

## INFORMATION – Netherlands

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

In the Netherlands, there is no use and enjoyment rule applicable to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons in accordance with Article 59a of Directive 2006/112/EC.

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

In the Netherlands, the basic time of supply for telecommunications, broadcasting and electronic services provided B2C is the moment of performance of services or in case of prepayment the moment of prepayment.

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

Continuous supplies of services are deemed to be completed at the end of the calendar year if the VAT on the service is reverse charged under art. 12 (2) Dutch VAT Act and there are no settlements or payments during that period. For other supplies (non reverse charged), the service is deemed to be completed once a year, but this does not necessarily have to be the end of the calendar year.

Reference to the above may be found in Article 13 of the Dutch VAT Act.

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

The Netherlands have not implemented provisions in its VAT legislation pursuant to which the taxable amount (of telecommunications, broadcasting and electronic services provided to non-VAT taxable persons) may be deemed to be the open market value. In specific cases (e.g. employees, related persons) the open market value may be invoked.

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

Bad debt relief is available in the Netherlands where it can be demonstrated that the customer has not and will not pay the outstanding amount (e.g. a bankruptcy (with no distribution) or correspondence between the supplier and the customer can be provided which shows that the customer will not pay the outstanding amount). Since 1 January 2017 the entitlement to a VAT refund arises ultimately one year after the date on which the receivable has become payable. This one-year period is supposed to have started on January 1, 2017 for payments that became due in 2016 or before based on a transitional arrangement. Consequently, refund of VAT on these bad debts can be obtained on January 1, 2018, although tax payers may still demonstrate that non-payment occurs at an earlier date.

Reference to the above may be found in Article 29 of the Dutch VAT Act.

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

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

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

In the Netherlands, the standard VAT rate is 21%.

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

The Netherlands have not implemented a rule under its domestic legislation whereby foreign taxable persons are released from the payment of VAT where the amount due is insignificant.

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

In the Netherlands, there is an obligation to issue a VAT invoice with respect to the supply of telecommunications, broadcasting and electronic services provided to non-VAT taxable legal persons. There is no obligation to issue a VAT invoice with respect to the supply of telecommunications, broadcasting and electronic services provided non-VAT taxable persons who are private individuals.

Reference to the above may be found in the Article 34c.1 of the Dutch VAT Act.

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

Invoices should be issued in accordance with Directive 2006/112/EC.

Invoices can be issued in any language. However, the tax authorities may ask for a translation in Dutch.

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

An invoice should be issued at the latest on the 15th day following the month in which the service is supplied. If a prepayment takes place an invoice should be issued before the prepayment becomes due.

Reference to the above may be found in Article 34g of the Dutch VAT Act.

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

It is possible to issue one single invoice for multiple services supplied to the same recipient provided that the invoice relates to a period of maximum one calendar month.

Reference to the above may be found in Article 35.1 of the Dutch VAT Act.

### **Invoicing Obligations - Electronic Invoices - VAT Directive 2006/112/EC - Articles 217-249**

Electronic invoices must meet all the VAT requirements of a 'standard' invoice. The authenticity of origin, the integrity of the content and the readability should be ensured until the end of the retention period of the invoice (seven years, ten years for immovable property related invoices). Each business determines the way of ensuring this. Electronic Data Interchange (EDI) and Advanced electronic signature are ways of ensuring the authenticity, integrity and readability of invoices. Electronic invoicing is only possible with approval of the recipient. If the recipient processes and pays the invoice without comments he shall be deemed to have accepted the electronic invoice. Reference to the above may be found in the Article 35b of the Dutch VAT Act.

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

Where batches containing several electronic invoices are sent or made available to the same recipient, the details common to the individual invoices may be mentioned only once where, for each invoice, all the information is accessible. Reference to the above may be found in the Article 35b.5 of the Dutch VAT Act.

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

The Netherlands have 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 applicable under a stand-still Scheme in the Dutch VAT legislation or subject to common practice in the Netherlands 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**

There are no specific rules in Dutch VAT law regarding the VAT treatment of vouchers. However, based on a Decree, a distinction is made between single purpose telephone cards and multi-purpose telephone cards. When supplying a single purpose telephone card, VAT is due when selling the card. When supplying a multi-purpose telephone card, VAT is due when the value on the card is used / redeemed.

A voucher is defined as a token, stamp or document that represents a right to receive goods or services to the value of an amount stated on it or recorded in it. When a gift voucher is sold, the same applies. The VAT is due when the value of the card is used/redeemed.

Reference to the above may be found in a Decree of the Dutch Ministry of Finance of 25 January 2013, nr. BLKB 2013/82M (prepaid telephone cards), amended by a Decree of 28 September 2015, nr. BLKB 2015/1158M and a Decree of the Dutch Ministry of Finance of 30 December 1999, nr. V1999/2649 (gift vouchers).

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

According to Dutch legislation the supply of education by an eligible body (i.e., school, university or registered training organization) is an exempt supply with no right to input VAT deduction. E-learning services are in principle taxable in the Netherlands unless electronic services are only used for communication between students and teachers. However, e-learning services can also be exempt from VAT if some interaction between the student and teacher is required. A case by case assessment is required in order to determine whether e-learning is VAT exempt or VAT taxable.

Reference to the above may be found in Article 11.1 (o) of the VAT Act and Article 8 of the VAT Implementing Decree.

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

Gambling services are an exempt supply for VAT purposes with no right to deduct input VAT. The definition of gambling services is outlined in the Dutch Gambling Tax Act and those services include all activities with an element of chance which cannot be influenced by the participants (i.e. prize contests, lotteries, slot machines, etc.). Although, there is no clear guidance in the Dutch legislation, the exemption should in principle apply to e-gambling activities. It is however recommended that the exact VAT treatment is analysed on a case by case basis.

There is no specific guidance in the Netherlands with regards to the VAT treatment of bonus points / credits granted as part of e-gambling activities since these activities are, in principle, VAT exempt.

Reference to the above may be found in Article 11.1 (l) of the Dutch VAT Act and the Dutch Gambling Tax Act

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

There are no further exemptions in the Dutch VAT legislation under which the supply of telecommunications, broadcasting and electronic services provided to non-VAT taxable persons may fall.

## VAT Registration Process

Registration for the EU scheme in the Netherlands, can be done by computer by completing the form Request for registration in the Netherlands for paying VAT in EU countries (EU scheme) in the secure section of our website. Registration for the non-EU scheme in the Netherlands, from 1 April 2015 onwards, can be done by computer by completing the form 'Request for registration in the Netherlands for paying VAT in EU countries (non-EU scheme)' (<https://mijn.belastingdienst.nl/pdfforms2/registratienieteunietpd.html>).

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

The general contact details of the competent section of the Dutch Tax Authorities are:

PO Box 2865

6401 DJ HEERLEN

The Netherlands

Mr G.J.T. Wessel

e-mail: [gjt.wessel@belastingdienst.nl](mailto:gjt.wessel@belastingdienst.nl)

tel: 00 31 88 154 30 96

Contact VAT obligations and reimbursements:

tel: 0031 55 538 53 85

## Appointment of a VAT Agent

A VAT agent can be appointed in the Netherlands.

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

In principle there is no penalty for non-registration or late registration by suppliers in respect of their supplies of telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Apart from the tax penalties all cases of non-compliance may be seen as a criminal act and may be sentenced with prison or fines. Please note that if a supplier fails to register, penalties for non-submission of VAT-returns or non-payment of VAT may apply.

## Penalties for non-compliance (Non-payment and late payment of VAT)

For non-payment, late or insufficient payment of VAT, the tax authorities can impose a penalty of a maximum of EUR 5,278 (for 'careless' errors) and a maximum of 100% of the VAT due (for fraud). Penalties of 25% or 50% apply in cases of gross negligence.

Apart from the tax penalties all cases of non-compliance may be seen as a criminal offence and may result in fines or imprisonment.

The Dutch Tax Authorities may exclude taxable persons from the MOSS in the Netherlands if they fail to file their return or make payments in time for 3 consecutive quarters.

Reference to the above may be found in Article 67c through 67f and 69a of the General Taxation Act.

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

If a VAT return is not submitted within the legal deadline, the tax authorities may impose a penalty with a maximum of EUR 131.

Apart from the tax penalties all cases of non-compliance may be seen as a criminal offence and may result in fines or imprisonment.

The Dutch Tax Authorities may exclude taxable persons from the MOSS in the Netherlands if they fail to file their return or make payments in time for 3 consecutive quarters.

Reference to the above may be found in Article 67b of the General Taxation Act. In case of a business established outside the EU that supplies electronic services within the EU and which has chosen the Netherlands for VAT identification the tax authorities may impose a penalty with a maximum of EUR 5,278 in case this business does not submit its MOSS return or submits it to late. Reference to the above may be found in Article 40 VAT of the Dutch VAT Act.

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

A penalty regime applies to inaccuracies on VAT returns resulting in a failure to pay the correct VAT amount. The penalty rate depends on the behaviour giving rise to the error (rather than the size of the error) and may be up to a maximum of EUR 5,278 (for 'careless' errors) or to a maximum of 100% of the VAT due (for fraud). Penalties of 25% or 50% apply in cases of gross negligence. Please note that if a taxpayer finds out that it has filed an incomplete or incorrect VAT return resulting in a failure to pay the correct VAT amount he is obliged to report this to the Dutch tax authorities as soon as possible. Failure to comply with this obligation may lead to a penalty with a maximum of 100% of the VAT amount. Reference to the above may be found in art. 10a of the General Taxation Act.

Apart from the tax penalties all cases of non-compliance may be seen as a criminal offence and may result in fines or imprisonment.

Reference to the above may be found in Article 67c through 67f and 69a of the General Taxation Act. In case of a business established outside the EU that supplies electronic services within the EU and which has chosen the Netherlands for VAT identification the tax authorities may impose a penalty with a maximum of EUR 5,278 in case this business files an incomplete or incorrect MOSS return. Reference to the above may be found in Article 40 VAT of the Dutch VAT Act.

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

Non-compliance with VAT obligations may lead to a reversal of the burden of proof from the tax authorities to the taxpayer. In case of failure to comply with various invoicing obligations the tax authorities may impose a penalty with a maximum of EUR 5,278.

Apart from the tax penalties all cases of non-compliance may be seen as a criminal offence and may result in fines or imprisonment.

Reference to the above may be found in the Articles 67ca and 68 - 71 of the General Taxation Act.