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# Indirect Tax Alert

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## Dutch VAT: 2020 year-end adjustments and points of attention



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# Dutch VAT: 2020 year-end adjustments and points of attention

In this memo, we describe some of the most relevant VAT year-end adjustments that businesses should consider at the end of the year. We also describe some other points of attention. If you need more detail, you can of course always contact your VAT contact person or any of the colleagues mentioned in this memo.

## 1. Private use adjustments

The Dutch VAT rules require businesses to adjust the VAT deducted on costs of goods and services that were (partly) consumed for private purposes by the business owners, their staff, business relations or others. This adjustment is made yearly, at the end of the (book)year. Different mechanisms are used for these adjustments. We will highlight the most relevant adjustments below.

### 1.1 Private use of (company/lease) cars

The VAT on the costs of providing company cars (whether leased or owned) to staff is fully deductible. The private use of these company cars is taxed by treating the private use as a supply for consideration to the users of these cars. Note that commuting is considered private use from a VAT perspective. VAT is due on these supplies, which should be reported as payable in the last VAT return of the book year (Q4 2020 or, in case of monthly returns, December 2020). In practice, actual use is often replaced by a fixed rate of 2.7% of the catalogue value of the car. This amount should be accounted for as VAT payable in the last VAT return of the (book)year. Other methods of calculation require strong objective substantiation.

Adjustment systems also apply to the supply or funding of other forms of transportation of staff (e.g. company bikes, public transport subscriptions).

### 1.2 Gifts to staff/employees

If a business gives away goods (e.g. a Christmas hamper) or services (e.g. the use of a company mobile phone, accommodation or a cinema voucher) to its staff, an adjustment of the deducted VAT that was incurred on the cost of these provisions only has to be made if the amount of the goods and services given away (or under cost price) exceeds EUR 227 per person (benefiting employee) per year. If the threshold is exceeded, all deducted VAT incurred on costs of supplies to that (those) specific staff member(s) has to be repaid to the tax authorities in the last VAT return of the (book)year. Specific exceptions exist where these supplies have a predominantly business purpose. We advise discussing this with your VAT contact.

Specific adjustment rules apply to company cafeteria and the supply of business bicycles.

### 1.3 Business gifts

The same rules as described under 0 apply to the provision of business gifts to recipients who, if they would have purchased the gifts (goods or services) themselves, would not have been able to deduct at least 30% of the VAT on these purchases. This means that businesses have to establish whether the EUR 227 threshold (per business relation per year) is exceeded.

If the goods or services are given to business relations that could have deducted at least 30% of the VAT, if they had purchased those goods or services themselves, another adjustment mechanism applies. In those cases, VAT is due on the application of these goods or services as if they were made for payment, unless the purchase price of the goods does not exceed EUR 15 (per item) or if the goods can be considered 'samples'. If taxable, VAT is due on the cost price or purchase price of the goods. Services are only taxed if they are given away for other than business purposes. No thresholds or 'sample-exceptions' apply to services.

#### 1.4 Immovable property

Specific rules (an input VAT deduction restriction) apply where a taxable person purchases immovable property, e.g. a house, that he will use for both business and private purposes. If the use changes over a certain period of time, the initial (restricted) VAT deduction may have to be adjusted accordingly.

## 2 Other (possible) adjustments

### 2.1 Deductible proportion

Businesses that perform both VAT exempt as well as fully taxed activities, usually apply a VAT recovery restriction to their general costs. This is in most cases a turnover-based restriction called pro rata. Businesses often apply the pro rata percentage of the previous year to determine their VAT deduction, and then calculate the actual VAT recovery restriction based on the relevant turnover of the current year at the end of the year. If this pro rata differs from the one applied, the business may have to adjust its initial deduction.

A similar mechanism applies to businesses that perform both economic as well as non-economic activities (including owning shares of subsidiaries for which they do not perform any activities for consideration). If the ratio between economic and non-economic activities changes over time, the initial VAT recovery restriction based on the non-economic activities may need adjustment.

### 2.2 Immovable property (and some other tangible property)

This first paragraph only applies to businesses that own immovable property that they purchased with VAT, and that also perform or started to perform VAT exempt activities. If the use of the (part of the) immovable property for the VAT exempt activities of the business changes, an adjustment may have to be made to the VAT that was originally deducted. The same may apply to VAT on costs of substantial renovations and on business assets that are normally depreciated for Corporate Tax purposes.

Businesses that lease immovable property with VAT should ensure that the lessee continues to use the property for purposes that entitle him to a minimum of 90% VAT recovery. If the VAT recovery position of the lessee decreases below 90%, VAT adjustments may have to be made. Also, at the end of the year, there may be an obligation for the lessee to inform the lessor about its VAT recovery position.

## 3 Other points of attention

### 3.1 Brexit (1 January 2021)

Even though we assume that all businesses are aware of the fact that the transition period in which the UK is still treated as an EU Member State for VAT purposes ends on 31 December 2020, we wanted to include this momentous change in this memo. Businesses may and will have to change the way they treat transactions between their EU

establishments and businesses established in the UK differently, from a VAT perspective, from 1 January 2021. Systems have to be ready. Supply chains may have to be adjusted. We would advise speaking to your regular EY contact in case of any remaining concerns.

### 3.2 VAT grouping

Separate legal entities can be considered one single taxable person for VAT purposes if they meet the relevant substantive requirements (i.e. there have to be sufficient financial, economic and organizational links between the entities). Businesses may want to assess whether all substantive requirements are still met at least once per year, and the end of the year is as good a time as any. If businesses have received formal, written confirmation from the Dutch Tax Authorities about them being included in a VAT group, the entities are jointly and severally liable for each other's VAT debts during this period. If the substantive requirements are no longer met, businesses may want to ask the Tax Authorities to formally dissolve (or adjust) the VAT group, avoiding joint and several liability for the entities to which it should no longer apply.

### 3.3 E-commerce (1 July 2021)

From 1 July 2021, new VAT rules apply to e-commerce throughout the EU. If your business is involved in e-commerce, you may need to adjust your systems to ensure compliance with these new rules.

### 3.4 Dutch VAT (payable) in financial statements

Businesses that report an amount of VAT payable (or recoverable) in their annual statements should check whether these amounts relate to the company's Q4 or December VAT return of the relevant year. In practice, we've seen that the Dutch Tax Authorities check these VAT amounts included in the financial statement and compare these to the VAT returns that were actually filed. If they establish a difference, i.e. where the amount payable in the financial statements exceeds the amount payable as reported in the last Dutch VAT return of the year (and filed within a month after the year-end), the Tax Authorities may impose an assessment to the amount of the difference, plus penalties.

### 3.5 Transfer Pricing Adjustments

Many companies make (retroactive) Transfer Pricing adjustments in January. These adjustments may have an impact on the company's VAT and Customs duties position. We strongly recommend ensuring that any indirect tax consequences of these adjustments are considered and properly accounted for. You can always discuss this with your EY contact.

### 3.6 COVID-19 relief measures

Taxpayers that have or are expected to have payment problems caused by the COVID-19 pandemic can apply for a deferment of the payment of taxes. The deferral period was recently extended to 1 April 2021. The default deferral period is 3 months but businesses can ask for an extension. Also, the tax and collection interest rates have temporarily been lowered to 0.01%.

Other specific measures apply to business that are involved in the fight against COVID-19, such as the exemption of the supply of medical staff and certain medical goods such as surgical masks. Specific measures may also apply in the field of customs.

If you have any questions, or if you want to discuss any of the points raised in this memo, please don't hesitate to contact your EY contact or any of the people mentioned in this memo.

The above is based on our interpretation of current tax legislation and case law published to date. This Indirect Tax Alert provides general information with no pretence of completeness, and it is not a tax advice.

#### Information

For more detailed information about the matters discussed in this Alert, please contact one of EY's tax advisers listed below.

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