



VAT alert Belgium

VAT authorities publish comprehensive guidance on private use of business assets

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From 1 January 2011, the Belgian VAT Code was amended with the introduction of article 45§ 1 quinquies. On the basis of this article, the private use of business assets led to an upfront limitation of VAT deduction on those assets, rather than a taxation of private use. This gave rise to, amongst others, a drastic change in company car taxation. The VAT authorities worked out several practical arrangements, however, the new regime generally led to a significant administrative burden for taxpayers.

In the federal government agreement, an evaluation was planned for this arrangement. Following that evaluation, the VAT authorities published a 50 page Administrative Circular gathering all practical rules and deviations in this field. While it foresees some specific tolerances and many clarifications, the new Circular does not lead to any drastic change.

It is important to note that the upfront limitation of VAT deduction is maintained for both business assets purchased by taxpayers (explicitly covered by article 45 §1 quinquies in the VAT Code) and rented goods or services. For goods purchased at a value below 1,000 EUR, several simplifications are specifically foreseen whereby these do not necessarily undergo a VAT limitation.

The new Circular contains, amongst others, an extensive section on company cars, with only limited changes to previously issued guidance:

- The use of lump sum methods for determining the professional use of a car (method 2 as well as method 3 – 35% deduction) can only apply for 1 vehicle per employee or director. If more than one vehicle is made available, the actual professional use of these additional vehicles must be defined in order to obtain VAT deduction.
- For sales representatives and under certain conditions, a professional use of 50% by default is foreseen;
- The immaterial professional usage, which normally excludes the use of the lump sum methods, is set at 10%;
- If an employee pays a separate upfront amount to the employer for extra options in the company car, it is not considered as a payment for the car's use; the employer does however obtain full VAT deduction for these extra options;
- Demonstration vehicles that are resold within a 3 month period do not lead to a VAT deduction limitation; beyond that 3 month period, the normal methods for determining private use apply;
- To determine the normal value of company cars made available to an employee against the payment of a contribution, the taxpayer can take into account the average cost and average private use of the car fleet, rather than calculate on a car by car basis.

For goods other than company cars, there are limited changes. The most striking point is that regarding free heating and electricity provided to directors or employees, whereby the VAT authorities allow that VAT is fully deducted and subsequently paid based on the amount of fringe benefit for direct taxes.

Another significant portion of the new Circular deals with the way in which mixed taxpayers have to deal with these rules. It is explicitly foreseen that taxpayers who do not deduct VAT on their business assets are not obliged to charge VAT if they request an employee contribution for the private use of (for example) a company car. Furthermore, the Circular contains a detailed method of calculating deductible VAT for mixed taxpayers, whether they allow free private use or request an employee contribution.

The new Circular replaces the existing administrative comments and will apply as of 1 January 2016. However, given that it is largely providing additional clarifications, it will also be useful in interpreting the VAT treatment for previous years.

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