



For the attention of representatives

Your letter from	Your reference:	Our reference:	Attachments:
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Brussels, 20<sup>th</sup> April 2021

## VAT REFUND – Belgium

**Vans: limitation of the deduction to 85%**

**Penalty for non-response to a request for information**

### ERRATUM

Dear Madam, Sir

Please note 2 changes in the processing of VAT REFUND applications:

1. **For invoices relating to the year 2020 and subsequent years**, we will apply the limitation of the deduction of VAT on expenses relating to vans. By default (i.e. without justification on your part in the application), we will apply the flat rate of 85%.

The information on this limitation can be found in Circular 36 of 2015, which I summarise below.

There are different methods to determine the use of a van for economic purposes:

- 1) Keeping a journey log (method 1)
- 2) 85% flat rate

With regard to tax vans that are mainly used as an instrument of work or means of operation in the course of the economic activity, the administration accepts that the taxable person determines the business use by means of a general flat rate (method 4 - 85%): the business percentage is fixed at 85%.



### 3) 35% flat rate

For tax vans that are not mainly used as a working tool or means of operation in the course of the economic activity, business use may be determined by means of a general flat rate (4 - 35% method): the business percentage is fixed at 35%.

This 4 - 35% method is subject to two cumulative conditions of application:

- the flat rate applies only to one vehicle per user ;
- the vehicle must actually be used as an instrument of work or as a means of exploitation in the context of the economic activity.

For further information in this regard, reference is made to AGFisc Circular No. 36/2015 (No. E.T.119.650) of 23.11.2015, numbers 128 to 132: <https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/a3fd23cf-1017-4fc1-a8cc-99041b69dcea>

and to « Book III: Right to deduct input tax - Chapter 11: Right to deduct, Section 8, heading 4, item E »: <https://eservices.minfin.fgov.be/myminfin-web/pages/fisconet/document/f119f7ee-c621-4973-84c9-9b6b43cc48a6>

2. **From 1 June 2021**, in the absence of a reply to an enquiry<sup>1</sup> concerning an application for a refund of Belgian VAT, we will apply a penalty (EUR 1,000.00 for the first infringement <sup>2</sup>) when submitting a new application concerning the same period.

I stay at your disposal for any information you may require.

Best regards,

Valérie SIMONS

Chief officer – Vat Refund

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<sup>1</sup> According to the article 62, §1er of the code of the VAT, every person has to supply verbally or in writing, in any requisition of the agents of the administration which has the value-added tax in its attributions, any information which are demanded to him to verify exact perception of the tax at his expense or chargeable to third party;

<sup>2</sup> According to the appendix of the royal order n°44 of October 21st, 1993, section four, section IX, taken pursuant to the article 70, §4 of the aforesaid code, any refusal of information and any communication of erroneous information are punished by a penalty of 1.000,00 EUR for the 1st infringement, 2.000,00 EUR for the 2nd infringement and 5.000,00 EUR for the following infringements.

CIRCULAR 36/2015 :

3.2.1.4. Separate regime for determining the professional use of tax vans referred to in Article 4, § 2, of the Code of Taxes assimilated to income taxes (including a method 4)

**3.2.1.4.1. General**

123. This separate regime is applicable to motor vehicles of the "van" type belonging to one of the following categories

(a) any vehicle consisting of a single cab or a double cab completely separate from the load space and comprising not more than two or six seats respectively, excluding the driver's seat, and an open load floor

(b) any vehicle consisting simultaneously of a passenger space with not more than two seats excluding the driver's seat and a separate load space, the distance between any point on the partition wall behind the front row of seats and the inner rear edge of the load space, measured in the longitudinal axis of the vehicle at a height of 20 cm above the floor, being not less than 50 per cent of the wheelbase length. In addition, this load space must be provided, over its entire surface, with a fixed horizontal floor which is an integral part of the bodywork or permanently attached to it and free of any attachment point for additional benches, seats or safety belts ;

(c) any vehicle consisting simultaneously of a passenger space with not more than six seats, excluding the driver, and a completely separate load space, the distance between any point on the partition wall behind the last row of front seats and the inner rear edge of the load space, measured in the longitudinal axis of the vehicle at a height of 20 cm above the floor, being at least 50 p.c. of the wheelbase length. In addition, this load space must be provided over its entire surface with a fixed horizontal floor which is an integral part of the bodywork or permanently attached to it and free from any attachment point for additional benches, seats or safety belts.

With regard to the tax vans referred to above, a distinction should be made between

(a) tax vans used (almost) exclusively for business purposes and which are not concerned by the application of the methods for determining business use (see Nos 94-96);

Where construction workers travel from their homes to a meeting point which is not at the head office (or an establishment of the taxable person), and then travel together to a specific building site, the whole journey is considered to be a business trip.

This also applies to journeys between home and the registered office (or an establishment of the taxable person) made to collect materials and tools before setting off for a specific building site (see No 102).

(b) tax vans not covered by (a) which are used both for business and other purposes and for which the taxable person has the option of either :

- either to apply method 1 (journey register) for all tax vans (not covered by a);
- or to apply method 4 (flat rate) for all tax vans (not covered by a).

Note

125. The taxable person must combine the methods mentioned in nos. 106-122 with the separate regime applicable to tax vans referred to in article 4, § 2, of the Code of taxes assimilated to income taxes.

In other words, the rules applicable to tax vans and the rules applicable to other means of transport must be applied separately.

Example

A taxable person has two vehicles, one of which is a car and the other a tax van, which are used for mixed purposes. To determine the business use of these means of transport, the taxable person can choose :

- with regard to the car: method 1, method 2 or method 3;
- with regard to the tax van: method 1 or method 4 (see commentary below).

#### **3.2.1.4.2. Method 1**

126. The taxable person keeps a daily logbook of journeys by manual entry (e.g. notebook, computer programme) or in an automated way (e.g. adapted GPS system).

A comprehensive journey log requires the following data to be kept for daily journeys for business purposes: date of journey, departure address, arrival address, kilometres travelled per journey, total kilometres travelled per day.

In addition, the mileage at the beginning and end of the period should be recorded (in principle per calendar year).

The daily updated journey register must be produced at the request of the administration.

127. This method requires the use to be determined for each individual motor vehicle. A duly kept journey register forms the basis for determining the right to deduct. The result of the calculation may be rounded up to the next unit.

The business use determined in accordance with this method in respect of year X is, as a rule, valid as an estimate of the business use for year X+1.

#### **3.2.1.4.3. Method 4**

128. This method consists of two general lump sums for determining business use. These two flat rates are set out below.

The administration accepts that the taxable person determines the business use of a tax van by means of a general flat rate (method 4-85%): %Business = 85%.

129. In view of the intention of the legislator and in order to avoid abuses, the application of the general flat rate of 85% is limited to vans mainly used as working tools or means of operation in the course of the economic activity. This additional condition is therefore stricter than the condition relating to use, as laid down in points 94-96.

This is a question of fact, which requires consideration of the legislator's intention to subject certain vehicles designed and constructed for the transport of goods with a maximum authorised mass not exceeding 3,500 kg to a more favourable tax regime (both for direct taxes and for VAT). These categories of vehicles are clearly defined.

In making this assessment, account must be taken of all the factual circumstances in which the taxable person's economic activity is carried out, especially :

- the fact that the transport of goods (raw materials, materials, merchandise) is a characteristic element of the nature of the taxable person's economic activity
- the fact that the type of van (open loading platform, separate loading area, number of seats) used by the taxable person is related to the nature of the economic activity
- the identity of the person to whom the means of transport is made available (the user), in particular with regard to his functions and tasks, even if the transport of goods is a characteristic feature of the taxable person's economic activity and even if the type of vans used is related to the nature of his economic activity.

131. Consequently, tax vans which are not used primarily for business purposes cannot benefit from the general flat rate of 85%. This also applies to tax vans which, during their period of use, no longer satisfy this condition.

For mixed-use tax vans whose use deviates at some point from the circumstances referred to in points 129 and 130 above, the business use may be determined on the basis of a general flat rate (4-35% method): %Business = 35% provided that the following conditions are met.

The 4-35% method is subject to two cumulative conditions of application:

a) The flat rate applies only to one vehicle per user.

The professional flat rate of 35%, by application of the 4-35% method, applies to only one vehicle per user. Where the taxable person (or his family) has more than one van at his disposal which is used for mixed purposes, but not primarily for business purposes, or where he provides a company director or employee (or their family) with more than one such vehicle, the flat rate may be applied to only one mixed-use vehicle of his choice. For other mixed-use vehicles, the business character must be demonstrated by means of a journey log.

At the time of purchase or at the start of the lease of a vehicle, the taxable person shall determine in respect of which vehicle he applies the general flat rate of 35%. He applies method 1 to the other vehicles at his disposal (or at the disposal of his family).

(b) The vehicle must actually be used as an instrument of work or as a means of exploitation in the course of the economic activity. Vehicles that are not used for the purposes of the taxable person's economic activity, or only to a negligible extent (occasional or incidental use), are therefore expressly excluded from the application of the 4-35% method.

Business use is negligible when the vehicle is used for business purposes for less than 10%.

This is a question of fact that the administration assesses on a case-by-case basis. In order to ensure the administration's view on the use of a certain vehicle, the taxable person may conclude a prior agreement with the administration (e.g. an agreement from the VAT audit office).

Where a taxable person makes a vehicle available to an employee as part of his salary policy, the administration considers that, for the application of the 4-35% method, the vehicle is actually used as a work tool or as a means of operation.

132. The taxable person is not required to apply method 4. If, however, he opts for the application of the flat-rate method, this is, as a rule, applicable, without distinction, to all mixed-use tax vans (method 4-85% and/or method 4-35%).

A taxable person who opts for the general flat rate must apply it for at least 4 calendar years, starting from the year in which this method was first applied.