

Zero VAT rate for seagoing vessels changed as of January 1, 2019: additional rules published

The change to the zero VAT rate for the delivery and provisioning of seagoing vessels and the performance of services to seagoing vessels had already been announced in the 2018 Tax Plan and was originally intended to take effect on January 1, 2018. However, after urgent consultation with the sector this change was postponed until January 1, 2019. The Deputy Minister of Finance recently published a new Decree containing clarifications. The new Decree will take effect as of January 1, 2019.

What will change on January 1, 2019?

At present the zero VAT rate is linked to the ship qualifying as a seagoing vessel and for the purposes of applying the zero VAT rate to for example the delivery, maintenance and provisioning of such ships, the classification of ships used for customs purposes is followed. This does not require that these seagoing vessels are also actually used for "navigation on the high seas". The European Commission has, however, rebuked the Netherlands and indicated that this provision is too broad. In response to this warning, the Netherlands has implemented a legislative amendment to take effect on January 1, 2019. As of this date, the zero VAT rate for seagoing vessels will only apply if the following two cumulative conditions are met:

1. the vessels are effectively used for at least 70% for navigation on the high seas; and
2. they are used entirely (100%) for commercial activities.

The condition requiring supply to the operator of the ship has not changed. This condition will thus continue to apply in full.

Decree: additional implementing rules

The new Decree provides additional rules on the interpretation of the two cumulative conditions and clarifies matters for the practice.

1. Used for at least 70% for navigation on the high seas

The condition regarding use for navigation on the high seas is in fact divided into two sub-conditions: (1) the ship must be able to be used for navigation on the high seas and (2) the ship must also actually be used for at least 70% for navigation on the high seas.

A ship is regarded as being able to be used for navigation on the high seas if it possesses an International Maritime Organization identification number (IMO number). The IMO number can be listed on the invoice when the provisioning of the ship takes place. If such a registration is not mandatory, then there are other ways to show that this is the case, for example by means of a certificate of registry.

Offshore vessels, such as floating platforms, can also qualify as seagoing vessels. Explicitly excluded from the zero VAT rate are ships/superstructures that are not complete or are unfinished and ship hulls, whether in an assembled or a disassembled state.

“On the high seas” is defined as waters outside the territorial waters of the Netherlands. To determine compliance with the 70% use requirement, the operator of the vessel must issue a(n) (annual) declaration (there is no set format for this). The operator of the vessel can use various methods to calculate the 70% requirement, such as distance covered, hours logged or routes on the high seas. Such a calculation must be determined on the basis of the preceding year or the preceding five years. The operator of the vessel must also issue a declaration if there is a new ship or a ship whose use in the preceding year is not known.

For the purposes of determining compliance with the 70% requirement, each route that the ship (partly) navigates on the high seas counts in its entirety as a route on the high seas. A route is a journey between two seaports. This can be the same port or a round trip.

The condition of use on the high seas does not apply to rescue vessels, such as lifeboats, tugs and salvage ships. It is sufficient if these ships sail at sea for at least 90% of the time (thus with a destination or round trip within the territorial waters of the Netherlands). Less strict conditions apply to coastal fishing vessels. There are also special conditions for applying the zero VAT rate to warships.

2. Used entirely for commercial operations

A ship is used entirely for commercial purposes if it is used 100% of the time for the performance of an industrial, a trade or a fishing activity. The zero VAT rate thus does not apply to ships that, for example, are partly used for private purposes. Full commercial use can be proven by means of a declaration from the vessel's operator.

Practical consequences

The legislative amendment as of January 1, 2019 will considerably increase the administrative burden for the maritime sector. Moreover, the supplier will remain responsible for the correct application of the zero VAT rate. It is thus important that a correct declaration is issued and that it is monitored. We also foresee potential disputes concerning as of which stage in the construction and completion of a ship superstructure there is a seagoing vessel and consequently as of when the zero VAT rate can be applied. It is important to carefully consider this and possibly reach agreement on a case-by-case basis in order to avoid financial disadvantages (e.g. cash flow).

If your company is involved with the delivery of seagoing vessels, or with the provisioning of seagoing vessels and/or supplying them with onboard amenities, then it is advisable to check how the legislative amendment will impact your enterprise. Our VAT specialists in the Indirect Tax Group are happy to provide assistance in this respect.

Meijburg & Co
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