

The government as VAT payer

In the VAT story, the government plays a special role. And then we mean especially the government providing services to its civilians. Through these activities it participates after all in the economy. On the other hand the government is in principle not considered as a VAT payer. If however the government provides services which could also be provided by VAT taxable companies, unfair competition could occur between companies and the government. How this is solved is laid down in a new circular letter of the tax authorities dating from December 2015 in which the VAT treatment of acting as government is explained.

Which 'governments' are concerned?

This scheme applies to all public bodies. These are next to the Federal State, the Communities, the Regions, local governments (provinces and municipalities) and the public institutions.

Public institution means an institution (i) which is incorporated (legal body) and (ii) is established by law (federal), a decree (communal), a royal or ministerial decree or a regulation (iii) in order to perform certain general tasks and (iv) can do so autonomously (v) but with a certain degree of control by the organising or supervisory body. The BIBF, IAB, the Medical Council, the Council of Lawyers, Child and Family, and public hospitals fall under this concept.

Watch out: the above mentioned institutions are established by law, decree, ... This is often referred to as establishment by foundation. Besides this there are also public legal bodies which are established by association. This is the case for of a.o. De Lijn, autonomous municipal companies, inter communal associations, regional housing companies, private hospitals. These institutions are normal VAT payers as mentioned in article 4 of the VAT Code.

Acting as government

The above mentioned public bodies are not considered as VAT payers. However an important nuance applies: they are not considered as VAT payers for activities where they act as government. If the government would act under the same circumstances as any other citizen, it would be deemed to be a VAT payer. Since it is not easy to determine whether a public body 'acts as government', the VAT authorities suppose it acts as government and does not has the capacity of VAT payer, unless there are specific reasons to prove otherwise.

Significant distortion of competition

A public body does no longer act as government, if its qualification as government and not as VAT payer would lead to any significant distortion of competition. In other words: the government cannot compete with normal suppliers of goods or services performing the same activities, who are VAT payers and should charge VAT (which is a disadvantage with respect to the government not charging any VAT). The VAT Code lists some sectors in which the government is deemed to create a potential distortion of competition: telecommunications and the supply of water, gas, electricity and steam.

For other sectors it is key to understand the meaning of any significant distortion of competition. What does 'any significant' mean? In order to avoid any discussion for the future, the VAT authorities have linked this with a clear threshold: 25.000€ of turnover per activity (and not per transaction). Please note that this is the same threshold which currently applies in order to determine what a small company is.

As from when do these rules apply?

The new rules of this circular letter (e.g. the turnover threshold of 25.000€) should be applied as from 1 July 2016. This moment was determined in order to give the public bodies sufficient time to implement these new rules.

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