

## Letting of warehouses and VAT

Letting of immovable property is in principle VAT exempt in Belgium. This means that the landlord of the immovable property should not charge VAT. This has as a consequence that the landlord cannot deduct the VAT which he has paid on the acquisition/repair/maintenance of the building. An important exemption however is the letting of warehouses for the storage of goods. Such letting is subject to VAT.

### General rule: letting of immovable property is VAT exempt

The letting of immovable property is not subject to VAT = exempt. This has advantages and disadvantages. The advantage is that the lease is cheaper. The price for the tenant is not increased with VAT. If VAT is to be charged, this leads to higher prices especially for private individuals using the immovable property for private purposes. For the landlord it has however also a disadvantage: he does not have right to deduct input VAT. He cannot recover the VAT which he has paid on the acquisition or the renovation of the building. Therefore it is for VAT payers advantageous to charge VAT. If the tenant is also a VAT payer, it makes no difference: he could after all deduct the VAT charged on the rent.

#### Example

The NV A lets out an immovable property to BVBA B for 5.000€ per month. No VAT is charged. Shortly before the start of the letting A had some work performed in order to make the building suitable: this work amounts to 10.000€ + 2.100€ VAT. The VAT amount of 2.100€ cannot be deducted by A.

### Exception to the rule: letting of warehouses for the storage of goods is subject to VAT

For every rule there are exceptions. Also for the exemption for the letting of immovable property. One of the most important is the letting of storage space for the storage of goods. This service is subject to VAT.

#### Exception: strict application

Since the non exempt immovable letting is an exception, it should be applied strictly. This what the tax authorities always did. Only the letting of immovable property which is used as storage space for goods, can be subject to VAT.

In other words if the building next to the warehouse is also used for other activities, the exception does not apply. In such case the exemption applies to the full building and the full building is excluded from the right to deduct input VAT.

#### Example

A lets a warehouse with a shop. The building is not exclusively used for the storage of goods. The letting of the complete building (storage place and store) falls under the exemption for letting of immovable property.

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### But with a certain flexibility: the 10%-threshold

Practice forced the tax authorities to some pragmatism. In most buildings used for the storage of goods there is still need for a (small) room where no goods are stored, i.e. an office space where the stock administration is held.

According to the tax authorities, the existence of a small office does not exclude the application of the exception (charging and deducting VAT). However this is subject to two conditions:

- The office is destined for staff managing the storage of the goods;
- The surface of the office does not exceed 10% of the total surface of the building.

The tax authorities are on the other hand quite strict in verifying these conditions. An office with a surface of 11% cannot count on any flexibility = does not fall within the scope of the exception to the letting of storage space, but under the normal rules for letting of immovable property (=exemption and no right to deduct VAT).

### New interpretation of the 10%-threshold: surface vs volume

In a recent ruling the ruling commission applied the 10%-threshold in a different way.

A VAT payer wanted to build a warehouse and let it as storage space. The surface of the office, from where the stock management would be effectuated, exceeded the 10%-threshold. On the other hand the storage space was high, much higher than the office space. As a consequence the volume of the office space would be smaller than 10% of the total volume of the building.

The ruling commission followed this reasoning and allowed that the exception (VAT on the letting of storage space) would be applied; it is after all not illogical for warehouses to look at the volume rather than at the surface.

What does this ruling means to you? Well, 'rulings' apply in the first place to the applicant. On the other hand the point of view of the ruling commission can be used as a convincing argument in other cases. There is a good chance that the tax authorities and the ruling commission will in the future more often accept the volume criterion.