



Indirect Tax VAT alert

Direct attribution method: Practical details published—take advance of the tolerance period to prepare

The Belgian tax authorities on 19 January 2023 issued practical guidance ([Dutch](#) | [French](#)) on the application of new rules on the direct attribution method for VAT deduction (“werkelijk gebruik”/“affectation réelle”), published in the Royal Decree of 26 October 2022 ([Dutch](#) | [French](#)) and applicable as from 1 January 2023. The replacement of the advance approval requirement with a notification procedure may provide affected taxpayers with less certainty over their VAT recovery position; however, an initial one-year tolerance period has been introduced. We recommend that businesses use this period to analyse the applied VAT deduction and to make timely adjustments or to consult the tax authorities if necessary.

In general, businesses that supply both taxed and exempt supplies (mixed VAT taxpayers) have a limited right to input VAT deduction. These partially exempt businesses generally have a choice of two regimes to determine the amount of VAT available for deduction: the default general pro rata method (a calculation based on turnover), or the direct attribution (or real use) method (see our previous [Tax Alert](#) of 29 November 2022 for more details).

Mandatory e-notification

Mixed VAT taxpayers who wish to use the direct attribution method must now notify the tax authorities using electronic form e604 or e604b on the updated MyMinfin module. Deadlines for submission of the notification depend on the taxpayer’s filing status, and are as follows:

- **1 February 2023:** For taxpayers filing monthly VAT returns who wish to apply the direct attribution method as from 1 January 2023.
- **1 April 2023:** For taxpayers filing quarterly VAT returns who wish to apply the direct attribution method as from 1 January 2023.
- **1 July 2023:** For taxpayers using the direct attribution method as at 31 December 2022 who wish to continue to do so. In this case, form e604b must be submitted.

Taxpayers that do not submit the notification by the relevant deadline are in principle not eligible to use the direct attribution method, and must therefore switch to or continue with the general pro rata (turnover based) method.

The updated form e604 is very simple and only requires the taxpayer to indicate whether the direct attribution method is already applied, or whether it will be applied in the future. It is not necessary to provide any additional information at this stage.

Disclosure of VAT deduction percentages

In addition to the submission of form e604b, mixed VAT taxpayers are required to disclose details of their VAT deduction percentages in the InterVAT module, including the following key figures related to the prior calendar year:

- The final general pro rata percentage;
- A breakdown of the percentage of input VAT that was fully deducted, partially deducted, or irrecoverable; and
- The deduction percentage (or multiple deduction percentages) for costs on which VAT is partially recoverable.

According to the Royal Decree, these figures must be disclosed in the first quarter of the subsequent year. However, under the 2023 tolerance policy, there is no need to disclose the 2022 figures, and the 2023 figures must first be disclosed at the beginning of 2024. This policy results in the following effective deadlines:

Mixed VAT taxable persons applying the actual use method for the first time as from 2023	<ul style="list-style-type: none"> • 20 April 2024 when filing quarterly VAT returns; or • The deadline for filing one of the first three VAT returns of 2024 (to be submitted no later than 20 February 2024, 20 March 2024, or 20 April 2024) when filing monthly returns
Mixed VAT taxable persons already applying the actual use method on 31 December 2022	<ul style="list-style-type: none"> • 20 April 2024 when filing quarterly VAT returns; or • The deadline for filing the May 2024 VAT return (i.e., 20 June 2024) when filing monthly returns

Impact

The changes made under the Royal Decree are expected to have a significant impact on mixed VAT taxpayers. Previously, use of the direct attribution method was subject to upfront approval from the Belgian tax authorities, requiring taxpayers to disclose to and discuss the specific details of their calculated percentages with the tax authorities prior to first use.

As from 1 January 2023, a taxpayer is no longer required to obtain prior approval from the tax authorities, which may reduce legal certainty around a taxpayer's deduction position. During the approval process, the Belgian tax

authorities may proactively intervene when they disagree with the specifics of the suggested direct attribution method and the pro rata percentage. The new rules do not preclude upfront discussions between taxpayers and the tax authorities regarding a taxpayer's VAT situation, especially in complex cases; however, as the upfront approval has been replaced by a simple notification, less discussion between taxpayers and the authorities is expected.

If the tax authorities determine that the direct attribution method was applied incorrectly by the taxpayer, further discussion will generally take place within the framework of a VAT audit. Closing the VAT gap is one of the stated goals of the tax authorities, and more audits are being carried out as a result. The potential financial risks are higher as the tax authorities will impose fines and late payment interest. This is particularly notable where the direct attribution method allows high VAT recovery for activities with limited taxable revenues.

Before 2023, the official guidance from the tax authorities permitted the spontaneous use of the direct attribution method under certain conditions (e.g., separate accounting). It is unclear whether such use without a notification is still possible under the electronic notification procedure, even if direct attribution leads to a fairer and more equitable VAT position.

It is expected that the taxpayer's key percentages will need to be communicated to the tax authorities on an annual basis. At this stage, it is not clear whether significant changes to a taxpayer's direct attribution method will also need to be communicated in the same way.

Lastly, the electronic notification and the VAT deduction percentages will give the tax authorities very limited insight into the taxpayer's VAT position. It is likely that as a result, the Belgian tax authorities will issue more requests for information, and potentially require more extensive discussions on the application of the taxpayer's VAT deduction method.

Action points

Although the only immediate action required is to ensure that the correct notification is submitted, with the percentages not required to be disclosed until the beginning of 2024, the expected increase in the number of VAT audits, coupled with the fact that many companies may not be applying the VAT deduction correctly, mean that mixed VAT taxpayers may also wish to consider the following actions:

- Carry out an analysis of the most appropriate VAT deduction method for the business. The direct attribution method allows a high recovery percentage for activities with limited taxable revenues.
- If necessary, conclude agreements with the tax authorities regarding the percentages applied.
- Review applicable deadlines and submit any notifications in good time. Missing the notification deadline leads automatically to the application of the general pro rata method instead of the direct attribution method.
- Analyse the business's accounting system to ensure it correctly calculates the required percentages that must be disclosed.
- Review the parameters used for calculating the VAT recoverable percentage on mixed or general costs, i.e., the special pro rata percentage, to ensure compliance with the upfront approval received from the tax authorities. Developments in national or international case law also may need to be taken into account.

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