



VAT alert Belgium

VAT fiscal representative: new calculation method for the financial guarantee towards tax authorities

New rules will apply for calculation of the financial guarantee when a fiscal representative is appointed as from 1 October 2021. The financial guarantee, which must always be provided, will be set at 10% of the annual VAT balance due, with a minimum of EUR 7,500 and a maximum amount of EUR 1,000,000. Royal Decree 31 has been amended to reflect the new rules ([Dutch](#) | [French](#)).

Context

When a foreign VAT taxable person is registering in Belgium for VAT purposes, under certain conditions he/she either can or must appoint a fiscal representative in Belgium. This mostly concerns non-EU established businesses who are obliged to appoint a fiscal representative unless they are based in Norway or the UK.

When a fiscal representative is appointed, he is jointly and severally liable together with the foreign taxable person for the payment of any VAT, penalties and interest that might become due over the VAT taxable transactions that the foreign VAT taxable person performs in Belgium. Unless the Belgian fiscal representative accepts an unlimited liability, a financial guarantee must be provided towards the Belgian VAT authorities, either through a bank guarantee or via a cash deposit.

On 1 July 2021, a change was published to [Royal Decree n° 31](#) that lays down the calculation method to determine the amount of the guarantee that is requested to cover the liability of a fiscal representative. The new rules apply to individual fiscal representatives, global fiscal representatives and import one-stop-shop intermediaries.

Old calculation method

Under the old rules, the amount of the guarantee was set to 25% of the theoretical amount of VAT which might become due on the transactions carried out by the foreign taxpayer in Belgium over a 12 calendar month period, without taking into account any VAT that might be recoverable over the same period. The VAT authorities could, nevertheless, on a case-by-case basis, deviate from the calculation and thus request a higher or lower amount. Even though there was no minimum or maximum amount foreseen in the legislation, in practice, the VAT Authorities applied an absolute minimum & maximum of EUR 7,500 and EUR 500,000 respectively.

New calculation method and application rules

10 pct. of VAT due resulting from box [71]

The amount of the guarantee will be determined at 10% of the VAT due resulting from box 71 of the periodical Belgian VAT returns submitted over a period of 12 calendar months. With the new calculation method, the VAT amount that is recoverable for the foreign tax payer is thus also taken into account. The amount of the guarantee cannot be lower than EUR 7,500 or higher than EUR 1,000,000.

The VAT authorities no longer have a discretionary authority to request a higher, lower or no guarantee at all. This means that when a fiscal representative is appointed a guarantee will always have to be provided.

Upon filing of a new VAT registration application, the amount of the guarantee is provisionally determined on the basis of estimates of the tax payable provided by the foreign VAT taxable person concerned. On 30 April of the year following the initial VAT registration, the VAT authorities will determine the final amount of the guarantee based upon the actual VAT returns that the foreign VAT taxable person has submitted.

Revision every 3 years

The amount of the guarantee is fixed for a period ending on 31 December of the second year following the determination of the amount of the guarantee. This means that the VAT authorities will re-calculate the amount of the guarantee based upon the figures of box 71 of the submitted VAT returns of the second year following the determination of the guarantee.

Only when this re-calculation results in an increase of 10% or more, the VAT authorities will request an amended guarantee. The foreign VAT taxable person can request a revision of the amount of the guarantee if the difference between the initial amount of the guarantee and the new calculation would result in a decrease of 10% or more.

Entry into force

The changes to article 3 of Royal Decree 31 will enter into force as from 1 October 2021. Foreign VAT taxable persons who are already VAT registered in Belgium through the appointment of a fiscal representative will likely be contacted by the VAT authorities by this date with a revised calculation and possibly a request for providing a new bank guarantee.

Next steps

We expect that the competent VAT office will reach out to fiscal representatives concerned in the coming weeks to align the financial guarantee in accordance with the new rules. This development will have to be monitored closely by foreign companies who are VAT registered in Belgium via a fiscal representative and which have (or have not) provided a bank guarantee in the past. This may also be an opportunity to review the VAT registration set-up to

determine whether or not a fiscal representative in Belgium is still required for foreign VAT tax payers concerned.

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