

INFORMATION - Belgium

Use and Enjoyment - VAT Directive 2006/112/EC - Article 59a

In Belgium, no special use and enjoyment rules have been adopted by virtue of Article 59a of Directive 2006/112/EC with respect to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Time of supply / chargeability - Deferment and Cash Accounting Scheme - VAT Directive 2006/112/EC - Article 66

In Belgium, telecommunications, broadcasting and electronic services provided to non-VAT taxable persons (private individuals) are taxable when the payment is received from the customer. No specific conditions are required for this cash accounting scheme to apply.

Reference to the above may be found in Article 22bis of the Belgian VAT Code.

Time of supply / chargeability - Continuous supplies - VAT Directive 2006/112/EC - Article 64(2)

In Belgium, continuous supplies of services are taxable in accordance with the general principles laid down in Directive 2006/112/EC. This means that services which give rise to continuous settlements or payments are deemed to be completed when the period expires to which the settlement or payment relates. When there is no continuous settlements or payments for over one year and

the VAT is owed by the recipient of the service by virtue of Article 51, §2, section 1, 1° of the Belgian VAT Code (the general B2B reverse charge), the services are deemed to be made at the expiry of each calendar year until the ending of the service.

Reference to the above may be found in Article 22, §2, section 2 of the Belgian VAT Code.

Re-valuation of services at open market value - VAT Directive 2006/112/EC - Article 80

In Belgium, the consideration for telecommunications, broadcasting and electronic services provided to non-VAT taxable persons may be deemed to be the open market value where:

- a) the consideration is lower than the open market value;
- b) the recipient of the supply cannot fully deduct the VAT due (this includes non-VAT taxable persons); and
- c) the recipient is connected to the supplier:
 - as a result of an employment or working agreement, including family members up to the fourth degree;
 - as partner, member or director of a company or legal person, including family members up to the fourth degree.

Reference to the above may be found in Article 33, §2 of the Belgian VAT Code.

Bad Debt relief - VAT Directive 2006/112/EC - Article 90

Bad debt relief with respect to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons is available in Belgium. In case of total or partial non-payment from the customer, the taxable person can apply for a refund of the VAT paid where it is certain the services will not be paid. For the Belgian VAT authorities this is when the supplier establishes that the supply remains totally or partially unpaid. The taxable person must prove that the loss is certain. This particular condition is satisfied by the entry of the non-payment in the profit and loss account, after use of all legal recourses.

Reference to the above may be found in Article 77, §1, 7° of the Belgian VAT Code.

Application of reduced VAT rates - VAT Directive 2006/112/EC - Article 98

In Belgium, no reduced VAT rates apply with respect to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Standard VAT Rate - VAT Directive 2006/112/EC - Article 96-97

In Belgium the standard VAT rate is 21%. Reference to this may be found in Article 1, section 1 of VAT Royal Decree n° 20.

Release from payment of insignificant amounts of VAT - VAT Directive 2006/112/EC - Article 212

Belgium has not implemented rules under its domestic legislation whereby taxable persons are released from the payment of the VAT where the amount due is insignificant.

Invoicing Obligations - Obligation to issue an invoice - VAT Directive 2006/112/EC - Articles 217-249

In Belgium, there is no obligation to issue an invoice for telecommunications, broadcasting and electronic services provided to non-VAT taxable persons (private individuals).

Invoicing Obligations - Content of an invoice - VAT Directive 2006/112/EC - Articles 217-249

Not applicable given that there is no obligation to issue a VAT invoice in relation to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Invoicing Obligations - Time limit for issuing an invoice - VAT Directive 2006/112/EC - Articles 217-249

Not applicable given that there is no obligation to issue a VAT invoice in relation to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Invoicing Obligations - Summary Invoices - VAT Directive 2006/112/EC - Articles 217-249

Not applicable given that there is no obligation to issue a VAT invoice in relation to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Invoicing Obligations - Electronic invoices - VAT Directive 2006/112/EC - Articles 217-249

Not applicable given that there is no obligation to issue a VAT invoice in relation to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Invoicing Obligations - Batch of electronic invoices - VAT Directive 2006/112/EC - Articles 217-249

Not applicable given that there is no obligation to issue a VAT invoice in relation to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Additional obligations deemed necessary for collecting VAT and preventing evasion (anti-avoidance measures) - VAT Directive 2006/112/EC - Article 273

Belgium has not implemented any rules or anti-avoidance measures that may directly impact telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Stand-still scheme - Derogations for States which were members of the Community on 1 January 1978 - VAT Directive 2006/112/EC - Articles 370-391

There are no provisions which are under a Stand-still Scheme in the Belgian VAT legislation or subject to common practice in Belgium that may be relevant for telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Stand-still scheme - Derogations for States which acceded to the Community after 1 January 1978 - VAT Directive 2006/112/EC - Articles 370-391

N/A

VAT Treatment of vouchers

In principle, vouchers, including prepaid phone cards, are considered as a means of payment in Belgium and are therefore treated as outside the scope of VAT.

There are no references to vouchers in the Belgian VAT Code but Circular letter n° AFER 41/2004 (E.T.103.375) dd. 20.12.2004 on prepaid phone cards and Circular letter n° 8 dd. 27.08.1997 on vouchers in general provides explanations.

Exemptions - VAT Directive 2006/112/EC - Articles 132 & 135 (E-learning activities)

The Belgian legislation excludes commercial companies from the benefit of the exemption applicable to educational services. Only non-profit organizations can benefit from the exemption under certain conditions. Article 44, §2, 4° of the Belgian VAT Code reads as follows:

- a) Teaching at school or universities, youth education, professional qualifications or recycling and closely linked supplies of goods or services such as lodging, food, drinks, educational devices, used for the purposes of the exempt education insofar as it is performed by public bodies or other legal persons deemed to pursue similar aims provided that such legal persons do not systematically aim at profit; potential profits can never be distributed but systematically allocated to maintaining or enhancing the aforementioned supplies.
- b) Lessons provided, in their own capacity, by teachers and relating to school and university teaching.

No specific provision applies to e-learning, however administrative practice confirmed that (i) when a teacher merely provides the content of a course via internet, this does not constitute an electronic service; the place of supply in such case being where the student is "monitored" by the teacher and (ii) a course followed "by satellite" (Decision of 17 July 2002 n° E.T. 102.720.) cannot be characterized as an exempt teaching service which, according to the Belgian VAT authorities can only take place when there is interaction between the teacher and the student.

Reference to the above may be found in Article 44, §2, 4° of the Belgian VAT Code.

Exemptions - VAT Directive 2006/112/EC - Articles 132 & 135 (Gambling activities)

In Belgium all lottery games, gaming and betting are VAT exempt. However, with respect to gaming and betting, when these qualify as electronically supplied services, they are subject to 21% VAT for which the supplier is liable. When these do not qualify as electronically supplied services, they remain exempt.

According to the Belgian tax administration, the taxable base of games and bets, qualifying as electronically supplied services, depends on the situation:

- When the organizer has the legal obligation to distribute profits from the games and bets, in order to calculate the taxable base, the profits need to be deducted from the stakes resulting in the net gaming revenue. VAT needs to be calculated inside this net gaming revenue.
- When the organizer only receives a commission, the commission constitutes the taxable base. This is the case when players are up against each other when playing games of chance to earn an amount of money, and the operator of such games can only receive as a remuneration a commission for the services provided. VAT is included in the commission and must be extracted to determine the taxable base.
- When the organizer does not have a legal obligation to distribute profits from the games and bets, the taxable base is equal to the total of the stakes. The VAT is included in the stakes and must be extracted to determine the taxable base.

Reference to the above may be found in Article 44, §3, 13° and Article 51bis, §1bis of the Belgian VAT Code and in the Circular Letter AAFisc n° 32/2016 (n° E.T. 130.082) dd. 30.11.2016. Article 1, §14 of the Belgian VAT Code defines the exact meaning of games and bets (1°) and lotteries (2°) respectively.

Exemptions - VAT Directive 2006/112/EC - Articles 132 & 135 (General)

Payment and deposit services are exempt, but suppliers have the option to subject these services to VAT and recover the related input VAT. Such option should then apply to all payment and deposit services.

Reference to the above may be found in Article 44, §3, 8° of the Belgian VAT Code for the payment and deposit exemption.

VAT Registration Process

<http://finances.belgium.be/fr/E-services/Intervat/moss>

Access to web-portal and contact details of the local VAT Authorities

The portal is accessible by all EU and non EU suppliers via

- a Belgian ID number (citizen/company)
- a "Class 3" certificate
- agents

The web portal of the Belgian VAT authorities can be accessed via the following link: <http://finances.belgium.be/fr/E-services/Intervat/moss>

Contact details of the Belgian VAT authorities:
moss@minfin.fed.be

Appointment of a VAT Agent

A non-EU operator using the MOSS is not required to appoint a fiscal representative as referred to in Article 204 of directive 2006/112/EC.

EU operators using the MOSS will not be allowed to appoint a fiscal representative.

Penalties for non-compliance (Failure to register and late registration)

In Belgium, the penalty for failure to register is EUR 500, the penalty for late registration is EUR 100 per month capped at EUR 500.

Reference to the above may be found in Article 70, §2 of the Belgian VAT Code and VAT Royal Decree n° 44.

Penalties for non-compliance (Non-payment and late payment)

Failure to pay output VAT on the 10th day of the second month following the quarter in which the transactions need to be reported is subject to a 10% fine. Reference to the above may be found in VAT Royal Decree n° 41.

Penalties for non-compliance (Non-submission and late submission of VAT returns)

Non-submission of VAT returns is subject to a EUR 1,000 fine per return.

Late-submission of VAT returns is subject to a EUR 100 per month capped at EUR 1,000.

Reference to the above may be found in Article 70, §4, and Article 53, §1, section 1, 2° of the Belgian VAT Code and VAT Royal Decree n° 44.

Penalties for non-compliance (Incomplete and incorrect VAT returns)

An exceptional (i.e. one off) irregularity in the VAT return is subject to a EUR 80 fine. Any other irregularity is subject to a EUR 500 fine.

Reference to the above may be found in Article 70, §4 and Article 53, §1, section 1, 2° of the Belgian VAT Code and VAT Royal Decree n° 44.

Penalties for non-compliance (Non-compliance with invoicing and accounting obligations)

The fines for non-compliance may vary between EUR 50 and EUR 5,000 depending on the infringement and the number of times it has been committed.

Reference to the above may be found in Article 70 of the Belgian VAT Code and VAT Royal Decree n°44.