value of the imported goods cannot be determined on the basis of the transaction value, it must be determined by one of the following other valuation methods. These methods have an imperative order of precedence; the first satisfactory method is mandatory:

- the transaction value of identical goods exported to the customs territory of the Union at the same or near the same time as the goods to be valued
- the transaction value of similar goods exported to the customs territory of the Union at the same or near the same time as the goods to be valued
- the value based on the unit price at which the imported goods or identical or similar imported goods have been sold in the largest aggregated quantity in the customs territory of the Union to persons not related to the sellers
- the calculated value, consisting of the sum of:
  - the cost or value of materials and fabrication or other processing employed in the production of the imported goods be - or processing
  - an amount for profit and operating cost equal to the amount normally taken into account when producers in the exporting country sell goods for export to the Union of the same type or kind as the value to be determined
  - the costs of transport and the costs related to transport.
- using reasonable means consistent with the principles and general provisions of all of the following:
  - the Agreement on the Application of Article VII of the General Agreement on Tariffs and Trade
  - Article VII of the General Agreement on Tariffs and Trade.

# 4. Costs to be added to the customs value

Article 34, § 2 of the VAT Code stipulates that a number of costs must be added to the customs value, insofar as they are not already included in that value.

It is:

- duties, levies and other taxes payable abroad, and those payable in respect of imports, with the exception of value added tax to be levied
- the additional costs, such as commission, customs formalities, packaging, transport and insurance, up to the first place of destination of the goods in Belgium.

# A. Duties, levies and other taxes

This includes duties, taxes, levies and other taxes payable in the third country, as well as taxes, charges and other taxes, with the exception of VAT, which are payable on import into Belgium and whose payment is mandatory with the declaration for consumption and which is therefore included in the value of the goods when they are released by customs.

Import duties and other taxes payable in the Community on the import of goods do not form part of the customs value of the imported goods.

Therefore, with the exception of VAT, the following taxes must be added to the customs value in order to determine the taxable amount for VAT:

- import duties
- the excise duty
- the special excise duty
- the agricultural elements
- the license fees
- the permit stamps
- the rights for inspection and sanitary examination
- the fees charged on imports for certain audit institutions
- the countervailing and other charges payable on imports of certain goods in accordance with European Community law.

With regard to specific excise goods, it is noted that when such goods are declared for consumption for the purposes of VAT, but are placed under a suspensive procedure with regard to excise duties, the amount of the excise duty payable should not be included in the taxable amount. included.

# B. Additional costs

The additional costs to the first place of destination in Belgium or to another place of destination in the Community must be included in the taxable amount.

Additional costs include costs associated with the import, such as: commissions, customs formalities, packaging costs as well as transport and insurance costs.

The additional costs from the place of dispatch in the third country or in the third country to the first place of destination in Belgium always form part of the taxable amount. For the purposes of Article 34, § 2, 2 °, of the VAT Code, the first place of destination is the place in Belgium that is mentioned in the consignment note or other document under which the goods enter Belgium. Failing this information, the first place of destination is deemed to be the place in Belgium where the first transhipment of the goods takes place.

Where a different place of destination in the Community is known at the time when the chargeable event occurs on import, the additional costs from the first place of destination in Belgium to that other place of destination in the Community must also be included in the yardstick. of tax are included.

The other place of destination in the Community can be either a place in Belgium or a place in another Member State.

## a. Commissielonen

Commissions are the fees that the addressee pays to brokers or agents who acted as intermediaries in the purchase of goods or in the services performed in respect of those goods.

The commissions and commission charged to the buyer form part of the customs value, with the exception of the purchasing commissions. Purchasing commissions should therefore be added to the customs value to determine the taxable amount for VAT.

## b. Costs related to customs formalities

Costs related to customs formalities are the sums paid for the services rendered by the freight forwarder for transport or by the customs broker used for customs clearance at importation.

More generally, customs formalities refer to the services which must be provided on the occasion of movements of goods between the Community and third countries under Community (customs, tax or other) regulations and where, for the implementation of these formalities, the intervention of the customs authorities.

These costs are considered, in accordance with customs regulations, to be closely related to the transport and delivery of the goods beyond the point of entry into the customs territory of the Community. Consequently, they should not be included in the customs value, but be added to the customs value for the purpose of determining the taxable amount for VAT.

## c. Cost of packaging

The cost of ordinary and customary packaging must be included in the taxable amount, even if it concerns packaging materials that must be returned to the supplier or service provider. The other packaging means are classified as goods that are distinguished from their contents; they are taxed at the rate that applies to them.

The cost of the packaging materials brought into Belgium under a temporary importation procedure with full exemption from import duties should not be included in the taxable amount of the goods imported into this country with that packaging. When the packaging materials are withdrawn from the temporary admission procedure, they are taxed at the applicable own rate.

### d. Costs of transport, transport-related activities and insurance

The cost of transport, with transport associated operations and insurance from the place of shipment in the third country or third territory to the first destination in Belgium, should always be included in the taxable amount.

Where another place of destination in the Community is known at the time when the chargeable event occurs on importation, the costs of transport, transport operations and insurance shall cover from the first place of destination to that other place of destination must also be added to the taxable amount.

Costs of transport-related operations are to be taken to mean the costs charged to the consignee for services relating to the transport of imported goods, such as towing, loading, unloading, handling, weighing, use of ports ...

The costs of storage and safekeeping of goods in a warehouse, which the seller charges to the buyer, are not regarded as additional costs within the meaning of Article 34, § 2, first paragraph, 2 °, of the VAT Code. They should therefore not be included in the taxable amount of VAT. They are also not part of the customs value, except where the price to be paid includes and cannot be split off.

The costs that the buyer pays to a third party to subject the goods to a quality control before their importation, without this expertise being imposed by the seller, are not considered as additional costs within the meaning of Article 34, § 2, first paragraph, 2 °, of the VAT Code because they are not linked to the import itself. Those costs should therefore not be included in the taxable amount for VAT. Nor are they part of the customs value. ( decision no. ET 117.558 of 01.12.2010 ).

### e. Comments

It is of no importance that the costs to be included in the taxable amount are advanced by the seller and charged separately to his customer or, according to the agreement between the parties, are paid by the buyer upon arrival of the goods or that the buyer carries out the transport with his own means.

For non-Union goods, the costs of transport, transport operations and insurance up to the place of entry of the goods into the customs territory of the Community should be included in the customs value.

Consequently, those costs should no longer be added to the taxable amount for VAT. Costs relating to that part of the journey made between the place of entry into the customs territory of the Community and the first place of destination in Belgium or, where appropriate, to another place of destination in the Community. on the other hand, is not part of the customs value. Consequently, they should be added to the taxable amount on VAT.

When non-Union goods are sold ' free at destination', the transaction price includes not only the shipping costs from the place of departure in the third country to the place of entry into the customs territory of the Community, but also those relating to the part of the journey made in the customs territory of the Community itself.

Although in that case the costs of transport within the Community are normally not mentioned separately on the invoice or any other commercial document accompanying the goods, those costs may be deducted from the transaction price for the calculation of the duties for the purposes of customs legislation. on import. However, it is clear that the shipping costs related to the transport operations carried out in the customs territory of the Community should be included as additional costs in the taxable amount for VAT.

Example:

A, a taxpayer established in Brussels, purchases goods in the United States. The goods are shipped directly to Belgium, accompanied by a manifest that mentions Antwerp as the port of unloading. On their arrival in Antwerp, the goods are released for free circulation and declared for consumption. A appeals to border forwarder B for this purpose and also orders him to transport the cleared goods to his company in Brussels.

Antwerp is the first place of destination in Belgium (place mentioned on the document accompanying sea transport). Transport costs from the place of departure in the United States to Antwerp must therefore be included in the taxable amount. However, these transport costs are already included in the customs value of the goods and should therefore no longer be added. In accordance with customs regulations, the port of unloading or transhipment (in this case Antwerp) is regarded as the point of entry into the customs territory of the Community for goods brought in by sea .

However, at the time of the chargeable event, another place of destination is known in the Community, namely Brussels. The transport costs Antwerp-Brussels are also part of the taxable amount. Costs related to the journey made in Belgium are not included in the customs value and must be added to it to determine the taxable amount for VAT.

## 5. Exception 1 - Goods under a suspensive customs procedure

When goods located in Belgium under one of the regulations referred to in Article 23, §§ 4 and 5 of the VAT Code (see 'Book I: Tax liability and taxable transactions - Chapter 4: Import'), are consumed indicated after having been the subject of one or more supplies and / or services under that regulation, the taxable amount on which the VAT due in respect of imports is calculated does not apply to the general rule, on the basis of Article 42, § 3, of the Royal Decree No 7 of 29.12.1992 regarding the import of goods for the purposes of the value added tax , not from the customs value, but from the value of the goods calculated in the trading phase in which they are after having undergone those actions.

In order to avoid double taxation on the same person, that value should, where appropriate, be reduced by the value of the services provided in respect of those goods to the person acting as the consignee when those services are not exempt from VAT under the tax rules of the domestic market in the Member State where they are deemed to take place or are deemed to take place outside the Community in accordance with Article 21, § 2 of the VAT Code.

In this regard, it should be noted that the service consisting of carrying out activities on tangible movable property, in accordance with Article 21, § 2, of the VAT Code, takes place where the taxable person / recipient of the service has established the seat of his economic activity or has a permanent establishment for which the service is provided.

Depending on the country in which that registered office or permanent establishment is located, the service relating to movable property located in this country will therefore be provided in Belgium, in another Member State or in a third country.

If, on the other hand, the recipient of the aforementioned service is a person who is not regarded as a taxable person for the location of the services, the service will take place where Article *21a* , § 2, 6 °, c) of the VAT Code applies. it is performed materially.

Services consisting of activities performed on goods that are located in Belgium under one of the suspensive arrangements referred to in Article 23, §§ 4 and 5 of the VAT Code are, pursuant to Article 40, § 2, 2 ° of the VAT Code exempt from VAT if they take place in Belgium in accordance with Articles 21, § 2, or *21a* , § 2, 6 °, c) and the other conditions listed in (see ' Book II: Determination of the taxable basis and the applicable rate - Chapter 8: Exemptions for exports, intra-Community supplies and acquisitions , imports and international transport ').

It follows from the foregoing that the value of the service provided to the consignee in respect of goods which are situated in Belgium under one of the suspensive arrangements referred to above must be deducted from the taxable amount on which the import VAT due is calculated when:

- the service is deemed to take place in Belgium in accordance with Article 21, § 2, or Article *21a* , § 2, 6 °, c) of the VAT Code and cannot be exempt from VAT
- the service is provided in another Member State in accordance with Article 21, § 2 of the VAT Code and cannot be exempt from VAT there
- the service takes place outside the Community in accordance with Article 21, § 2 of the VAT Code.

However, the value of the service cannot be deducted from the taxable amount of the imported goods where:

- the service is deemed to take place in Belgium in accordance with Article 21, § 2, or Article *21a* , § 2, 6 °, c) of the VAT Code and is exempt from VAT under Article 40, § 2, 2 ° of the VAT Code
- the service is deemed to take place in another Member State in accordance with Article 21, § 2 of the VAT Code, and there it is exempt from VAT on the basis of a national provision equivalent to Article 40, § 2, 2 °, of the VAT Code.

Moreover, the taxable amount as determined according to the criteria set out above must be increased by the sums not already included in that value which must be included in the taxable amount.

Examples:

- A, B, C and D are taxable persons who have their economic activity in Belgium.

  A purchases bulk goods for 1,000 euros outside the Community and places them here under a customs warehouse procedure. The arrival of the goods in Belgium does not make VAT due.

  A sells the goods in the bonded warehouse to B for EUR 2,000, which in turn resells them to C for EUR 3,000 while retaining the bonded arrangement. C has the goods weighed in the customs warehouse and bagged by D for the price of 200 euros.

  C withdraws the goods from the bonded warehouse scheme and declares them for consumption in its name.

  The VAT due on imports must be calculated over a value of EUR 3,200. That value consists of the purchase price of C, or 3,000 euros, plus 200 euros, the price that C must pay for the service provided by D.

  The service takes place in Belgium, country where C has the seat of its economic activity and is exempt from Belgian VAT on the basis of Article 40, § 2, 2 ° of the VAT Code (service relating to a good that is is located under the customs warehouse procedure referred to in Article 23, § 4, 5 ° of the VAT Code). The fact that import duties can be calculated on the transaction price paid by A or EUR 1,000 is of no significance in determining the taxable amount for VAT.

- Same example as under the first bullet point, except that the addressee C is a foreign taxpayer who has recognized an individually liable representative in Belgium and has the seat of his economic activity either outside the Community or in a Member State other than Belgium whose national legislation does not provide for an exemption from VAT for services provided to goods which are under a customs warehouse procedure in that Member State or in another Member State (eg Belgium).

  In the release for consumption of the goods in respect of C have the relevant input VAT payable only be calculated on the price C to B has paid for the acquisition of goods (3,000 euros). The service that the goods have undergone takes place where C has established the seat of its economic activity (Article 21, § 2, of the VAT Code), i.e. outside the Community or in a Member State other than Belgium where it effectively VAT was taxed. Pursuant to Article 42, § 3, of the Royal Decree No 7 , mentioned above, such services do not form part of the taxable amount of the imported goods.

## 6. Exception 2 - Outward processing

When goods that were temporarily exported to be repaired, processed, modified or processed outside the Community (outward processing procedure) are imported into Belgium with total or partial exemption from VAT pursuant to Article 41 of Royal Decree 7 , aforementioned , the taxable amount of VAT is not the customs value of the reimported goods, but a special value.

The taxable amount for reimported goods is limited to the value of goods and works supplied outside the Community, increased by the sums not already included in that value which, in accordance with Article 34, § 2, of the VAT Code, taxable amount should be included.

Works performed outside the Community means services relating to the goods exported which are materially supplied outside the Community, regardless of whether they are deemed to be in a Member State of the Community or in a third party in accordance with the rules governing the location of the services. country for the purposes of VAT (see Article 41, § 3, of Royal Decree No 7 , aforementioned).

# 7. Sums not included in the taxable amount

The rules for determining the taxable amount with regard to transactions in Belgium also apply to imports of goods.

Interest due for late payment is not considered an additional cost and should therefore not be included in the taxable amount.

# 8. Data expressed in a currency other than the euro

Article 27, § 1 of the VAT Code provides that when the data for determining the taxable amount on import are expressed in the currency of a third country or of a Member State that has not adopted the euro , the exchange rate is determined in accordance with the Community provisions in force for the calculation of the customs value.

The exchange rate to be applied to imports is therefore always the one applicable to the calculation of the customs value.

Those provisions are contained in Article 146 of Commission Implementing Regulation (EU) No 2015/2447 of 24.11.2015 laying down detailed implementing rules for certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down of the Union Customs Code.

In accordance with the said Article 146, the following exchange rates are used for the currency conversion to determine the customs value:

- the exchange rate published by the European Central Bank for the Member States whose currency is the euro
- the exchange rate published by the competent national authority or, where the national authority has designated a private bank to publish the exchange rate, the rate published by that private bank for the Member States whose currency is not the euro.

The exchange rate to be used is the exchange rate published on the penultimate Wednesday of each month.

The exchange rate applies for one month from the first day of the following month.

---

[ Table of contents of this chapter ] - [ Table of contents of the VAT Comment ]