

Cost sharing associations: new VAT rules

The VAT rules for cost sharing associations or independent groups were amended in July 2016 due to European pressure. End of last year the tax authorities finally issued a circular letter providing more explanation on these new rules. We herewith explain these briefly.

What is a cost sharing association?

The official legal name for a cost sharing association is 'independent group'. A cost sharing association is an association which is established by two or more persons or legal bodies in order to rationalize their costs. A typical example is an association of several hospitals which establish a cost sharing association in order to acquire expensive medical equipment. The association will buy the equipment and rent it out to the hospitals. By doing so, the hospitals do not have to make the investments in the equipment individually, and the costs are spread.

A cost sharing association can be incorporated or not.

The cost sharing association is incorporated:

- Incorporating can be made in any form: a not for profit association, a limited company (bvba, nv, ..).
- Staff necessary for the operation of the association is hired by the association directly on its payroll. The cost of the staff is divided under the members.

The cost sharing association is not incorporated:

- It should act in its own name. Between the founders a cooperation agreement is made determining which activities the association will perform, how it will work and which member will fulfill the VAT obligations.
- It cannot engage staff itself. Staff should be hired by one of the members in the name and on behalf of the association. This member can put the staff at the disposal of the association without any VAT charge, provided that the staff is used for VAT exempt activities.

The members enter into a durable cooperation. This means that the members should stay in the association for at least two subsequent years.

Who can become a member of the association?

The members can be companies, non profit organizations or natural persons. This means that they can also have taxable activities. These taxable activities should however be ancillary. This means that the total amount (per calendar year) of the transactions giving right to deduct VAT (= the taxable transactions) should be less than 50% of the total annual turnover. Occasionally exceeding this threshold is allowed by the circular letter.

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What can a cost sharing association do?

Services for the members

In the first place the association can provide services for the members. On these services the association should not charge any VAT. These are exempt. Condition however is that these services are directly required for the exempt or non-taxable activities of the member. There should be a specific link between the services supplied and the exempt activity of the member receiving the services.

Above we indicated that it is possible that a member is a mixed VAT payer. These are the members having both taxable and exempt activities. In such case the association should charge VAT if this 'mixed' member uses the services both for its taxable and exempt activities. It is remarkable that in such case VAT must be charged on the full service: also for the part which is used for the exempt activities. This can be avoided by splitting the service in two parts and quoting this clearly on the invoice.

Services for non-members

The association can also provide services for non-members. On these services the association should charge VAT. Additionally the association should 'mainly' provide services for its members. This means that more than 50% of the annual turnover of services rendered should be derived from services for the members. Also in this case the circular letter provides a tolerance in case this threshold is not met.

Supplies of goods

The supply of goods has nothing to do with the cost sharing associations arrangements. Such supplies are always subject to the normal VAT rules.

Point of attention: services between members

Services provided by one member to another do not fall within the scope of this scheme. The members should charge each other VAT (except when the transaction as such is VAT exempt).

Which price can be charged by the association to its members?

The cost sharing association can only charge the members for its costs. This means that it can only ask for repayment of the member's share in its total expenditure. In practice this means that the association cannot have the goal to make profit. In case profit is made, it cannot be distributed to the members but it should be used to improve the services.

Formalities

Cost sharing associations should fulfil a number of administrative obligations. They should a.o. (i) keep an accurate, detailed and transparant bookkeeping, (ii) provide insight to the members in the cost price calculation and make an annual settlement, (ii) issue invoices for the taxable services and supply of goods and (iv) file a member list with the VAT authorities.

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