



# Role of third parties in the taxation process – ‘fiscal outsourcing’

Prof. dr. Niels Appermont – 8 December 2022



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# Research project presentation



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# Research project presentation

- FWO Senior Research Project 2020
  - ‘Taxpayer or customer? An inductive inquiry into ‘fiscal outsourcing to private service providers on the basis of the Belgian distance charge’
  - Supervisor: prof. dr. Elly Van de Velde (Hasselt University)  
Supervisor: prof. dr. Reinhard Steennot (Ghent University)  
Co-supervisor: prof. dr. Niels Appermont (Hasselt University)



# Research project presentation

- FWO Senior Research Project 2020
  - Start project: September 2021
  - PhD Researcher: Madou Haberkorn (joint PhD UHasselt/UGent)
  - Supervisory committee:
    - Prof. dr. Elly Van de Velde & prof. dr. Reinhard Steennot (supervisors)
    - Prof. dr. Niels Appermont, prof. dr. Bart Peeters & prof. dr. Steven Van Garsse



# 'Outsourcing' within the context of the Flemish distance charge

Main principles and questions



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## Some context

- ‘Distance charge’ for trucks and heavy goods vehicles (2016)
- Interfederal collaboration between 3 Belgian Regions, within the context of EU legal framework on electronic road toll systems and road charging
- Implemented in the Flemish region as a ‘tax’ and incorporated in the Flemish Tax Code (‘FTC’)
  - Consequently, all matters relating to ‘service of the tax’ for FTC taxes would normally be handled by the Flemish Tax Administration (‘VLABEL’)
  - This is VLABEL’s main task, according to its 2004 founding decree
  - According to standardized legal provisions and procedures, as set out in the FTC



# 'Outsourcing' ?

- Main question: what do we mean by 'outsourcing'?
  - No agreed upon definition
  - Not evident to 'pinpoint'
  - Working definition: *"a practice whereby one or more of the elements of the 'service of taxation' are delegated to one or more external (private) parties, not including autonomous internal governmental agencies"*
  - Several examples in Belgium/Flanders: Flemish distance charge, several energy levies, 'kijk en luistergeld', ...



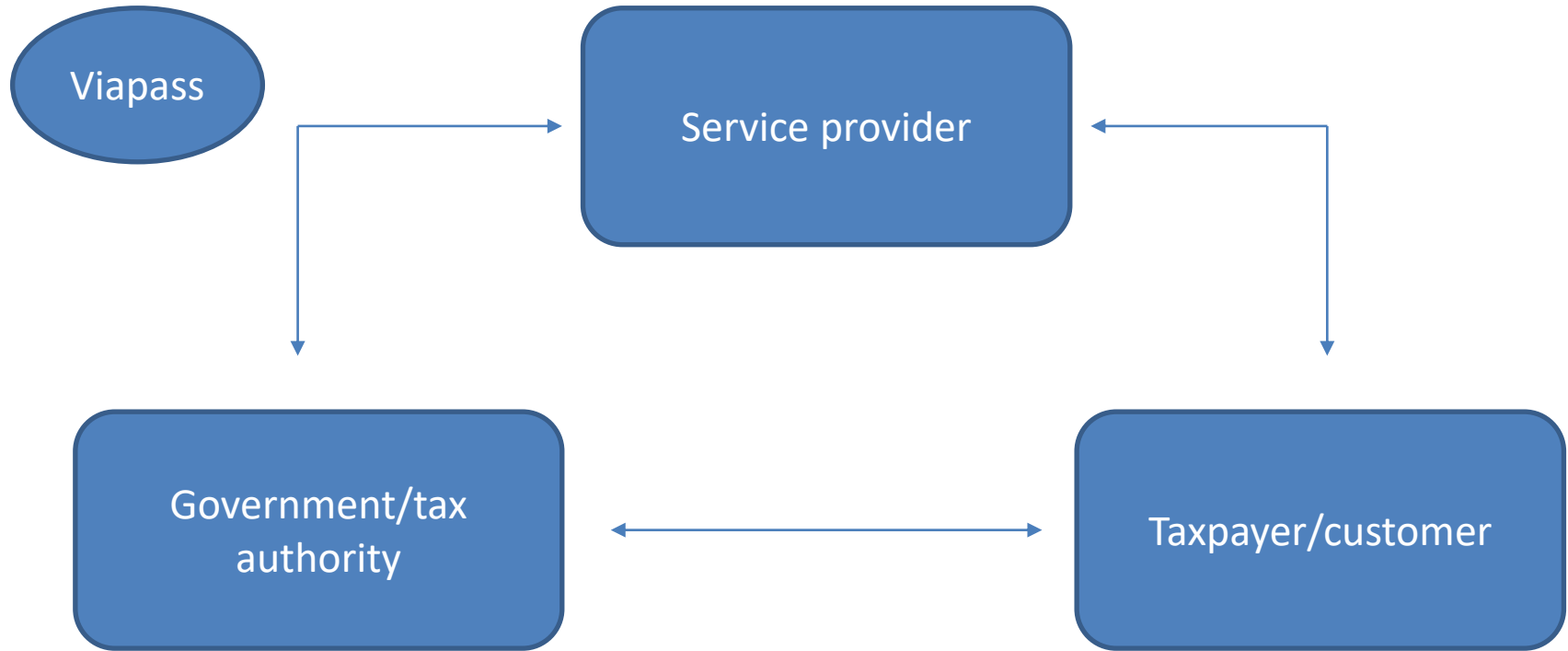
# The 'service of taxation'

- 'Service of the tax' involves the power to:
  - determine the existence of the relevant tax base
  - calculate the amount of tax due
  - verify the existence of the tax base and the amount of tax and perform checks and audits
  - handle all disputes related to the tax, both administrative and judicial
  - ensure the collection and recovery of the tax, including costs and interest
  
- Within the context of the Flemish distance charge, many of these aspects are 'outsourced' to private partners
  - In essence, VLABEL will only 'come into play' during the sanctioning phase when imposing fines, according to the FTC procedures
  - The tax should be paid to a private service provider on the basis of a contract and passed on to VLABEL





# Schematic overview



# Some essential aspects of the distance charge

- Enormously complex legal framework, yet some essentials are:
  - The ‘taxpayer’ is in principle identified as the person in whose name the license plate of a qualifying vehicle is registered
  - The taxpayer is obligated to install an On Board Unit (OBU) in the vehicle
  - The taxpayer is obliged to conclude a service contract with one of seven external service providers, which have been licensed by the government in order to obtain an OBU
  - On the basis of data registered and transmitted by the OBU, the service provider calculates the amount of tax and provides the taxpayer with an invoice
  - The tax is then passed on to the government by the service provider



# Two central observations

- Central observations:
  - The traditional legal relationship between taxpayer and the tax authority, governed by public law, is replaced, in whole or in part, by a contractual relationship between the taxpayer/customer and an external service provider
  - Public/tax law models of legal protection of the taxpayer are substituted by private forms of legal protection
    - Possible distortion of classical degree of public law taxpayer protection?
    - Possible distortion of contractual balance between two independent contracting parties?
- Equivalence?



# Myriad questions

- Both as a matter of principle and as a matter of practice
  - Impact of the Constitutional principle of legality?
  - Definition of a ‘tax’?
  - Governmental ‘core tasks’?
  - Transparency?
  - Equal treatment between taxpayers?
  - Efficiency gains *vis-à-vis* ‘normal tax procedures’?
  - Does VLABEL have access to relevant data in order to verify the amount of tax passed on?
  - To whom should the taxpayer turn with questions, complaints?
  - Differing terms & conditions which all may include payment terms, late payment interest rates, possibilities for payment facilities, ... which differ from those applicable to (other) taxes



# Myriad questions

- Both as a matter of principle and as a matter of practice
  - Possibility to obtain advance tax rulings?
  - Applicable procedures and competent courts in the case of disputes?
  - Impact of specific B2C and B2B legislation, such as unfair contract terms and abuse of economic dependency?
  - ...



# Thank you for your attention!

Prof. dr. Elly Van de Velde

Prof. dr. Reinhard Steennot

Prof. dr. Niels Appermont



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