

Value-added tax obligations in Belgium for nonresident taxpayer

The value-added tax (VAT) laws in Belgium are not only applicable for residents but in equal measure for every assessable person, who is a nonresident but is doing VAT-causing business in Belgium. An assessable person is considered as a nonresident, if their residence or their place of business is not situated in Belgium and the company does not have a “fixed infrastructure” in Belgium.

The laws applied for nonresident assessable persons are different for persons who are having a fixed infrastructure in Belgium and those who not. There is also a difference for the obligated registration before VAT-causing workings if the person is an EU resident or not. Furthermore there exists a special rule for nonresident participants at events or at the markets.

1. Nonresident assessable persons with a fixed infrastructure in Belgium

Nonresident assessable persons, who are having a fixed infrastructure in Belgium, are equated with resident persons for the VAT laws. This means that they are having the same rights (e.g. input tax deduction, right to restitution etc.) but also the same obligations (e.g. presentation of a periodical notification, pay the VAT, preparation of lists etc.).

A fixed infrastructure in Belgium as defined by the VAT laws has to fulfill three cumulative qualifications (Note No 4/2003 of 4th March 2003, No 9):

1. The assessable person is operating a head office, a branch, a factory, a workshop, an office, an agency or another fixed infrastructure except construction areas in Belgium
2. The fixed infrastructure is managed by a person, who is able to represent the assessable person towards suppliers and clients
3. The infrastructure is managing supplies and services according to the Belgian VAT-laws.

2. Nonresident assessable persons without a fixed infrastructure in Belgium

Assessable persons without a place of business in the EU are generally obligated to notify a “representative of liability” before starting VAT-causing businesses in Belgium (suppliers, intra-community purchases or imports, providing services or relocation of goods in a VAT-stock). This obligation does not need to be fulfilled if the contractor is obligated for the VAT paying (reverse charge) (Art 55 WBTW).

Assessable persons with a place of business in the EU but not in Belgium, but doing VAT causing businesses there, are having the choice whether they register themselves directly or via a “representative of liability” (Art 55 § 2 WBTW).

2.1 Registration for the Belgian VAT via a representative of liability

If the registration is fulfilled via a representative of liability, the representative is jointly and severally liable for all VAT obligation of the nonresident assessable person. Furthermore the Belgian authorities are authorized to demand a debt guarantee, which is limited to a quarter of the annual owing VAT sum. The representative of liability may request a limitation of his liability to the amount of the debt guarantee from the authority.

The advantage of engaging a representative of liability is that they are subjected to the same rules of shifting according to Art 51 § 2 WBTW as a resident assessable person. This could be important if the nonresident assessable person is doing business with nonresident sub-contractors or sub-supplier. In those cases, according to the shifting rules, it is possible to pay the VAT through the nonresident assessable person with a representative of liability and the VAT will be cleared with a Belgian notification. Hence the VAT does not have to be financed in advance.

2.2 Direct registration

Nonresidents located in the EU are having the possibility of a direct registration for the VAT in Belgium; therefore a representative of liability is not needed.

The advantage of a direct registration is that a debt guarantee does not have to be given. On the other hand the disadvantage is that the rules of the VAT-shifting (at supplies or services through nonresident) are not applicable for cases, where a nonresident, registered in Belgium, is the purchaser of those supplies or services. Furthermore the “affiliate-rule” in case of works in immobile situations is not applicable, if the consumer is direct VAT-registered in Belgium (Art 51 § 2 belg. VAT-law).

3. Special rules for events, markets and merchandise

Nonresident organizer of plays, events and markets as well as nonresident participants of them and nonresident intermediaries specialized on the merchandise of these events has to register them for the VAT in Belgium, but are receiving a special treatment.

This rules provide a simplified administrative handling. For example, instead of the periodic VAT-declaration, they only have to submit a special declaration with the title “EVENTS, MARKETS and MERCHANDISE” once.

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