



Indirect Tax

VAT alert

New requirements apply to the direct attribution method for VAT deduction from 2023

On 10 November 2022, the Royal Decree of 26 October 2022 ([Dutch](#) | [French](#)) was published in Belgium's official journal, providing detailed new rules on the direct attribution method for VAT deduction ("werkelijk gebruik"/"affectation réelle"), that can be applied by certain partially exempt ("mixed") VAT taxpayers. Key changes include a new procedure, applicable as from 1 January 2023, for affected taxpayers to notify the Belgian VAT authorities of their decision to use the direct attribution method, and an obligation to provide key information on a yearly basis relating to the VAT deduction. While the objective of the new measures is to reduce the administrative burden by using digital communication channels, the higher level of transparency available to the tax authorities means that affected taxpayers will need to take into account the additional obligations and potential increased scrutiny of their use of partial exemption arrangements.

Changes to direct attribution method rules

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. The latter is optional, but currently often subject to prior approval as a taxpayer must notify the VAT authorities of the intended use of the regime.

The program law of 27 December 2021 ([Dutch](#) | [French](#)) announced a change to the notification procedure for mixed VAT taxpayers wishing to apply the direct attribution method, referring to an electronic and advance notification that would apply as from 2023.

The Royal Decree sets out new rules governing the direct attribution method, concerning the following main elements:

- The obligation to submit an electronic notification prior to the application of the direct attribution method;
- The procedure by which the VAT authorities may refuse the application of the direct attribution method;
- Period for which the option for the direct attribution method is applicable;
- An obligation for taxpayers already applying the direct attribution method prior to 1 January 2023 to submit an electronic notification by 30 June 2023 at the latest;
- Yearly reporting obligations for affected taxpayers; and
- Situations in which the tax authorities can require the taxpayer to apply the direct attribution method instead of the general pro rata method.

Some of the key changes which will apply as from 1 January 2023 are detailed below.

Obligation to notify electronically

It will no longer be necessary to obtain prior approval from the VAT authorities to apply the direct attribution method, and it will be sufficient to make an electronic notification via the e-services module of the FPS Finance.

Normally, the notification can only be done in the first declaration period of the calendar year, and the taxpayer is then obliged to apply the method for at least three calendar years. The direct attribution method may be used immediately, as from the start of the declaration period in which the notification is made. If the notification does not take place within the permitted time frame, the taxpayer is obliged to deduct VAT in accordance with the general pro rata method for the rest of the calendar year.

The VAT authorities will send an acknowledgement of receipt of the notification but are not obliged to express an opinion on the correctness of the data or the parameters used. They may refuse the application proposed by the taxpayer at any point until 31 December of the year following the year in which the notification was made. In the case of a refusal, the taxpayer may have to react quickly to be able to use an appropriate deduction method for the relevant year, either by adjusting the partial exemption calculation method through a dialogue with the VAT authorities, or through an appeal against the refusal.

Even if the proposed method is not rejected, the VAT authorities may carry out a VAT audit at a later date. If the criteria applied are not considered correct at that point, the VAT authorities may (retroactively) change the deduction method.

Mixed VAT taxpayers who apply the direct attribution method before 2023 must also make a notification by 30 June 2023 at the latest.

Information to be disclosed to the VAT authorities

The level of detail to be provided with the notification is not yet known, but this notification will be a part of the electronic forms that are submitted at the commencement or change of a taxpayer's activity. Although not clearly stated, it can be assumed that certain changes to the direct attribution method used will also need to be communicated to the VAT authorities in the same way.

Alongside the initial notification, the following key information must be communicated at the beginning of each calendar year, from 2024 onwards, in the Intervat module for the previous calendar year:

- The definitive general pro rata percentage (no longer to be communicated via separate letter);
- A percentage breakdown of the entire input VAT amount incurred during the previous year that is either fully, partially, or not recovered; and
- The deduction percentage (or multiple deduction percentages) for costs on which VAT is partially recoverable (special pro ratas).

This data will allow the VAT authorities to have a better view of situations where the direct attribution method might give a distorted picture of the VAT deduction.

Mandatory application of the direct attribution method

The VAT legislation already provides for circumstances where the general pro rata method would lead to distortions, and where the direct attribution method may therefore be imposed on a taxpayer. These situations may exist where a mixed taxpayer has business activities with a low exempt turnover but high related external costs, combined with other activities generating a high taxable turnover and low related external costs.

Although currently the imposition of mandatory usage of the direct attribution method is largely at the discretion of the relevant VAT office, under the new rules its application is only possible where:

- The taxpayer's economic activity includes a sector with a right to deduct input VAT, and a sector without the right to deduct, which are clearly distinct and, in particular, where separate accounting is kept for each sector;
- The mixed taxable person can easily determine, at the time of supply, the sector to which the goods or services received are allocated; and
- The general pro rata method cannot be applied because it is difficult or impossible to determine the denominator of the ratio (total taxable and exempt supplies).

The taxpayer must be notified in advance when the mandatory application of the direct attribution method is required, and must then apply this as from the first day of the reporting period in which the administrative decision is notified. Where a taxpayer provides incorrect information at the start or change of their business activities, mandatory use of the method could also be applied retroactively.

The Royal Decree provides the Ministry of Finance with the ability to require an industry sector or a group of taxpayers to apply the direct attribution method in the situations above, through a general administrative circular.

Next steps

While certain details are still awaiting clarification, it is clear that the application of the direct attribution method will be governed within a tighter framework in the future. Taxpayers already using this method, or considering it for future tax periods, will need to analyse whether their proposed deduction method is aligned with this new framework in order to be able to apply a method best suited to their activities, subject to closer monitoring and possible corrective actions by the VAT authorities.

Based on our broad experience in the design and refinement of deduction methods in various sectors, Deloitte Belgium can help businesses to assess their situation and check whether the parameters used are sufficiently aligned with the business activities and the sector(s) in which the business operates.

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