



## VAT alert Belgium

### Special VAT regime for supplies and services to public bodies as of 1 January 2016

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On 26 November 2015, the Belgian Parliament adopted a [draft law](#) that contains a special regime for determining the tax point for supplies of goods and services to public bodies. As a result of this new regime, the VAT will become due by the supplier only after receiving the payment. For public bodies with a right to deduct the input VAT, this regime also implies that the input VAT can only be deducted upon the invoice's payment. This new regime's entry into force is 1 January 2016.

#### Background

The new regime for public bodies is part of a broader modification of the Belgian tax point rules, applicable from 1 January 2016, which aims at lowering the administrative burden for companies.

The tax point is a crucial concept in VAT and determines the moment from which VAT is due by the supplier/service provider and the moment from which the VAT can be deducted by the customer.

In a B2B context, the invoice date will again be the most important factor for the tax point. In addition, the [draft law](#) also provides new tax point rules for transactions with the government (B2G or business-to-government-context). Taking into account the fact that some public bodies qualify as VAT taxpayers, this new regime can also apply in a G2G context.

#### Broad outlines of B2G tax point rules

As of 1 January 2016, the VAT on the supply of movable goods and services to public bodies will be due when the payment, or part of the payment, is received by the supplier/service provider and to the extent of the received payment (the so-called 'cash accounting system'). The supply (with VAT) of immovable goods (new buildings) is excluded from this regime.

The cash accounting system is only applicable to the extent that the supplier/service provider is the VAT debtor and consequently charges VAT on his/her invoice. The supplier/service provider will become VAT debtor only upon payment, and will have to report the transaction in his/her VAT return. As a result, the issue of VAT prefinancing by the supplier/service provider, if payment by the public body is overdue, can be avoided.

The cash accounting system is applicable on transactions towards public bodies as stated in article 6 of the Belgian VAT code. Accordingly, the targeted entities are the federal government, the communities, regions, provinces, urban agglomerations, municipalities and "public institutions" (residual category).

The fact that the public body is performing activities subject to VAT and therefore has a (full or partial) right to deduct input VAT, is not relevant for the cash accounting system's applicability. Moreover, if the public body has a (full or partial) right to deduct input VAT, the cash accounting

system's introduction at supplier/service provider level implies that the right to deduct input VAT at public body level also only arises upon the invoice's payment. As a result, the public body must be able to justify the amount of deductible VAT reported in its VAT return based on a proof of invoice payment during the period to which the VAT return relates. If this proof cannot be provided during a VAT (refund) audit, this can lead to the rejection of the right to deduct VAT, increased with fines and interests.

If the public body is debtor of the VAT ("reverse charge", as applicable for example on immovable work when the public body is VAT registered and is filing periodical VAT returns, etc.) the cash accounting system will not apply. The issue of VAT prefinancing by the supplier/service provider does not arise in this case.

In light of the new tax point rules, public bodies are encouraged to consider the following:

- Determine whether they qualify as a public body as stated in article 6 of the Belgian VAT code. Municipal non-profit organisations, autonomous municipal companies, etc. do not qualify as a public body. For these organisations, the tax point rules for B2B situations will apply.
- If they qualify as a public body as per article 6 of the Belgian VAT code, the necessary procedures should be put in place when preparing the VAT return in order to demonstrate (e.g. through proofs of payment, etc.) that the VAT could be deducted in the concerned VAT return.

## Contacts

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