



Recent VAT developments

Webinar – 19 June 2025

Introduction



Prof. Madeleine Merkx

Programme Director and board member EFS
merkx@law.eur.nl



Milja Bormann-Bakker LL.M.

Programme Coordinator EFS
Post Master EU VAT
miljabormann@icloud.com



Rakesh Ghirah LL.M.

Programme Coordinator EFS Post Master
Indirecte Belastingen
ghirah@law.eur.nl



Mr. drs. John Gruson MA

Programme Coordinator EFS Top Level
Seminar EU VAT
gruson@ese.eur.nl

Agenda

Time	Topic	Speaker
16.00-16.05	Introduction	Madeleine Merkx
16.05-16.15	New Dutch policy for holding companies	Milja Bormann-Bakker
16.15-16.30	Update e-invoicing	John Gruson
16.30-16.40	Introduction to EFS' programs	Milja Bormann-Bakker, John Gruson and Rakesh Ghirah
16.40-16.50	Transfer pricing and VAT	Rakesh Ghirah
16.50-17.00	Q&A	Moderated by Madeleine Merkx



New Dutch policy for holding companies

Milja Bormann-Bakker LL.M.

Two new resolutions:

With effect from 1 July 2025, the following policy decisions will expire:

1. Decree of 18 February 1991: Levying of VAT with regard to so-called Holding companies and holding of shares in general ("Holding Resolution")
2. Decree of 3 August 2004: Levying of VAT with regard to the sale of shares

These governmental resolutions have been overtaken by ECJ case law issued. Taxpayers assumed they can rely on this approving policies, but several Tax inspectors thought they can no longer apply the policies, resulting in a paralyzing effect for practice. The following new policy decisions will enter into force on 1 July 2025:

1. Decree of 26 November 2024: amendment of Decree of 24 November 2020 (Deduction of VAT) (no. 2024-13975, Government Gazette (Staatsblad) 2024, 38540)
2. Decree of 4 December 2024: Policy Statement on Tax Liability and Fiscal Unity VAT (VAT Grouping) (no. 2024-13987, Government Gazette 2024, 38545)

Back to basics

The Gateway to VAT = VAT-entrepreneurship: For NL specifically, but not not much difference for EU perspective:

1. 'Anyone who independently carries out a business or profession and services for (non-symbolic) remuneration'. Profit motive not leading.
2. Exploitation of an asset

Please note that this does not include the mere exercise of property rights and dividend is not a remuneration for a performance

This means that pure holdings do not qualify and therefore do not get access to the rights and obligations in the VAT system.

Back to basics

Established case law: the mere acquisition and holding of shares is not an economic activity for VAT.

However, shareholding is a relevant activity if there is interference in the management of that company, which involves transactions subject to VAT (a 'mixing holding company'). 'Interference' does not require direct and full management control, Any transaction carried out on a permanent basis for remuneration is sufficient (such as administrative, accounting, IT, technical, management, rental services).

For the right to deduct VAT, the qualification of the interference carried out is decisive (example: VAT-exempt rental). Be careful when holding shares as an investment. Buying shares to invest excess cash is not an economic activity, because it is similar to a private investor.

In assessing whether such an investment exists, the following does not play a role:

- The size of the portfolio
- Whether advice from third parties has been called upon
- The Investor's skill/competence

Back to basics

Deduction right is available to VAT entrepreneurs and only to economic transactions

Deduction if costs are directly attributable to VAT-taxed activities

No deduction if costs are attributable to VAT-exempt activities

Partial deduction for general costs that are not directly attributable to VAT-taxed/VAT-exempt activities (pro rata)

Main rule: pro rata based on turnover ratios. Alternative: deduction based on actual use if this is more in line with actual use.

So, no deduction for non-entrepreneurial transactions:

Partial deduction for mixed costs that are not directly attributable to entrepreneurs/non-entrepreneurs' part =

Pre pro rata: no fixed method

Pay attention to the formal requirements:

- Status of Customer
- Invoice in accordance with legal requirements
- Wrongly charged VAT is not deductible

Some thoughts on VAT grouping

The Dutch fiscal unity for VAT or VAT group facility is open to entrepreneurs established in the Netherlands who are financially, organizationally and economically intertwined

Advantages of the fiscal unity: Mutual transactions are not taxable

Deduction of input tax can be determined on the basis of the performance of the group as a whole

The VAT group is created by operation of law, and a formal decision of the Dutch tax authorities is not required, but sometimes it is desirable. On the other hand, a decision does lead to joint and several liability.

In principle a non-entrepreneurial holding company (which holds purely shares) cannot form part of a VAT group.

New Decisions: A Holding may still be added to the VAT group if the holding company is a policy-making and steering body.

"The holding company is strongly involved in decision-making within the group, is fully at the service of the total business operations of the affiliated operating companies and as such can be regarded as an important factor in its maintenance. In this way, the holding fulfils an essential economic function within a group."

Addition to economic link requirement!

Why do we need the resolutions?

- With regard to holdings they are very helpful in the determination of VAT recovery when it comes to the holding, buying and selling of shares.

Buying of shares – main take aways

Determine whether the purchase takes place in the capacity of a VAT entrepreneur. Purchase costs are regarded as an entrepreneurial transaction and are deductible if there is a (demonstrable) intention to provide VAT-taxed services to the subsidiary.

Is the purchase in the end not made? Irrelevant, unless the costs incurred are used for another purpose (e.g. when the capital raised is ultimately used for the VAT-exempt provision of credit).

What if the buying entity has not yet been established?

In practice, we regularly see that a BidCo is set up to buy the shares, but that all advisory costs are initially incurred by the founder of BidCo, after which the advisory costs related to the purchase are passed on by the founder to BidCo. The Dutch Tax Administration regularly takes the position that the costs have already been consumed by the founder and that the payment (afterwards) of BidCo is a pure contribution to the costs of the founder. In that case, the founder is not entitled to deduct VAT. Make sure that the structure and agreements are in order in advance so that such risks can be reduced.

Selling of shares – main take aways

First of all, determine again whether the sale takes place in the capacity of VAT entrepreneur.

If yes, determine if there is a holding company that trades in shares commercially. Please note that this activity is fully covered by the financial exemption for VAT

If yes, if there is an interference holding with compensation (note: the majority participation has been removed). Pay attention to the 'intention test'

Not if there is a pure holding company or a mixing holding without remuneration. Unless: the transaction constitutes a direct, permanent and necessary extension of another entrepreneurial activity of the holding company. Then there is still a sale as an entrepreneur (an 'extension holding')

But what is a direct, durable and necessary extension?

Selling of shares – main take aways continued

In the transactions concerning the shares of the entrepreneur, there is a direct, permanent and necessary extension in the following situations:

1. The transaction aims at a (re)structuring and is thus linked to the organisation of the economic activity of the entrepreneur.
2. The purpose of a sale and transfer of shares is to allocate the proceeds directly to the taxable economic activity of the entrepreneur concerned.
3. With the transaction, the entrepreneur aims to expand or change its operational activities.
4. The transaction serves to cover his obligations in relation to an economic activity.
5. It is interesting/striking that this 'extension idea' is so explicitly fleshed out in the new policy statement, while in case law the discussion is almost exclusively about the interfering holding company.

Selling of shares – main take aways continued

If it is established that the sale of shares takes place as an entrepreneur, it is then important to determine the extent of the right to deduct input tax.

Main rule: a sale of shares is a VAT-exempt transaction under the financial exemption, which means that the VAT on the costs incurred in this context is not deductible.

Exception: no deduction limitation if buyer is established outside the EU.

VAT can therefore only be (partially) deducted if the costs can be regarded as general costs, which do not relate exclusively to the sale of shares but are made in the context of a broader (re)structuring of the group, unless the shares are sold to a non-EU buyer. The allocation of costs is also explained in more detail in the new policy decisions explained on the next slide.

Selling of shares – main take aways continued

An entrepreneur can incur costs of the purchased service **prior to or after** the sale and transfer of the shares. If the repurchased supply is made **prior** to the sale and transfer of the shares, there is a direct and immediate link if the repurchased supply was – objectively viewed – made exclusively for the purpose of a taxable sale transaction with shares. If this test is answered in the affirmative, the repurchased performance will be directly attributed to the sale and transfer of the shares.

Where the costs of the supply in question are incurred **after** the sale and transfer of the shares has been completed, there is no direct and immediate link if the repurchased supply is not – objectively – caused exclusively by a taxable sale and transfer of shares. In that case, there is no direct allocation of the costs to the sale and transfer of the shares."

Conclusion: all costs before, during and after the sale will be assessed more closely by the Dutch Tax Administration

Selling of shares – main take aways continued

If the costs are **not exclusively** a result from a VAT-exempt shares sale, there are no directly attributable costs, but there may be general costs if the costs are directly and immediately related to the entire economic activity of the entrepreneur. The advantage of this is that in that case there is (partially) a right to deduct input tax.

General costs include, for example:

- Costs related to broader (re)structuring and in the context of continuity
- Costs related to the transfer of a company (in addition to shares also individual business assets)
- Costs related to the settlement of business activities
- Costs that are not included in the sale price of the shares, but in the remuneration for the services in the entire economic activity

In short, the general principles (based on EU law) will continue to exist. The VAT is therefore partly deductible.

In practice, it is very complicated to assess this on a case-by-case basis!

Deductions of VAT on general costs (deal fees)

If there are general costs, the (pre) pro rata deduction rule applies to these costs.

Main rule: pro rata based on turnover ratios

The proceeds of the sale of shares **do not have to be included** in this calculation if:

The sale takes place occasionally. Relatively limited use of mixed-use goods and services is then used for this transaction.

or

The sold participation forms a VAT group with the seller.

Is the sale not incidental? In that case, the proceeds of the sale of shares must be included in the pro rata. (This is the case with corporate trading in shares), and

In the case of an entrepreneur who is involved in private equity investments as a private equity or investment company or as an affiliated entity.

This can have a **major impact** in practice

Deductions of VAT on general costs (deal fees)

Expired is the general approval of no VAT deduction limitation for non-economic activities of holding companies

What has taken its place: the extension holding. It remains to be seen how this will develop in practice. This leads to the necessary uncertainty.

Expired also: the broad approval that sales expenses on sales of shares are designated as general expenses and that the sale proceeds do not have to be included in the pro rata for occurring share sales.

Fall back on basic rules for the deduction of EU law.

Conclusion

Take away: No progress on average and some clear down-sides for some.

There seems to be more likely to be costs directly attributable to a share sale.

There is also a higher pro rata deduction limitation

And especially PE has a hard time recovering deal fees especially compared to other business

In short, although case law has been included in the new resolutions more questions may come up in the future.



Update e-invoicing

Mr. drs. J. Gruson MA

Timeframe adoption VAT in the Digital Age package



November 2024
ECOFIN: political
agreement



11 March 2025
ECOFIN formal ratification



14 April 2025
Entry into force: first
changes have immediate
effect



December 2024
European Parliament
reapproves



25 March 2025
Publication Official
Journal of the
European Union



Q2-Q4 2025
Fiscalis
workshops/Work on
Explanatory
Notes/Guidelines
Continuation Peppol
ViDA pilot

Digital reporting with e-invoicing

- Rules for e-invoicing
 - EU-standard format EN16931
 - Wider variety of formats possible for domestic transactions
 - Introduction of the notion of 'hybrid invoices'
 - Summary invoices remain but subject to conditions
 - Additional invoice requirements
 - E-invoice to be issued 10 days after taxable event (+ reporting)
- Mandatory digital reporting for intra-EU-transactions per 1 July 2030
- Optional digital reporting for domestic supplies of goods and services (after 1 July 2030 harmonised rules to be followed)

Changes in e-invoicing rules - domestic

- Upon entry into force, **14 April 2025** immediate application of amendments to Articles 218 and 232 VAT Directive, related to e-invoicing:
 - Derogation request no longer needed to implement domestic B2B/B2C e-invoicing obligation.
 - Member States can decide that the acceptance by the established recipient of invoices issued according to the EU standard is not required in case of mandatory domestic e-invoicing.
- VAT Committee Working Paper 1102 – EC: common understanding on what are possibilities given to Member States

Changes in e-invoicing rules - domestic

- **1. Transactions not subject to mandatory e-invoicing:**
 - Intra-Community transactions (including those carried out within the framework of a triangular transaction);
 - Supplies of services to a Member State where the supplier is not established and for which the customer is liable to pay the tax (reverse charged services); and
- Member States have possibility to out scope certain transactions taking place within their territory.

Changes in e-invoicing rules - domestic

- **2. Taxpayers not covered by mandatory e-invoicing:**
 - A Member State cannot impose the obligation to issue e-invoices to taxable persons not established in their territory. Further, they cannot oblige recipients not established within their territory to accept e-invoices.
→ What about existing obligations in Poland and Hungary.....?
 - Imports and exports are transactions taking place within territory of a Member State; no obligation to issue e-invoices, when supplier or recipient is not established in the territory of the Member State.
 - Regarding purely domestic supplies of goods and services, possibility to mandate use of e-invoices is not limited to transactions between taxable persons. It can cover both B2B and B2C transactions.
- Member States have possibility to out scope certain taxpayers. Possibility for gradual implementation of the obligation (first to larger businesses and then to smaller ones)
→ see France, 1 September 2026 large and midcap businesses, 1 September 2027 SMEs.

Changes in e-invoicing rules - domestic

Supplier established in:	Customer established in:	Mandatory e-invoicing an/or acceptance?
Austria	Austria	E-invoicing mandatory, no acceptance customer required
Austria	Netherlands	E-invoicing mandatory, acceptance customer required
Netherlands	Austria	No e-invoicing obligation
Netherlands	Netherlands	No e-invoicing obligation

Changes in e-invoicing rules - domestic

- **3. Impact reporting systems and 2030 change**
 - Until 1 July 2030, Member States allowed to implement reporting systems not based on e-invoicing, and they can also mandate established taxable persons to issue and accept e-invoices without having to report the data contained in these invoices to the tax administration.
 - Modifications introduced by ViDA package from its entry into force up until 1 July 2030 do not refer to digital reporting requirements.
 - Therefore, possibility for Member States to implement a domestic reporting system remains as it was before entry into force of package.
 - Transitional measures provided for in the ViDA Directive allow to maintain some of the existing domestic reporting systems beyond 1 July 2030.

Changes in e-invoicing rules - domestic

■ 4. Use of standards

- According to modifications of VAT Directive, use of a specific standard for e-invoicing is not required.
- Therefore, Member States can freely mandate any e-invoicing standards they consider appropriate for exchange of e-invoices within their territory.
- From 1 July 2030, the EU standard EN16931 will become the only standard acceptable for intra-Community supplies, triangular transactions and reverse charged services.
- For any other transaction, the EU standard will necessarily be one of the standards allowed, even though Member States can allow the use of other standards.

Changes in e-invoicing rules - domestic

- **5. ViDA implementation**

- Contractor will present final report on 'Challenges of VAT after ViDA in December 2025;
- Work on preparation of the Explanatory Notes will begin once the European Commission receives input from the Fiscalis workshop, and it will continue later with the support of the VEG and the GFV;
- VAT Committee guidelines expected to achieve agreement with Member States on interpretation of Articles 218 and 232 (see previous slides).
- Publication of the updated version of the European standard for e-invoicing (EN16931) is expected in September 2025 (Peppol pilot).

- **Meanwhile in NL:**

- DTA are considering real-time VAT calculations and split payments using Blockchain technology to combat VAT fraud, especially in the B2C sector. This system would ensure automatic VAT collection at the point of sale, replacing traditional tax returns. It is a trial of the mintBlue system (a Dutch blockchain company).

Timeline DRR with e-invoicing



14 April 2025

Derogation request no longer needed to implement domestic B2B/B2C e-invoicing obligation.

Member States can decide that the acceptance by the established recipient of invoices issued according to the EU standard is not required in case of mandatory domestic e-invoicing.



1 July 2030

New domestic DRR obligations must be aligned with EU standard or other formats ensuring interoperability with EU standard.

E-invoice substantial condition right to deduct.

E-invoicing mandatory for all intra-EU transactions, combined with real time reporting

Setup of Central VIES for tax authorities

Current ESL abolished



31 March 2033

Interim evaluation report by Commission on functioning of DRR both on domestic and intra-EU level



1 July 2035

Member States with current derogation must converge with EU standards for their domestic transactions

Lower level of harmonization for domestic transactions:

- More flexibility on the format (not strictly limited to the EU standard)
- Clearance models still possible
- Broad basis for MS to ensure technical requirements

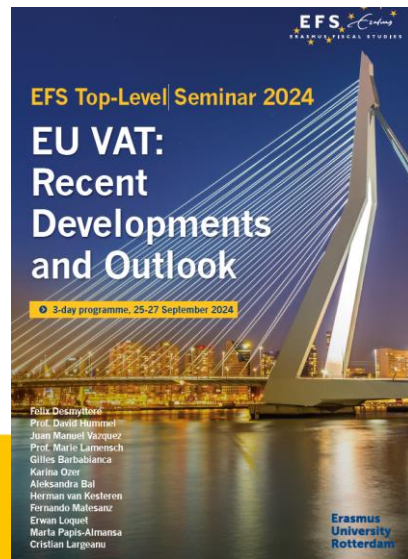


Introduction to EFS' programs

VAT

EU Top-level seminar EU VAT: *Recent Developments and Outlook*

- **A three-day seminar (in English)**
- 25 top international indirect tax specialists from tax advisory services, legal practice, the judiciary, government bodies, tax authorities and academia will discuss the VAT implications of a wide range of topical issues, including the measures recently implemented or soon to be implemented across the EU. We guarantee in-depth. Interactive sessions bridging theory and practice and an excellent opportunity for international networking
- The fee covers all seminar materials, lunches on the campus, a dinner at a wonderful and acclaimed restaurant, and a walking dinner during a boat trip on the river Maas in the port of Rotterdam
- *Our agenda:*
- **Day One**
 - Update European Commission on future of VAT
 - Green policy options under current and future VAT rules
 - VAT, TP and intercompany transactions
- **Day Two**
 - Customs reform and its impact on VAT
 - Enforcing VAT and customs rules via platforms
 - Single VAT Registration and its implementation
 - Expert Panel Session: Digital reporting obligations supported by e-invoicing - experiences
- **Day Three**
 - Functioning of the CJEU (ECJ and Court)
 - The Court of Justice and VAT: recent judgments, opinions and pending cases.



Overview of speakers

Agustín Míguez Pérez (European Commission), Edoardo Traversa, Bart Heijnen, Martijn Schippers, Madeleine Merkx, Emilia Sroka, Ruben Dirks, David Hadwick, Stefania Lotito Fedele, Jurian Langer and Marie Lamensch

Overview of the Dutch Post Master Indirecte Belastingen

- Twelve weeks of training in VAT on Tuesday from 9 September to 2 December 2025
- In Dutch
- Suitable for:
 - Tax professional in the tax consultancy practice, the business world, academia, the judiciary, other legal professions, ministries or the Tax Authorities
 - 2-9 years experience in VAT
- Paper and defence to obtain certificate

Topics of the Dutch program (in Dutch)

1. Algemene beginselen van EU-recht/ misbruik van recht en fraude
2. Belastingplicht/publiekrechtelijke lichamen
3. Concernproblematiek I en II
4. Maatstaf van heffing/Btw-aspecten van vouchers
5. Aftrek van voorbelasting I en II
6. Intracommunautaire goederenhandel/Plaats van dienst en vaste inrichting
7. Douanerechten, heffingen bij invoer/onroerend goed
8. Vrijstellingen: medisch, onderwijs, sociaal-cultureel I en II
9. Financiële vrijstellingen I en II
10. Internationale en nationale ontwikkelingen in het fiscale toezicht I en II
11. Wetgevingsproces/Btw en technologie
12. Controle en boete, fraude en strafrecht/Btw ondernemingsstrategieën in Europa

Overview of the Post Master EU VAT

- Combined campus and online training programme about EU VAT from March through June 2026
- In English
- Suitable for:
 - Tax professional in the tax consultancy practice, the business world, academia, the judiciary, other legal professions, ministries or the Tax Authorities
 - Tax professionals working in an EU Member State or dealing with VAT in EU Member States
 - 2-9 years' experience in VAT
- Paper and defence to obtain certificate

Programme topics

On Campus

- Taxable person and taxable supply
- Taxable amount including vouchers
- Exemptions
- Deduction
- International trade
- Panel session – VAT and entrepreneur strategies in the EU
- Case study

Online

- EU legislative process, functioning of the CJEU, EU principles and charter of fundamental rights
- Supply chain and VAT
- Business restructuring and VAT
- VAT in a digital environment
- Indirect tax assurance
- Responsibility and fair taxation
- Administrative cooperation in the field of VAT

Overview of lecturers

Marco Gomes Vale Viga, David Hummel (CJEU), Karoline Spies, Pieter Bouwhuis, Jeroen Bijl, Bart Heijnen, Erwan Loquet, Tina Ehrke-Rabel, Marta Papis-Almansa, Marja Hokkanen, John Gruson, Milja Bormann-Bakker, Madeleine Merkx, Walter de Wit, Martijn Schippers, Ilona van den Eijnde, Trudy Perie, Dimitri Koepprianov, Maarten de Wilde, Eleonor Kristoffersson, Lisette van der Hel-van Dijk, Menno Griffioen, Oscar Smeets, Suzanne den Breems and Han Kogels

For more information

- Post Master EU VAT: [Post-Master EU VAT \(in English\) - EFS, Erasmus University Rotterdam](#)
- Post Master Indirecte Belastingen (dates for 2025 coming soon): [Post-Master Indirecte Belastingen - EFS, Erasmus University Rotterdam](#)
- Top Level Seminar EU VAT (program for 2025 coming soon): [Top Level Seminar 'EU VAT: Recent Developments and Outlook' \(in English\) - EFS, Erasmus University Rotterdam](#)



Transfer Pricing and VAT

Rakesh Ghirah LL.M.

Tension between Direct & Indirect tax



TP methods by the OECD

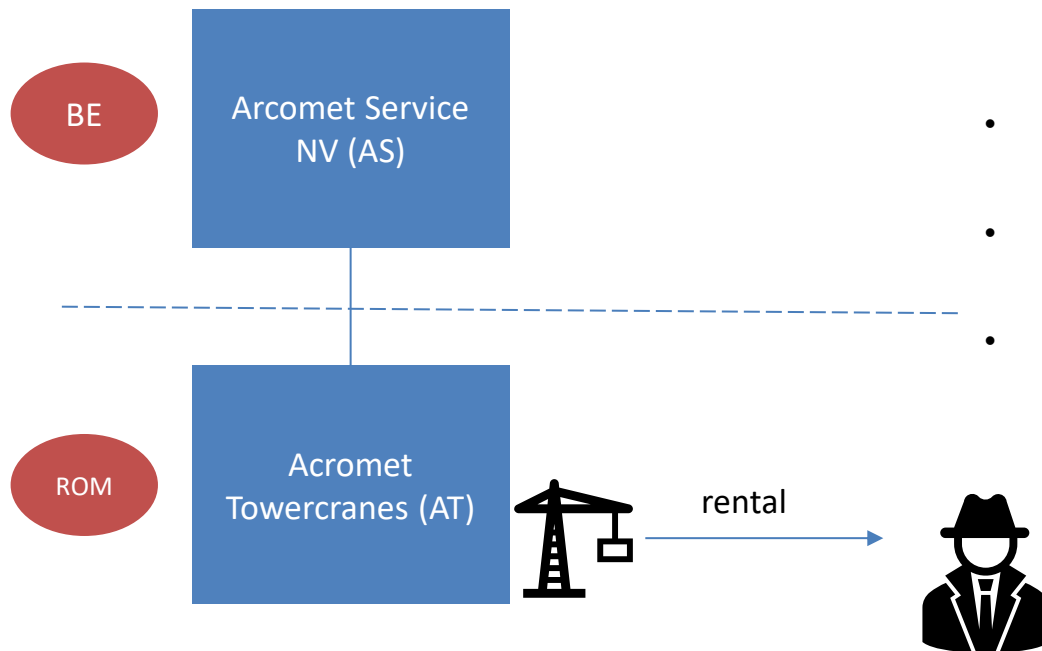


At arms length vs subjective value



Subjective vs objective taxation

Acromet towercranes



- Transfer pricing agreement securing operating profit margin to be adjusted at the end of the year:
- - operating profit margin AT lower than
-0,71% AT invoices AS for the difference
- - operating profit margin between -0,71% and + 2,74% no entitlement to remuneration
- - operating profit margin more than + 2,74% AS invoices AT for the difference

In 2011, 2012 and 2013 surplus profit for which AS issues three equalization invoices

Equalization invoices are for management services qualify as intra-community service

Acromet towercranes

- Opinion of the Advocate General
- Voluntary remuneration vs adjustments made by the tax administration
 - Adjustment by tax administration is out of scope (*adjustments cannot be regarded as the consideration for a supply for consideration*)
 - Voluntary remuneration can be in scope
- Can it be regarded as a supply of services?
 - AG refers to the working paper of the VAT committee

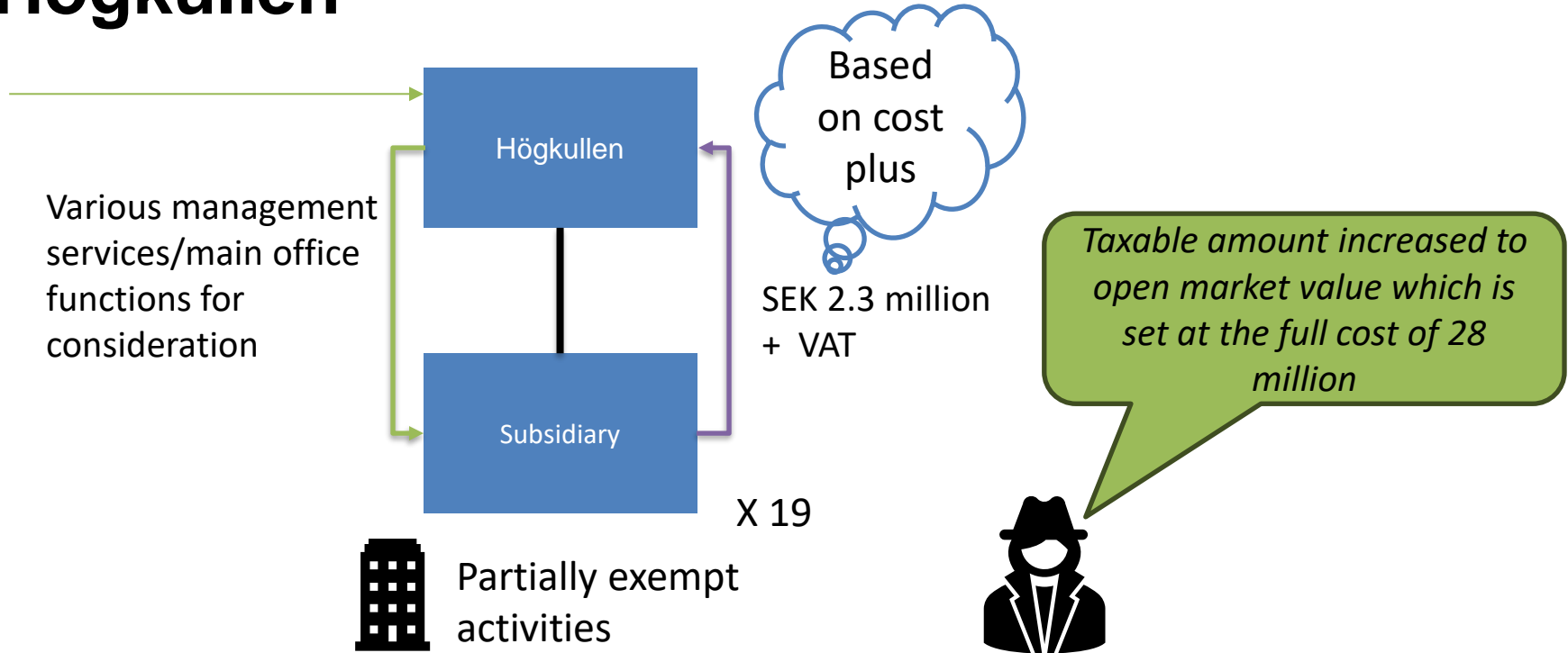
VAT Committee

- For there to be VAT implications, the rules of article 2(1) of the VAT Directive would have to be met
- Existence of a consideration
 - There must be an element identified as an extra consideration for the supply already made
- Existence of a supply
 - The TP adjustments should be allocated to individual transaction in order to have VAT implications
- Direct link between supply and consideration
 - Tolsma: existence of a legal relationship
 - Elida Gibbs & Commission v Germany: taxable amount needs to be adjusted to reflect the actual consideration received.

Acromet towercranes

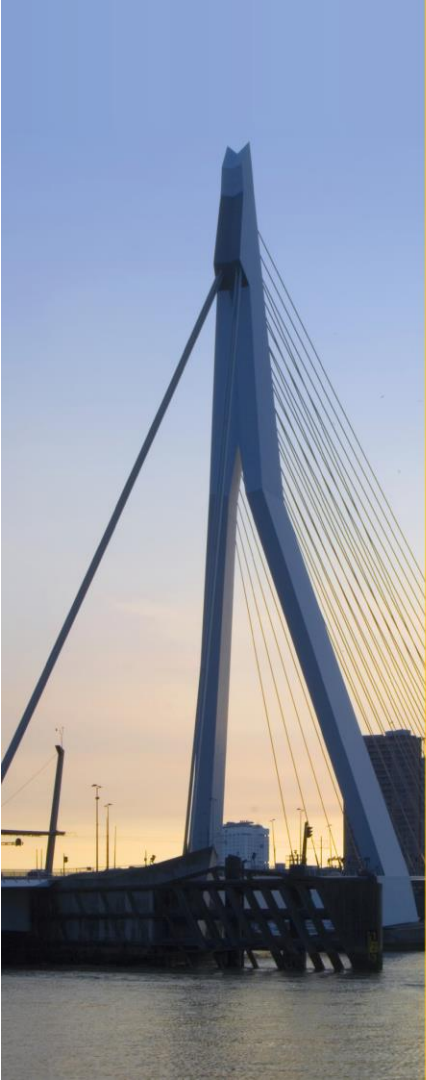
- Acromet had contractually agreed that the transfer price adjustment would take place at the end of the year based predefined net margin ranges.
- AG: The transaction was risk-devoid because of the contractual agreement, therefore there is a direct link between the consideration and the supply of a service
- “The uncertain nature of the provision of any payment is such as to break the direct link between the service provided to the recipient and any payment which may be received” (Tolsma, Cibo Participations and Bastova)
- Finanzamt X

Högekullen



Weatherford Atlas Gib

- Weatherford Atlas Gib acquires Foserco SA through merger
- Services bought within the group and supplied to member of the group
- Tax authorities denied the deduction because there was no link between the supplied services and the its taxed transactions
- Question were poorly formulated resulting in no answer on TP



Q&A

Thank you for your attention