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The unsuspected levers of the Brussels Region in terms of VAT

Faire construire les logements sociaux par le secteur privé

De bouw van sociale woningen door de privésector

Nicolas Bernard and Edoardo Traversa

Translator: Jane Corrigan

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EDITOR'S NOTE

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AUTHOR'S NOTE

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1. The situation regarding the issue

1 Housing taxation in the Brussels Region is truly paradoxical. On the one hand, the need for new properties has never been as great as it is today, fuelled by the continuous population growth over the last twenty years and by the reinforcement of energy efficiency requirements (with new constructions consuming much less energy than existing buildings). On the other hand, it is clear that the primary property sector (new build) is at a tax disadvantage, not only because the buyer of a new home pays 21 %

VAT rather than the 12,5 % registration fee for an existing home (more than two years old), but also because the buyer is excluded from the flagship measure of the Brussels Region in terms of home ownership, namely the 175 000 euro registration fee allowance.

2 Admittedly, the federal government, which has retained jurisdiction over VAT, gave a boost in 2016 by lowering the rate of this tax to 12 % for "private housing" entrusted after construction to "social housing agencies" (AIS) for a minimum of fifteen years;[1] these agencies are entirely subsidised by the public authorities (the Region and, additionally, the municipalities) but are under private law, and their mission is precisely to make housing on the private market available to low-income households. And recently, as part of the so-called Corona support measures, a temporary extension of the VAT reduction from 21 % to 6 % for housing demolitions and rebuilds was adopted.[2]

3 However, these efforts do not seem to be enough. On the one hand, individuals who prefer to manage a rental themselves rather than use the services of such an agency are deprived of the tax benefits (VAT reduced to 12 %), even though these agencies have the most social intentions (to provide housing to a precarious population at low rates); not to mention the fact that associations other than AISs are also developing a social rental offer, and for the same reason, are excluded. On the other hand, the arrival of private stakeholders in the area of AISs, drawn not only to the 12 % VAT rate, but also to the total exemption from property tax (which is a benefit of using such an agency), has caused a double upheaval. First of all, in terms of the functioning of AISs, they have had to absorb a 30 % increase in housing in two or three years [Rassemblement bruxellois pour le droit à l'habitat, 2020: 1], grouped together in large building complexes (rather than scattered throughout the urban fabric). Secondly, as regards the budget, the Region is finding it very difficult to keep up, even to the point of considering a moratorium on the subsidisation of new AIS housing. In a word, it seems that the tax measure designed to benefit individuals has already reached its limit.

4 In contrast, public housing production benefits from an enviable tax status, with only 6 % VAT applied to property produced "within the framework of social policy" and rented (or sold) by the "regional housing corporations" and "social housing corporations approved by them", among others.[3] At the very least, there is an unmistakable difference in treatment with the regime applicable to individuals. However, it is known that for various reasons the public authorities contribute only marginally to the placing of new housing on the market (barely 1 0%), with most of the construction being done by the private sector (about 4 000 dwellings per year [perspective.brussels, 2018: 6]). The social housing corporations, more specifically, are already unable to slow down the uninterrupted lengthening of the waiting list; no less than 10,5 % of the Brussels population is now waiting, sometimes for ten years [Ben Hamou, 2021: 9]. A growing social demand therefore exists, and the efforts of the public sector will not be enough to meet it.

5 It is in an attempt to break the deadlock (and to revive the dynamics of private sector involvement in the development of the social housing stock) that this article proposes to consider extending the 6 % VAT rate on the purchase of new housing to private individuals, in return for fulfilling a series of social requirements. VAT is not a Regional competence, as it falls within the remit of the federal government, but Brussels does have some power (regulatory and budgetary). However, let us begin by pointing out –

as background information – the illegal nature of the current differentiated VAT system on two counts.

2. The illegality of the current differentiated VAT system

6 Due to the fact that it applies the reduced rate of 6 % to sales involving certain (public) stakeholders and not others (despite the fact that the latter may have an identical property policy), the federal VAT system violates a twofold fundamental legal principle, namely that of equal treatment and tax neutrality.

2.1. Equal treatment

7 First of all, as regards equal treatment, let us point out that not all discrimination is prohibited per se, yet it must be based (narrowly) on an objective and reasonable justification, which is the only way to highlight the proportionality which must exist between the chosen means and the intention. Otherwise, the measure fails to comply with Articles 10 and 11 of the Constitution. However, the discrimination established by the federal authority does not appear to have provided the required justification.[4] “The difference in treatment resulting from the proposed measures must therefore be justified in this sense,” as pointed out by the legislation section of the Conseil d'État at the time, which warned:

> “In this respect, it must be borne in mind that although budgetary restrictions inevitably require certain choices to be made, these restrictions are in themselves incapable of justifying the chosen option. A more relevant justification is therefore required.”

8 However, this invitation was ignored by the federal government.

9 As proof of the legal unease, the Constitutional Court took resolute action. It thus declared that the application of a reduced VAT rate[5] to rest homes, exclusive of psychiatric care homes, was unconstitutional.

> “Residential facilities for the elderly as well as psychiatric care homes belong to the social housing sector, as both are responsible for the accommodation and reception – generally on a long-term basis – of people in need of assistance,” observed the high court. “Psychiatric care homes do not differ fundamentally from rest homes in terms of the accommodation and reception of people in need of assistance in the context of social housing, and as such there is no reasonable justification for subjecting the two categories of institution to a different rate of VAT as regards work carried out on property used for such reception. The fact that the two categories of institution are organised differently as regards investments, costs, staff and infrastructure does not justify the difference in treatment either.”[6]

2.2. Tax neutrality

10 In this segment of the Belgian VAT system, it is therefore the stakeholder's formal status which determines whether the reduced rate is applied, and not the property transaction itself. Thus, this system does not respect another cornerstone principle of European law, namely that of tax neutrality, whereby two similar transactions (in terms of their results) must be subject to a similar tax regime. Stemming from directive

2006/112/EU, this iron rule "precludes similar goods or services which are in competition with one another from being treated differently from a taxation point of view, so that those goods or services must be subject to a uniform rate," states the Court of Justice of the European Union.[7] And, in assessing whether goods or services are similar, "the identity of the producer or service provider and the legal form under which they operate are, in principle, irrelevant."[8] It could not be clearer.

11 Far from being confined to the European sphere, the principle of tax neutrality also exists in domestic law. The Cour de cassation itself – the supreme court of the judiciary in Belgium – has endorsed Community case law, ruling that

> "as soon as [the legislator] grants a reduced rate, in view of the tax neutrality required by the Court of Justice, in particular in its judgment of 29 March 2001, C-404/99, it is nevertheless obliged not to treat the same transactions differently".[9]

3. The levers of the Brussels Region in terms of VAT

12 In contradiction with the most elementary rules of law (both Belgian and European), our differentiated VAT system penalises private initiative above all, which is greatly needed in Brussels in order to boost the production of social housing. But what can the Brussels Region do when this tax falls within the remit of the federal government? There are precisely some (unsuspected) levers which it could make use of, which is the main theme of this article.

3.1. Fulfilling the concept of "housing corporation"

13 As noted, the reduced rate of 6 % benefits "regional housing corporations" and "social housing corporations approved by them". At first glance, the formula refers respectively to the *Société du logement de la Région de Bruxelles-Capitale* (SLRB, the umbrella and supervisory body of the social housing sector) and the sixteen public service housing corporations recognised by it (which manage social housing). It should be noted, however, that the Royal Decree No 20 on VAT does not itself define these concepts; as the federal government is not responsible for housing (which is the responsibility of the Regions), it leaves it to the Regions to decide.[10] The main power of the Brussels Region lies precisely in the interpretation of these terms. This possibility is suggested by the Royal Decree itself, which uses the generic concept of "housing within the framework of social policy"[11] (rather than the restrictive concept of "social housing policy", for example).

14 The role of the Region is therefore to adapt the concept of "social housing corporation" to include any person (natural or legal, public or private) operating in conditions similar to those of the stakeholders currently benefiting from the reduced rate of 6 % – whether in terms of types of construction, sale or rental arrangements, control and supervision by the competent authorities, etc. Incidentally, by focusing on the nature and purpose of the operations carried out rather than on the stakeholders responsible for carrying them out, the grievance regarding discrimination and the infringement of European law would no longer be an issue.

15 This is not impossible, it seems, as the Region initiated (and carried out) a similar process ten years ago to officially include citydev.brussels[12] on the list of stakeholders benefiting from the 6 % rate. How was this done? Parliamentarians passed an order

(known as the Hutchinson order of 20 July 2011) "to define social policy in the area of housing" and not "social housing policy," it should be noted. The text also provides a limited list of public stakeholders operating within the framework of this policy, including citydev.brussels. If the legislator has done so for this stakeholder, whose housing is neither rented (but purchased) nor reserved for a precarious population (since the eligible income ceilings are nearly three times higher than those in effect for social housing strictly speaking[13]), we do not see what would prevent individuals who are similarly committed to this social policy from benefiting from the reduced rate. Moreover, such an extension to the private sector has been achieved in the past with the order of 11 July 2013, when social property agencies made their appearance on this list; and on that occasion it was specified – as if to better emphasise the property operation itself and the end users – that the regional label would be granted to the stakeholders mentioned only "to such extent that they comply with the conditions of maximum income, rent and selling price set by the government".[14]

16 Naturally, it would then be up to the Brussels authorities to negotiate with the federal government (which makes the final decision to grant the reduced rate of 6 %) regarding the addition of a new beneficiary. Beyond the fact that the federal authority has already been flexible in the past (by accepting citydev.brussels, for example), the Brussels Region would strengthen its argument by raising the risk of the submission of a complaint before the European Commission (for violation of directive 2006/112/EU and the principle of neutrality).

3.2. A compensatory regional subsidy

17 If the first solution suggested here is not successful, the Region should not throw in the towel. The need for the private sector is too great to give up so quickly. Brussels has a second lever which is of a budgetary nature: the granting of a compensatory regional subsidy. In practical terms, this would make up for the difference between the 6 % VAT (which would have applied to private stakeholders if a broad – and non-discriminatory – definition of "housing corporation" had been adopted) and the standard rate of 21 % (which is applied in the absence of regulatory adaptation).[15] It is true that the Region cannot force the hand of the federal government in determining who is liable to VAT, but in the area of housing, which falls within its remit, it is able to provide a financial compensation for the tax disadvantage which affects private stakeholders offering their rental properties to underprivileged households. This financial solution is interesting in that it can be implemented quickly by the Region, without any upheaval in legislation or negotiation with another level of government.

18 Admittedly, a subsidy such as this one would have a cost for the Region (whereas a reduction in the VAT rate is borne by the federal government in the form of lost revenue).[16] However, this must be put into perspective in at least three ways. Firstly, it must be set against the expected increase in the social housing stock. Secondly, this regional outlay will always remain (much) lower than the very substantial amounts of money required to build (and maintain) social housing managed by a public corporation. Thirdly, the subsidy will no longer exist when the federal government finally amends its royal decree. In the end, one of two things is true: either the measure is not very successful and it does not cost the Region much, or it is popular and it

reinforces (and legitimises) the need for the federal government to make the 6 % VAT rate applicable to private operators.

4. The social requirements

19 Whether it takes the form of eligibility for the 6 % VAT rate or a compensatory regional subsidy, any financial support given to private operators intending to work within the framework of social housing policy cannot be conceived without serious requirements, which guarantee the effectiveness of this social allocation as well as its sustainability. There is no question of giving public money (whether federal or regional) without verifying that it is being used properly in the long term. The last part of this study will therefore focus on the prerequisites for the private sector to obtain the tax relief. Broadly speaking, there are three requirements: to sell part of the property produced to a social housing corporation (or to the Fonds du logement), to make use of the remainder freely only under certain social conditions (and for a given period of time) and, finally, to locate the operation in a neighbourhood with a shortage of social housing. Let us explain these requirements in detail.

4.1. Sell a certain proportion of the housing produced to a social housing corporation (or the Fonds du logement)

20 The first requirement is that a certain proportion of the housing created must be sold to a social housing corporation or the Fonds du logement (for its rental assistance activity).[17] Why these two operators? Firstly, because they are mentioned by name in the royal decree No 20 on VAT,[18] which makes things easier. Secondly, because they already have a supply of rental, social and sustainable housing, which is the objective of the reduced VAT rate. In any case, placing these properties in the social housing sector will only boost public housing production, which is struggling to meet its objectives.[19]

21 This proportion could be between half and two thirds, i.e. enough so that the majority of dwellings within the property project are affordable (and to give the public stakeholder reinforced decision-making power in the co-property general assembly), but not beyond a certain threshold, in order to ensure socio-economic diversity among the inhabitants. Furthermore, the percentage could be calculated either in number of dwellings or in (ten-)thousandths of the co-property.

22 The social housing sector should not be disrupted by this type of arrangement, as the SLRB already buys turnkey housing from private developers on behalf of a social housing corporation under the Plan Alliance-Habitat launched in 2013;[20] in the first 18 months of the current legislature alone, nearly 400 properties were purchased this way [Ben Hamou, 2020]. For its part, the private operator would undoubtedly be reassured to know that more than half of its project would be sold, and this guarantee of purchase would be likely to help in the issuing of bank loans; the announced acceleration of the urban planning procedure for property projects comprising a minimum of 25 % public housing is a step in the same direction [Ben Hamou, 2021: 77]. The hardest part, in the end, may be convincing the housing associations, which are not always thrilled with the prospect of being in a joint ownership with other operators (private or otherwise).

4.2. Make the sale (or rental) of the remainder subject to certain social conditions

23 A possible consideration could be to leave the remaining housing free of all restrictions once the share of housing intended for the social housing sector has been sold. However, it would be difficult to justify the granting of a reduced VAT rate to the federal government in this unregulated scenario. Yet, there is no question of subjecting the remaining housing to excessively strict rules, at the risk of making the measure unattractive to private stakeholders and abandoning the idea of socio-economic diversity.

24 It is therefore proposed that the remaining part should be subject to an intermediate regime, which would allow the private developer to sell the property or rent it to anyone, but in accordance with certain conditions without which the reduced rate would not be possible. These conditions could be related to the type of buyer, the rent or the selling price. It would be good policy in this respect to base them on the Brussels regulations on urban development charges. These regulations impose the payment of a certain sum of money for residential buildings of more than 1 000 m2 , and exempts the private operator which builds a certain proportion (15 %) of "conventional" dwellings within the project,[21] which are sold or rented by the operator without restrictions, but in compliance with requirements related to the public (maximum incomes and non-ownership), the purchase price (capped) and the rent (regulated).[22]

25 It is still necessary to ensure that these social conditions continue for a significant period of time, beyond the initial buyer or tenant in any case. In this regard, the 15-year period might be appropriate for consistency with the 12 % rate. However, as a rate of 6 % would be granted in this case (instead of 12 %), the possibility of extending this period should be examined. For a long time, this did not seem to be in line with the philosophy of tax law due to the VAT review period for "investment property" (a period of 15 years during which the administration can adjust the VAT already deducted in advance, for example in the event of a change in the use of the property).[23] This period does not seem to be intangible, however, as it has recently been extended to 25 years for new buildings intended for commercial rental[24]. During this period (whatever it may be), the requirements associated with the rental would therefore have to be maintained and, if there has been a sale instead, the private operator would have to ensure that the purchaser complies with the relevant requirements, and so on until the end of the period.[25]

26 What if the operator does not respect these conditions? In addition to the proportional reimbursement of the undue tax gain (which would be the responsibility of the federal government in the case of VAT), another mechanism could be considered in the event of a sale: the Region could impose taxation of the capital gains, along the lines of the Flemish *planbatenheffing*, which receives part of the capital gains on property due to a change of use or a change in spatial planning rules (an agricultural plot of land being converted into a buildable area, for example).[26] However, in general, it would be necessary to maintain a sense of proportion in determining these different conditions and, in concrete terms, to preserve the profitability of developers, failing which they would not consider embarking on operations of this type – which would then deprive the Region of the social housing it is hoping for.

4.3. A location in a neighbourhood with a shortage of social housing

27 Lastly, it is proposed that the reduced VAT rate should be reserved for private operations in an area where there is currently a shortage of social housing. Not only does the Brussels Region suffer from a considerable shortage of social housing (only 6,92 % of the total built environment), but it is very unevenly distributed; in the absence of any constraint on the local authorities, everything rests on the goodwill of the municipalities, some of which therefore have almost five times less social housing than others [perspective.brussels, 2021: 34].[27] The minimal solidarity that could be expected from the different entities of the same region is undermined; is it acceptable, for example, that the most affluent municipalities, with their limited public housing stock, divert social demand *de facto* to municipalities which are already less well off?

28 The principle of the geographical targeting of aid is commonplace in the Brussels Region, including in the area of access to property. Among other examples, citydev.brussels (which sells new housing at 70 % of the market price) carries out its missions "as a priority" in certain areas, such as the urban revitalisation area, priority interest areas, regional interest areas, etc.[28] For a long time, the purchaser of a property located in the area of reinforced housing and renovation development benefited from a greater reduction of registration fees. Finally, a household whose income exceeds a certain threshold is not entitled to the renovation bonus if the property is located outside a neighbourhood contract area or an area of reinforced housing and renovation development.[29]

29 However, in order to avoid grievances regarding unequal treatment and the violation of the principle of tax neutrality, this geographical targeting must be as specific as possible and accompanied by a detailed justification. Thus, counting by municipality is likely to be somewhat approximate, as the density of social housing can vary significantly from one neighbourhood to another. It is therefore advisable to move away from this strictly administrative division in favour of a more empirical approach, which reflects the realities of the various areas in Brussels more closely. A tool of this type does exist: the neighbourhood monitoring developed by the Brussels Institute for Statistics and Analysis (IBSA), which lists up to 145 different neighbourhoods (including 118 residential neighbourhoods) and mentions the social housing statistics for each.

30 The percentage of social housing below which the reduced VAT rate could be obtained has yet to be decided. The most convenient solution would be to align it with the 15 % threshold used by the current Brussels regional policy declaration for example. Admittedly, this proportion concerns more broadly "housing with a social purpose" which, in addition to social housing in the narrow sense, includes many other types of property (housing leased by the municipalities and CPAS, the Région foncière régionale, the social housing agencies and the Fonds du logement for rental assistance, not to mention housing produced in the context of neighbourhood contracts, loans granted by the Fonds du logement or property sold by citydev.brussels). However, the solution proposed here seems compatible to us, as it does not rely solely on the social housing institution.

31 This location requirement has a final advantage: the reduction in the VAT rate to 6 % (and the cost that goes with it) is therefore intended to be temporary. As soon as all Brussels neighbourhoods reach the required proportion of social housing, the measure would be discontinued.

*

32 We do not claim that the measure suggested here will resolve the severe lack of social housing in the Brussels Region on its own. Nor do we claim that the various parties concerned (private operators and social housing corporations) will unanimously take this path, which certainly contrasts with their traditional modes of operation. But let us concede that the proposed mechanism should make it possible to expand the social housing stock without state intervention (other than financial), to meet environmental requirements more adequately (through the use of new buildings) and to put an end to a double legal irregularity (which could lead to the current VAT system being invalidated by our constitutional court and/or to Belgium being condemned at European level); all of this, while shifting the cost to the federal government (if necessary) and without using coercive measures with regard to private stakeholders. Although it is less targeted from a social and environmental point of view, the recent extension of the 6 % rate to demolition/rebuilding shows that the federal authorities are ready to use the tax tool to stimulate the creation of new housing. More broadly, the proposal made here is simply part of a (fruitful) process to diversify stakeholders and even hybridise legal principles,[30] which is more necessary than ever in order to respond to the housing crisis. Our mechanism certainly has room for improvement and its conditions are entirely subject to discussion, but let us recognise that there is no longer enough time to just wait and see.

BIBLIOGRAPHY

BEN HAMOU, N., 2021. Plan d'urgence logement 2020-2024, Brussels.

BEN HAMOU, N., 2020. Communiqué de presse du 19 décembre 2020, Brussels.

PERSPECTIVE.BRUSSELS, 2018. Observatoire des permis logement. Situation été 2018, n° 9.01, Brussels.

PERSPECTIVE.BRUSSELS, 2021. Monitoring des projets de logements publics, n° 5, Brussels.

RASSEMBLEMENT BRUXELLOIS POUR LE DROIT À L'HABITAT, 2020. Les agences immobilières sociales dans la tourmente, Brussels.

TRAVERSA, E., FRANSSEN, C. and DESENFANS, P. TVA et politique sociale immobilière : quelle marge pour l'extension des taux réduits à des acteurs privés ? In: Jurimpratique. 2015. Vol. 2015, no 2, pp. 185-198

NOTES

1. Royal decree on VAT No 20 of 20 July 1970, table B, section XI, §1, 1°, e), and §6, al. 1.
2. This measure was previously limited to 32 urban areas, including Brussels, Anderlecht, Saint-Gilles, Saint-Josse-ten-Noode, Molenbeek-Saint-Jean, Schaerbeek, Forest, Ixelles, Uccle and

Etterbeek. The application of this reduced rate is now planned for all of Belgium and for the period from 1 January 2021 to 31 December 2022, according to conditions which may vary slightly (programme act of 20 December 2020, MB 30.12.2020).

3. Royal decree on VAT No 20 of 20 July 1970, table A, section XXXVI, §1, 1°.

4. For a long time, tax and other regimes which favoured public stakeholders over private stakeholders were considered to be justified on the grounds that, by their very nature, the former pursued public interest objectives while the latter were unable to do so. Today, particularly under the influence of European law, this public/private distinction is no longer self-evident and must be justified in detail by the legislator, particularly with regard to the specific conditions in which the activity being promoted is carried out. While it cannot be ruled out that the legislator may, in certain specific cases, establish that only a public stakeholder is able to meet these conditions, this development generally implies that private stakeholders should be allowed to try to meet them. See for example CJEU, 21 January 2016, Les Jardins de Jouvence, Case C-335/14, regarding the application of a VAT exemption to (private) assisted living facilities in the Walloon Region.

5. In the present case, a rate of 12 % on the sale to these institutions of "housing complexes intended for use as accommodation for the elderly" (in particular), again provided that the properties in question were new properties "intended for housing within the framework of social policy" (Royal decree on VAT No 20 of 20 July 1970, Table B, section X, §1, A, d).

6. Judgment No 169/2009 of 29 October 2009, cons. B.4.1.

7. Adam judgment of 11 October 2001, C-267/99, paragraph 36.

8. Linneweber judgment of 17 February 2005, C-453/02, paragraph 25. The words "in principle" are nevertheless important, because in other areas (such as medicine) it is important to consider the status of the taxpayer in order to exclude from the tax benefit those who practise the art of healing illegally.

9. Cass., 14 February 2008, n°C.04.0071.N

10. The Minister of Finance thus stated in 2008 that "the federal state can only refer to the definitions given by the Regions" (Question asked by Mr Van der Maelen of 3 June 2008, Q & A, Ch., 2007-2008, No 026, pp. 6115-6117 XX).

11. Heading of item XXXVI of Table A annexed to Royal Decree on VAT No 20 of 20 July 1970.

12. At the time, Société de développement pour la Région de Bruxelles-Capitale (S.D.R.B.).

13. 65 013,43 euros for a single person, compared with 23 525,31 euros in social housing; and in the case of a couple, only half of the income of the spouse (who earns the least) is taken into account by citydev.brussels.

14. See art. 2, §3, of the Code bruxellois du logement.

15. For a dwelling with a production cost of 250 000 euros, for example, the subsidy would actually amount to 37 500 euros. In other words, a regional budget of one million euros would allow the creation of no less than 26 new social housing units of this type.

16. The exact and overall cost to the Region would depend in particular on whether or not VAT is charged on this grant (which in turn depends on whether it should be considered as "directly linked to the price" of the sale of the building). Without going into the details of the analysis here, the requirements for the granting of the subsidy and the fact that in principle it would not affect the market value of the property (excluding VAT) appear to rule out the application of VAT to the subsidy itself; moreover, in several rulings (9 February 2017 No 2014/AF/84 and 28 June 2012 2008/AR/2484, www.taxwin.be), the Brussels Court of Appeal has excluded the application of VAT to subsidies from the SDRB – now citydev.brussels.

17. The price could be suggested by the Comité d'acquisition d'immeubles, for example, a department of Documentation patrimoniale which, within Bruxelles Fiscalité, has the specific task of carrying out estimates relating to property or property rights located in the Brussels-Capital Region.

18. Table A, section XXXVI, §1, 1°, a).
19. Thus, only 51 % of the 5 000 properties announced by the 2005 Plan régional du logement have been built today (actually received) and the 2013 Plan Alliance-Habitat, which aims to create 6 720 new dwellings, has only achieved 21 % [perspective.brussels, 2021: 9 and 13].
20. The aim of this procedure is to gain in speed, since it allows a dwelling to be made available to a tenant in just two years (in particular because private projects need planning permission beforehand in order to be eligible), whereas the SLRB takes an average of six years to build one by itself. However, the price is higher, since the SLRB must also purchase the land (which is provided by a public authority in the classic scenario). The whole procedure is the subject of an agreement which lists the rights and obligations of each party. See the answer given on 17 November 2020 by Nawal Ben Hamou, Secretary of State of the Brussels-Capital Region in charge of housing and equal opportunities, to the written question No 287 concerning the new housing in the Corbeau project.
21. Article 10, §2, al. 1 of the Government of the Brussels-Capital Region decree of 26 September 2013.
22. Article 1, §1, 2°, of the Government of the Brussels-Capital Region decree of 26 September 2013.
23. Article 48, §2, al. 2 of the VAT Code and Article 10 of Royal Decree No 3 of 10 December 1969 on deductions for the application of value added tax, M.B., 12 December 1969.
24. Article 48, §2, al. 3, CTVA and article 6 of the law of 14 October 2018. The extension of the VAT review period beyond 20 years can, however, be challenged under the text of the VAT directive (article 187).
25. In any case, even if the VAT legislation can serve as a source of inspiration, the Region would still be free to set other conditions for revising the amount of the subsidy, given that it would hypothetically be outside the scope of VAT.
26. Articles 2.6.4. to 2.6.19 of the *Vlaamse Codex Ruimtelijke Ordening.*
27. 3.98% in Uccle compared to 17,42 % in Watermael-Boitsfort.
28. Art. 2, al. 2 of the Government of the Brussels-Capital Region decree of 26 September 2013.
29. Art. 10, §1 of the Government of the Brussels-Capital Region decree of 4 October 2007.
30. Whether it is long-term tenure or surface right for the production of public housing, the application of the temporary occupation model in unoccupied property, the involvement of private individuals in the development of the stock of social housing agencies and corporations, the contribution (in cash or in kind) of these same private operators to the placing of subsidised housing on the market, etc.

ABSTRACTS

As we know, there is a dramatic lack of social housing in the Brussels Region. While the VAT system undoubtedly benefits the public production of social housing (by granting a reduced rate of 6 %), it does not help private operators or associations which also have the vocation to provide housing at a modest price (without going through a social housing agency). Moreover, this differentiated VAT system violates two fundamental legal principles: equal treatment and tax neutrality (according to which two similar operations in terms of their results must be subject to a similar tax regime). It is therefore time to change this tax measure. But what can the Brussels

Region do when this tax falls within the remit of the *federal* government? There are at least two things it can do: include the private construction of social housing in the category of "social housing corporation" (which already benefits from the reduced VAT rate) or, failing that, grant a subsidy to the former activity in order to compensate for the difference between the standard VAT rate (which will be applied) and the reduced rate. All of this, of course, would be subject to social conditions, such as selling a certain proportion of the housing produced to a social housing corporation and making the sale (or rental) of the remainder subject to certain social conditions. By involving the private sector in this way, it could be possible to shorten the very long waiting list for social housing.

La Région bruxelloise manque dramatiquement de logements sociaux, on le sait. Si le régime de la TVA avantage incontestablement la production *publique* des logements sociaux (par l'octroi d'un taux réduit : 6 %), il n'aide en rien les opérateurs privés ni les associations qui, pareillement, ont pour vocation de mettre à disposition des logements à un tarif modeste (sans passer par une agence immobilière sociale). En plus, ce système différencié de TVA heurte deux principes juridiques fondamentaux : l'égalité de traitement et la neutralité fiscale (suivant lequel deux opérations semblables quant à leurs résultats doivent connaître un régime fiscal lui-même semblable). Il est temps dès lors de changer ce logiciel fiscal. Mais que peut bien faire la Région bruxelloise dès lors que cet impôt relève des compétences de l'autorité *fédérale* ? Deux choses au moins : englober dans la catégorie de « société de logement » (qui bénéficie déjà du taux de TVA réduit) la construction privée de logements à caractère social ou, à défaut, accorder à cette dernière activité un subside qui compenserait la différence entre le taux standard de TVA (qui sera appliqué) et le taux réduit. Le tout, naturellement, moyennant une série de contreparties sociales, comme vendre une certaine proportion des biens ainsi produits à une société de logement social et assujettir à certaines conditions sociales la vente (ou la location) du solde. En impliquant de la sorte le secteur privé, il sera permis d'espérer une résorption plus rapide de la très longue file d'attente des logements sociaux.

Het is geen geheim dat er in het Brussels Gewest een dramatisch tekort is aan sociale woningen. Hoewel het btw-stelsel de productie van sociale woningen door de overheid ontegenzeglijk bevoordeelt door het verlaagde tarief van 6 % toe te kennen, helpt het in geen geval de privéactoren en organisaties die evenzeer woningen ter beschikking willen stellen tegen een lage prijs (zonder daarom met een sociaal verhuurkantoor te moeten samenwerken). Bovendien druist dit systeem van een gedifferentieerd btw-tarief in tegen twee juridische basisbeginselen, namelijk gelijkheid van behandeling en fiscale neutraliteit (volgens hetwelk twee qua resultaten soortgelijke transacties een soortgelijk fiscaal regime moeten kennen). Het is dan ook tijd om deze fiscale koers te wijzigen. Maar wat kan het Brussels Gewest dan doen, aangezien btw valt onder de bevoegdheden van de federale overheid? Op zijn minst twee dingen: de private bouw van sociale woningen opnemen in de categorie van "huisvestingsmaatschappij" (die al geniet van het verlaagde btw-tarief) of anders voor de private bouw van sociale woningen een subsidie toekennen die het verschil tussen het standaard btw-tarief (dat zal worden toegepast) en het verlaagde btw-tarief compenseert. Dit alles uiteraard door middel van een aantal sociale compenserende maatregelen, zoals een deel van de geproduceerde woningen verkopen aan een sociale huisvestingsmaatschappij en de verkoop (of verhuur) van de overige woningen aan bepaalde sociale voorwaarden onderwerpen. Door de privésector op die manier te betrekken, kunnen we misschien hopen dat de ellenlange wachtlijsten voor sociale woningen sneller zullen inkrimpen.

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AUTHORS

NICOLAS BERNARD

Professor of law at Université Saint-Louis - Brussels and UCLouvain. Author of "Bail de logement social, de logement modéré et de logement moyen en Région de Bruxelles-Capitale", Les Baux. Commentaire pratique (loose-leaf format), 2020, pp. V.1.1. to V.1.4.13
nicolas.bernard[at]usaintlouis.be

EDOARDO TRAVERSA

Professor of tax law at UCLouvain, member of the Brussels Bar, President of the Conseil wallon de la Fiscalité et des Finances. Author of *Taxe sur la valeur ajoutée – Droit belge et européen*, Larcier, 2020 (with Ch. Herbain and M. Lamensch)
edoardo.traversa[at]uclouvain.be