

SEMINAR
ORGANIZED
BY THE FAIB:

NEW VAT
REGIME FOR
NGOs



EUROPEAN
VATDESK

INTRODUCTION

THE VAT STATUS OF ANY PRIVATE ORGANIZATION



IN GENERAL

The VAT status (including the entitlement to recover input VAT levied on purchases) of any business (including non-profit organizations) depends on the answers to the following questions:

1. is the organization engaged in any economic activities, *i.e. providing services or goods against compensation on a regular basis?*

- If YES, organization is a VAT-able person
- If NO, organization isn't a VAT-able person.

2. Are the economic activities exempted from VAT or not?

- If YES, organization is an exempt VAT-able person without VAT recovery;
- If NO, organization is a normal VAT-able person with VAT recovery.

IN GENERAL

The VAT regime of NPO, like any business, depends on how their revenues qualify from a VAT perspective.

The main categories of NPO revenues are as follows:

- Membership fees;
- Sponsorship, exhibition and other events related fees;
- Fees & other compensations;
- Subsidies & Grants from Public Authorities;
- Gift and donations

The concept of « non-for-profit » is not relevant to determine whether NPO is a VAT-able person, by contrast to income tax systems

The concept of « non-for-profit » may be required in order to take benefit from several VAT exemptions (education, cultural activities etc.)

PART I

NPO'S
ACTIVITIES AND
THEIR VAT
TREATMENT



CONCEPT OF ECONOMIC OF ECONOMIC ACTIVITY FOR VAT PURPOSES

Definition of a taxable person (art. 4 of Belgian VAT CODE):

- Anyone
- Who pursues an economic activity
- Habitually
- Independently
- Regardless the place
- Regardless the purpose
- Regardless the outcome

CONCEPT OF ECONOMIC OF ECONOMIC ACTIVITY FOR VAT PURPOSES

Non-profit making associations do not enjoy a particular status from a VAT point of view contrary to Income Tax.

Indeed, the VAT status of “taxable person” is not limited to entities with commercial purposes, aimed at generating profit, nor is limited to profitable business or activities. The VAT qualification will depend on the nature of the activity performed by the association.

The first question to resolve is to ascertain whether or not an NPO has to be treated as a “taxable person” for VAT purposes or, in other words, whether it is engaged in an economic activity.

- Objective character

In the first place, the term “economic activity” is objective in character, and must be considered *per se* whatever its purposes or results.

It is therefore immaterial that the activity is carried out in the public interest and not with a purely business or commercial goal or with the aim of achieving certain targets

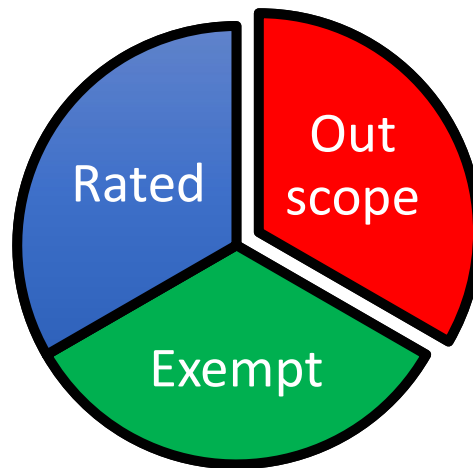
- Against consideration

Economic activity exists provided it entails supplies (of services or tangible goods) made to identifiable beneficiaries against consideration. The activity at issue must therefore be carried out in return for a remuneration. This was the approach taken by the European Court of Justice, which excludes from VAT services provided free of charge, on the ground that where a person’s activity consists exclusively in providing services free of charge, there is no basis of assessment.

The requirement that transactions must be performed against compensation is confirmed by the fact that economic activities are necessarily activities which are carried out with the aim of obtaining payment of consideration or which are likely to be rewarded by the payment of consideration. If they were free of charge in all cases they would not fall within the scope of VAT, since they could not constitute a basis of assessment.

In addition, a consideration does not mean necessarily a price above the cost price. It is only referred to the requirement that parties should agree upon a subjective value (in cash or in kind) that forms the counterparty of the services/goods supplied. The consideration can be paid by anybody, either the recipient contracting party or a third party including authorities.

Economic Activity = VAT Scope



GENERAL RULE : ECONOMIC ACTIVITIES SUBJECT TO VAT

CONDITIONS

- Delivery of goods or provision of services (**art. 2**)
- For direct consideration paid by the contracting party or by a third party
- Providing a “consumable benefit” for the recipient

➔ Failing this, the transaction is an “out of scope” operation (e.g. operations free of charge, compensation, etc.).



GENERAL RULE : ECONOMIC ACTIVITIES SUBJECT TO VAT

Since NPOs do not enjoy a specific status as far as VAT, in principle, their activities are subject to VAT (= general principle of taxation).

Therefore, they must register for VAT purposes and are subsequently entitled to deduct the VAT borne on the costs to taxed activities.

Nevertheless, there are two derogations to that general rule:

DERORATIONS

▪ Activities exempted from VAT

Some activities (specifically listed in the legislation) are exempted from VAT.

The (international) NPOs performing exclusively those activities do not have to register for VAT and cannot subsequently recover VAT incurred on the costs related to the exempt activities.

▪ Activities outside of the scope of VAT

There also exist activities considered of general interest (for the public at large) which are outside the scope of VAT.

The NPOs performing such activities are not, under certain conditions, viewed as a VAT-able person and may therefore not recover input VAT incurred on the costs related to those “out of scope” activities.

Examples:

NPO lobbying/advocating a business sector
NPO in vocational trainings

Example:

NPO fully financed by subsidies or donations

NPOs usually perform activities of a mixed nature: activities which are subject to VAT, exempt from VAT and out of scope. In such a case, the issue consists in determining the extent of their right to recover VAT: general deductible proportion based on the turnover, proportion based on the direct attribution of costs, attributive system, etc

VAT STATUS OF NPOs

ORDINARY TAXPAYER	EXEMPT TAXPAYER	MIXED TAXPAYER	PARTIAL TAXPAYER	NON – TAXABLE PERSON
Only activities subject to VAT	Only activities exempted from VAT (article 44 of Belgian VAT Code)	Activities subject to VAT + activities exempted from VAT	Activities within the scope of VAT + activities outside the scope of VAT	Only activities outside the scope of VAT

PART II

MODALITIES OF NPO'S RIGHT TO DEDUCTION



A right to deduct means a taxable person's right to claim from the tax authorities the VAT paid upon acquired goods and services.

VAT is deducted by subtracting the deductible amount from the VAT payable in the regular VAT return submitted to the tax authorities.

Right to deduction – Principles

ORDINARY TAXPAYER	EXEMPT TAXPAYER	MIXED TAXPAYER	PARTIAL TAXPAYER	NON – TAXABLE PERSON
Right to deduction in principle total except for some limitations and exclusions (art. 45, §§ 2 and 3 of the Belgian VAT Code)	No right to deduction	General pro rata or direct attribution of costs (art. 46, §§1 and 2 of the Belgian VAT code)	Attributive system (incl. possible pro rata rule)	No right to deduction

Specific deduction rules for mixed taxable persons

NPOs are authorized to recover the VAT charged on the expenses attributable to its economic activities.

However, VAT is not deductible when it affects expenses incurred for services exempt from VAT.

The deduction can take place in two distinct ways :

- ❑ **General proportion based on revenue** : mixed VAT taxable persons by default deduct input VAT using the “general pro rata method,” a percentage calculated as the ratio of VAT- taxed turnover to total turnover.
- ❑ **Direct attribution of costs: cost centers must be elaborated** : alternatively, such taxpayers can request to deduct input VAT based on the “actual use” of the goods and services purchased. *This alternative deduction method, commonly referred to as the direct attribution method, is widely used in the financial and insurance, real estate, not-for-profit and public sectors.*

Deduction using general proportion based on revenue

Numerator = total annual turnover subject to VAT

Denominator = total annual turnover

Example :

- ❑ Transactions subject to VAT: 1,220
- ❑ Transactions exempt from VAT: 1,300

$$N = 1.220$$

$$D = 1.220 + 1300 = 2.520$$

$$N = 1.220 = 49\%$$

$$D = 2.520$$

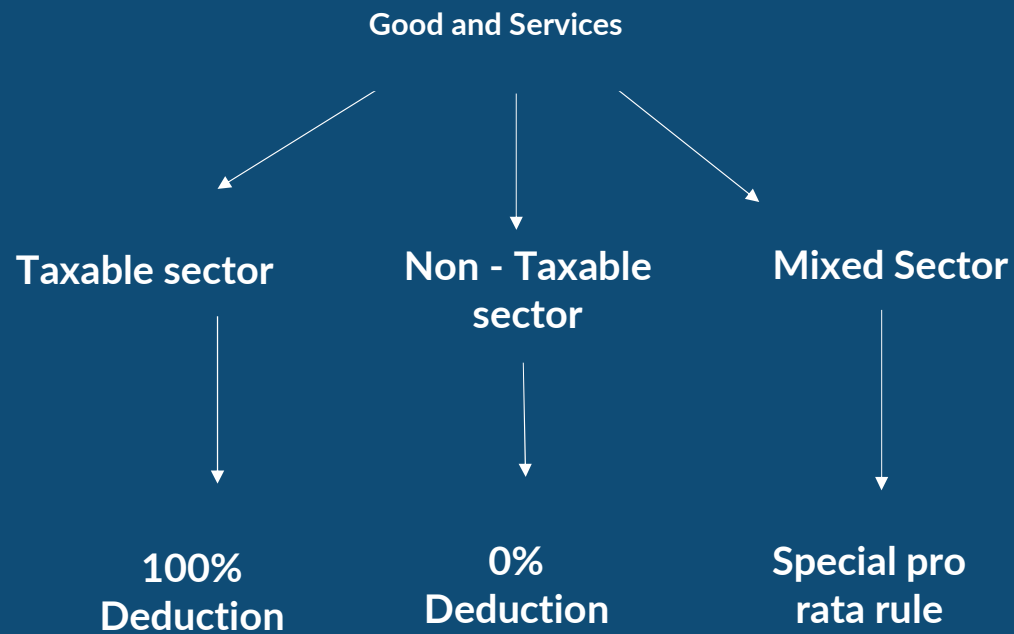


Deduction using the direct attribution method

- ❑ Either option of the taxable person (subject to authorization)
- ❑ Either imposed by the administration
- ➔ Need to keep cost accounting



Deduction using the direct attribution method



PART III

UPDATES :

THE FORMAL
REQUIREMENTS FOR
THE DIRECT
ATTRIBUTION OF
COSTS METHOD



MODIFICATION OF THE FORMAL REQUIREMENTS

From 1st of January 2023, the formal requirements linked to the direct attribution of costs have been modified (**Articles 18bis & 18ter of the Royal Decree No. 3**)

- Obligation of electronic notification

Noteworthy : this obligation concerns only mixed VAT-able persons. It does not affect partial VAT-able persons or ordinary VAT-able persons with incidental exempt activities.

Every NGO who wishes to opt for that method must notify the option to the Tax Authorities in order to do so.

- Absence of prior notification to the Authorities will result in ineligibility to use the direct attribution method.
- This notification should be communicated to the Tax Authorities in an electronic form (via e-forms 604A or 604B).
- The notification should be issued before the end of the first VAT reporting period of the calendar year in respect of which NPO wants to opt.

- The VAT authorities will send an acknowledgement of receipt of the notification but are not obliged to express immediately an opinion on the correctness of the data or the parameters used. They may refuse the application proposed by the taxpayer at any point until 31 December of the year following the year in which the notification entered into effect.
- The taxpayer may have to react :
 - either by adjusting the partial exemption calculation method through a dialogue with the VAT authorities
 - or, through an appeal against the refusal.

That information should be provided together with the VAT return of the first quarter or VAT return of one month of the first quarter of the concerned year.

- Disclosure of information
- The following key information must be communicated at the beginning of each calendar year, from 2024 onwards, in the Intervat module for the previous calendar year :
 - The definitive general pro rata percentage (no longer to be communicated via separate letter);
 - A percentage breakdown of the entire input VAT amount incurred during the previous year that is either fully, partially, or not recovered; and
 - The deduction percentage (or multiple deduction percentages) for costs on which VAT is partially recoverable (special prorata).

TEMPERAMENTS

The amendments to Royal Decree no. 3 did come into force on 1st January 2023.

However, a “tolerance” is provided for the communication, by means of the periodic VAT return via INTERVAT, of data relating to the system of deduction according to direct attribution for the first time.

This information will have to be provided for the first time when the periodic VAT return for :

- the first quarter of 2024 (to be filed by 20 April 2024 at the latest) or ;
- one of the first three months of 2024 (to be filed no later than 20 February, 20 March or 20 April 2024).

This “tolerance” also applies in the event of a commencement or change of activity in 2023.

Anyone who was already applying the deduction system according to the direct attribution on 31 December 2022 must include this information in the periodic VAT return relating to :

- for the first quarter of 2024 (to be filed by 20 April 2024 at the latest) or ;
- the month of May 2024 (to be filed by 20 June 2024).

Tax Authorities have also the discretion to impose the deduction according to the direct attribution of costs instead of the general pro rata !

Under the new rules the application of mandatory usage of the direct attribution method the is only possible where:

- ❑ The taxpayer's economic activity includes a sector with a right to deduct input VAT, and a sector without the right to deduct, which are clearly distinct and, in particular, where separate accounting is kept for each sector;
- ❑ The mixed taxable person can easily determine, at the time of supply, the sector to which the goods or services received are allocated
- ❑ The general pro rata method cannot be applied because it is difficult or impossible to determine the denominator of the ratio (total taxable and exempt supplies).

The taxpayer must be notified in advance when the mandatory application of the direct attribution method is required, and must then apply this as from the first day of the reporting period in which the administrative decision is notified.



What is observable after the recent changes is that the notification procedure in order to opt for the direct attribution method is more elaborated and detailed.

It is apparent that the Tax Authorities want to gain insight into the methods of VAT deduction selected by the mixed taxable persons, therefore the formalities initiated are significant.

The direct attribution method has now become more demanding, therefore all NPO qualifying as mixed taxable persons and wanting to have their VAT deducted according to this method need to justify their deduction position.

They will need to analyze whether their proposed deduction method is aligned with this new framework in order to be able to apply a method best suited to their activities, subject to closer monitoring and possible corrective actions by the VAT authorities.





**THANK YOU FOR YOUR
ATTENTION!!**

**Chrysoula Gkana
Marie-Hellen Christonakis
Philippe Noirhomme**

We deliberately chose to remain a
human-sized firm in order to meet
your professional requirements

