

Addendum to BRUO, Bitstream xDSL and Bitstream Fiber PON

# Update on the VAT treatment of compensations

Approved by BIPT on 13/06/2024  
Sensitivity: Unrestricted



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## 1 Purpose of the addendum

The present addendum describes the following change in the VAT treatment of the compensation fees as set in the Proximus regulated broadband reference offers (cf. section 2 below):

- A 21% VAT (instead of “without VAT” in the prevailing version of the reference offers) will be applicable to all indemnities, whether due by Proximus or the wholesale customer.
- There will be no netting of both types of indemnities on billing level (thus VAT level), but the netting principle described in the reference offers will be possible on payment level.

The applicability of the new “Useless End-User visit” (Provisioning) SLA is also updated to be in line with the currently published KPI.

## 2 Scope and planning

This addendum is applicable to the BRUO, Bitstream xDSL and Bitstream Fiber PON services as described in the related reference offers.

The present addendum has been communicated to the BIPT in order to become effective as from 28/06/2024.

## 3 Context

To better understand why it is necessary to update the VAT treatment of the compensation fees introduced by the addendum communicated to BIPT on 30 June 2020 (“Update on SLAs and compensations”), reference is made to 2 Court Cases of the European Court of Justice that have impacted the VAT qualification of indemnities:

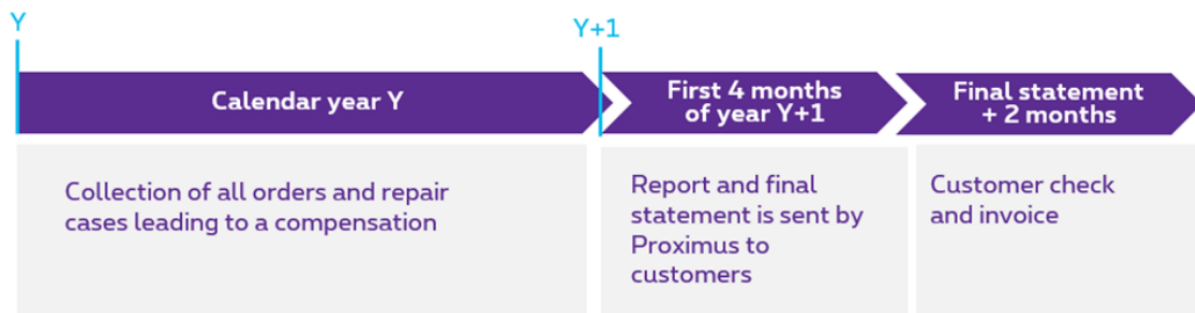
- the *Meo* case C-525/16 of 22 November 2018 and
- the *Vodafone Portugal* case C-43/19 of 11 June 2020.

Before these judgments there was a common ground that the compensation fees such as those related to the SLAs described in the regulated broadband reference offers were outside the scope of VAT. The 2 above-mentioned cases have put that historical common ground into question and have made the VAT treatment of indemnities more of a grey zone. This grey zone is confirmed by the timing by which the Belgian VAT Authorities have implemented the impact of these cases in their VAT Commentaries. On 11 September 2020 a mere reference to the *Meo* case was introduced in the introduction of the Commentaries. It was not until 1 June 2022 that the *Meo* and *Vodafone Portugal* cases have been implemented in the part of the Commentaries on the VAT treatment of indemnities and on 1 September 2022 an additional implementation of *Meo* has taken place. This explains why the present change in the VAT treatment of the compensation fees as described in the reference offers was not taken into account in the draft addendum “Update on SLAs and compensations” submitted to BIPT on 30 June 2020.

## 4 Operational Impact

### 4.1 Billing

As a consequence of the above-mentioned evolution, the VAT of the compensation fees (whether due by Proximus or the wholesale customers) will be set at 21% in the invoices/credit notes issued by Proximus to the wholesale customers. These invoices/credit notes will be issued as from the milestone “Final statement + 2 months” of the compensation process<sup>1</sup>:



This milestone “Final statement + 2 months” falls at the end of the month of June 2024 for the netting of the calendar year 2023. Note that it will most probably come sooner in the upcoming years<sup>2</sup>.

As a general rule, the compensation fees due by the wholesale customers will be billed through an invoice of Proximus to the wholesale customers (or integrated as a line item on the next invoice) while the compensation fees due by Proximus will be credited through a credit note of Proximus to the wholesale customers (or integrated as a discount on the next invoice). The netting will thus not take place on billing level (i.e. VAT level), but will be possible on payment level. This is required to be fully compliant with the VAT legislation.

Finally, the compensation related to the new “Useless End-User visit” (Provisioning) SLA is only applicable to orders not falling in the scope of projects (i.e. mass migrations, orders with a project ID). This is of course positive for the wholesale customer but needs to be made clear in the reference offers, in alignment with the published KPI.

<sup>1</sup> Cf. section 6.1 of the annex 4 “Basic Service Level Agreement” of the Bitstream reference offer.

<sup>2</sup> Taking into account that the first milestone of calendar year Y+1 (i.e. within the “first 4 months”), falling in the second half of April this year, will most probably be achieved sooner in the upcoming years as the new netting process will no longer be in project mode.

## 5 Impact on the regulated offers

### 5.1 Adaptation on Bitstream Fiber PON documents

The sections of the Bitstream Fiber PON offer documents which are impacted by this Addendum are indicated in the subsequent paragraphs. These adaptations refer to the consolidated prevailing version of the Bitstream Fiber PON reference offer, published on the Proximus website, at [Bitstream Fiber PON - Proximus Reference Offer for Bitstream Access | Proximus](#)

#### Annex 4 – “Basic Service Level Agreement”

In section 5.1.1.7.3 “Applicability of the SLA”, §84 is to be updated as follows (highlighted in yellow):

84. The “Useless End-User visit” (Provisioning) SLA is only applicable to orders:
- Submitted to Proximus through the MSO (GUI & SOA) interface as described in the Annex “Planning & Operations”.
  - Needing at least one End-User visit (installation methods “with customer visit” and “with customer visit splicing included”).
  - Installed by a Proximus Technician or a Partner Technician thus excluding installations by Certified Technicians and remote activations.
  - Not falling in the scope of projects (i.e. mass migrations, orders with a project ID).

In section 6.1 “General” (included in chapter 6 “Terms and Conditions for Compensations”), §154 is to be updated as follows:

154. The netting in the final statement will clearly indicate which Party owes money to the other. If the final statement is negative, Proximus will issue (without further delay) a manual invoice without VAT to the Beneficiary XYZ. If positive, the Beneficiary XYZ has to issue its own invoice (or credit note) without VAT to Proximus.

154. The annual final statement will include the compensation amounts due by Proximus and those due by the Beneficiary and will therefore indicate which Party owes money to the other Party. The compensation amounts due by the Beneficiary will be billed through an invoice of Proximus to the Beneficiary (or integrated as a line item on the next invoice) while the compensation amounts due by Proximus will be credited through a credit note of Proximus to the Beneficiary (or integrated as a discount on the next invoice). The compensation fees are subject to 21% VAT.

### 5.2 Adaptation on Bitstream xDSL documents

The changes in the Bitstream xDSL offer are identical to those in the Bitstream Fiber PON offer (see section 5.1 hereabove). Therefore, Bitstream xDSL updates won’t be highlighted here, but will be implemented as well when this addendum enters into force.

### 5.3 Adaptation on BRUO documents

The changes in the BRUO offer are identical to those in the Bitstream Fiber PON offer (see section 5.1 hereabove). Therefore, BRUO updates won't be highlighted here, but will be implemented as well when this addendum enters into force.

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