

Private use

Insight into your
VAT adjustment
2020



Indirect Tax

December 2020



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Preface

The VAT adjustments for private use of goods and services, bought for business purposes by a business but (partly) used for private purposes, need to be calculated and included in the last VAT return of each financial year. In the publication ‘Private use – Insight into your VAT adjustment 2020’, we give an overview of the adjustments that are covered by the current relevant VAT legislation.

We have included some particular points of attention regarding the consequences of COVID-19 pandemic, such as the VAT consequences of donations and facilities for working from home.

In general, we see a development in case law on the VAT adjustment for private use in favor of entrepreneurs. This seems to indicate that in certain cases the Dutch Tax Authorities tends too quickly towards excluding deductions as soon as private enjoyment by an employee is observed. However, the Supreme Court mainly looks at the necessity for the company. Certainly in the case of increased provision of home work facilities in the corona crisis, but also, for example, in the provision of company buses (of course outside the BUA, but with the same test), it remains desirable for the Dutch Tax Authorities to primarily keep the company’s interests in mind in special situations.

The following adjustments are discussed: total exclusion of VAT deduction on hospitality/ catering costs, the VAT Deduction Exclusion Decree (‘Besluit uitsluiting aftrek omzetbelasting 1968’ - further: BUA), VAT on deemed supplies such as the private use of a company car, and VAT adjustment for the private use of immovable property labelled as a business asset.

In practice, the VAT adjustment for the private use of a company car usually constitutes the most significant financial interest. Therefore, in this publication we pay specific attention to this adjustment.

This publication does not provide for an exhaustive overview of all relevant rules and regulations. If you would like more information on VAT adjustments and the possibilities for your business, please contact your PwC Indirect Tax advisor who will be happy to assist you further.

Utrecht, December 2020

Jochem Kijftenbelt

VAT adjustments in Dutch VAT rules

A business supplying VAT taxable goods and/or services (hereinafter jointly referred to as taxed activities), may, in principle, deduct the VAT incurred. This entitlement to VAT deduction does not apply if the business supplies goods and/or services that are not taxed with VAT or are exempted from VAT. In addition, it may be the case that a business incurs costs for both business and private purposes. To the extent that these costs relate to the private use, the VAT incurred on these costs can, in principle, not be deducted.



In order to tax the different types of private use, the Dutch VAT rules and regulations contain several (adjustment) mechanisms:

- total exclusion of VAT deduction on hospitality/catering costs;
- adjustment of VAT deduction under BUA;
- levying VAT on 'deemed supplies' (for example private use of company cars);
- levying VAT on the so-called 'open market value' of the private use of a company car instead of on the (lower) actual contribution by staff; and
- the VAT adjustment for private use of immovable property labelled as a business asset.



VAT on hospitality/ catering costs

The VAT incurred on the costs of food and drink supplied to people visiting a hospitality/catering business (for example a hotel, bar or restaurant) for a short stay is never deductible. This rule also applies if a business arranges the supply of food and drink by a catering company at a location selected by the business itself, for example on a boat or at an exhibition.

This specific exclusion of VAT deduction does not apply to VAT on, amongst others, the rental of accommodation, lodging, meeting room facilities, the use of audio equipment or the reception of guests.

Deduction of VAT possible?

When hospitality/catering costs are oncharged including VAT double taxation of VAT can occur. This double taxation can sometimes be avoided. Would you like more detailed information, please contact your PwC Indirect Tax advisor.



BUA

BUA is the most frequently applied mechanism for adjusting the deduction of VAT on costs attributable to goods and services destined to be used for business purposes, but which are also used for private purposes (consumption).

However, there are also costs which are primarily incurred in the interest of the company and for which the personal advantage for the employees, if any, is of minor importance. BUA makes an exception for these costs and a VAT adjustment does not apply.

We see a development in case law that in certain cases the Dutch Tax Authorities tends too quickly to exclude a deduction as soon as private enjoyment is detected in an employee. However, the Supreme Court mainly looks at the necessity for the company. It is therefore important to properly substantiate this corporate interest.

Business seats

The Supreme Court ruled that the providing of business seats to relations and staff for free can have commercial reasons. Therefore, in case of valid commercial reasons the deduction of VAT on such costs is not excluded under the BUA. VAT deduction for open VAT returns is still possible. You can deduct VAT only if you can plausibly ensure that attendance at the event for which you have business seats, took place with (potential) business relations.

BUA categories

Under BUA, the deduction of VAT is excluded for the following expenses:

- status-related expenditures;
- provision of business gifts or other gifts to persons who are not fully entitled to a VAT deduction;
- the following supplies of goods and services provided to employees:
 - accommodation;
 - sports and leisure facilities;
 - private transport (the company car not included);
 - benefits in kind;
 - other supplies for personal use; and
 - provision of food and drink in a staff canteen.

Below we describe the rules for each category.

Examples of types of costs not affected by BUA are:

- outplacement costs;
- occupational Health and Safety Service (Dutch 'ARBO') costs;
- training costs with a purely business character;
- costs for private transportation by bus of commuting employees within the meaning of the Passenger Transport Act ('Wet Personenvervoer');
- provision of office parking facilities;
- costs for working clothes;
- costs incurred for a masseur with the aim of eliminating or reducing stress-related complaints at work;
- costs incurred for arranging a company pension scheme.

Status-related expenditures

The exclusion of the deduction of VAT on expenditures for having or pursuing a certain status is based on the Dutch Income Tax Act 2001. This VAT provision - as is the case under the Income Tax Act - is of hardly any practical value. We will therefore not further discuss this exclusion in this publication.

Provision of business gifts or other gifts to persons not or partly entitled to VAT deduction

'Business gifts' refers to (promotional) gifts that a business provides for its business' purposes to its customers, suppliers and such. 'Other gifts' means favourable supplies by a business to foundations and institutions which have no or a limited right to deduct input VAT.

For each business gift or other gift you should assess whether the recipient would (for the most part) not have the right to deduct VAT, if the recipient were to incur the expenditure himself. The VAT on the costs incurred cannot be deducted if the recipients of your gift, when he would bought it self, can deduct less than 30% of the VAT, and the total value of all gifts to the recipient in one year exceeds the threshold of EUR 227 (excluding VAT).

If the restriction under BUA will not apply, it is possible that you will have to pay VAT for this gift as it may qualify as a 'deemed supply'.

Supplies provided to employees

A number of specific types of supplies provided to employees are covered in BUA. The deduction of VAT on costs attributable to these supplies is excluded for the employer if an annual threshold of EUR 227 (excluding VAT) per beneficiary is exceeded.

This relates to the following supplies provided to employees:

- **Provision of accommodation**
This includes for example making available living accommodation to a employee, without a separate consideration being paid for this. Another example is the supply of accommodation in the Netherlands to foreign employees, without consideration. This also applies to foreign temporary workers. Case-law shows that the concept of housing is not limited to the permanent residence of temporary workers. The Supreme Court recently ruled that even when providing housing, the business interest - depending on the specific circumstances - can predominate and any private enjoyment is secondary to this. Then a VAT correction on the basis of the BUA is not an issue;
- **Facilitation of sport and leisure activities**
Examples of this are making available sports accommodation, fitness rooms and holiday accommodation, going on non-business excursions and trips for the benefit of the employees;
- **Provision of private transportation**
This category is discussed below in more detail;
- **Payment of benefits in kind**
Examples are Christmas gifts, telephone subscriptions, computers, courses which also (in part) benefit the recipient in private, books and clothing (excluding specific working clothes);
- **Other supplies for personal use by the employees**
This is a residual category for supplies of goods or services that do not fall under any of the other categories;
- **Provision of food and drink in staff canteen**
This category is discussed below in more detail.

APPROVED

The Dutch Work-Related Costs scheme (further: WKR) in the Dutch Payroll Tax Act determines the extent to which allowances and benefits from the employer to its employees are subject to payroll taxes. At first sight these allowances and benefits seem to be treated identically for VAT purposes and the WKR, but there are differences.

The 'discretionary margin' (the part of the total wage sum which employers can use for allowances and benefits to employees under WKR) has to be calculated including VAT. For VAT purposes, however, the consideration for application of the BUA threshold (EUR 227) needs to be taken into account excluding VAT.

The value assessments are also different. For example, a public transport pass is valued at nil under the WKR, but for VAT purposes the face value is applicable and could lead to a VAT adjustment. Furthermore, different approaches also appear in relation to the provision of mobile phones and company bicycles.

It is important to identify these differences and take them into account within your administration.

Please note that the inventory made for the use of the WKR is very useful for the analysis of the application of the BUA.

Company pension scheme

Implementation of a company pension scheme for employees cannot be considered to be a by the employer provided staff arrangement in the context of article 1, paragraph 1, sub c of the BUA. Nor constitutes it a business or other gift in the context of article 1, paragraph 1, sub c and paragraph 2 of the BUA.

Private transportation

Private transportation of employees can take various forms.

Company car

BUA does not apply to the private use of company cars.

The private use is taxed in a different way for VAT purposes: as a deemed supply (see paragraph 'VAT on deemed supplies').

Public transport pass

BUA is applicable on the supply of public transport passes.

Company bicycle

BUA includes a separate bicycle scheme (including E-bikes). Bicycles with a fuel-powered motor are not covered by this scheme.

The VAT on the purchase or lease of a bicycle provided by the employer to his employee for commuting between home and office can be deducted for an amount of up to a maximum of EUR 130 per employee regardless the bike is more expensive than EUR 749 (EUR 130 is 21/121 of EUR 749). A personal contribution by the employee can be deducted when calculating the EUR 749 threshold. The VAT included in this personal contribution has to be accounted for as payable VAT in the VAT return. This personal contribution can also consist of sacrificing holiday leave or 'ADV-days')

If the bicycle is also used for purposes other than commuting, no further VAT adjustment is necessary.

The bicycle scheme only applies when the following conditions are met:

- In the relevant calendar year and the two previous calendar years, no other bicycle has been provided or made available to the employee;
- The employer has to demonstrate that no other allowance or means of transport than the bicycle is provided for more than 50 per cent of the number of commuting days.

If these conditions have been met, the value of the bicycle provided will not be included for determining the BUA threshold of EUR 227. If these conditions have not been met, BUA will apply in full to the bicycle provided or made available to the employee.

Costs related to the bicycle are not within the scope of the company bicycle scheme under BUA. For example, costs of theft insurance, maintenance costs or an extra lock. Therefore, applicability of BUA to these costs has to be decided in the usual manner.

Provision of food and drink in staff canteen

Businesses exploiting a staff canteen themselves are allowed to deduct in full the VAT on costs incurred for the supply of food and drink in the staff canteen. This does not only apply to food and drink, but also to the costs of furnishings and investments, et cetera. Operating a staff canteen is subject to VAT. This applies to all businesses irrespective of whether they carry out exempt supplies or supplies taxed for VAT purposes. VAT is levied on the canteen turnover (usually 9 per cent), which the business has to account for in its VAT return as payable to the Dutch Tax Authorities.

Selling food and drink may also be considered as a benefit for the employees. BUA includes the so-called 'canteen scheme' in order to calculate this (possible) benefit. The calculation of the total canteen costs is included in table 1.

Table 1	
Purchase price of food, drinks, ingredients (excluding VAT)	€ A
Plus: 25% mark-up on these costs	+ € A x 0.25
Minus: actual canteen proceeds (including VAT)	-/- € B
Difference	€ C

If amount C (the extra lump sum) is positive, in principle 9 per cent has to be paid over this amount.

This payment can possibly be omitted if the EUR 227 threshold is not fully used.

When contracting out the staff canteen exploitation, other specific regulations apply. For more information we recommend that you contact your PwC VAT advisor.

Determine the BUA adjustment

If a business/employer charges or withholds a consideration for one of the before-mentioned supplies, it is required to account for the VAT included in this employee's consideration in the VAT return. If the consideration paid is more than or equal to the cost of the private use, no BUA adjustment will have to be made. If the consideration paid is less, the BUA adjustment will be based on the difference between the cost and the net consideration.

Even if the employee's consideration consists of sacrificing holiday leave or 'ADV-days', the employer has to submit the VAT included in this consideration as payable in the VAT return.

The value of the preferential treatment (benefits in kind or other supply) is deemed to be equal to the cost price of the supply.

If the costs incurred have a business purpose as well as a private purpose, the BUA adjustment applies proportionally. For example, a mobile phone made available to an employee is qualified as a benefit in kind to the extent that it is used for private purposes. A BUA adjustment has to be made only for this part.

Threshold € 227

No adjustment under € 227 per beneficiary per financial year

Deduction will not be excluded (adjustable) if the total value of the supply to which BUA applies is of 'minor value'. This means that the deduction continues to apply and no adjustment needs to be made, if the value of the supply (business gift or supplies to staff) does not exceed the threshold of EUR 227 (excluding VAT) per recipient (business relationship, institution, member of staff) per financial year. If the value exceeds this threshold, the deduction of VAT for supplies to this recipient is no longer applicable for all supplies.

'Value' means the purchase costs, the cost price or production costs, exclusive of VAT. For goods which are usually subject to depreciation, the original costs are spread over a period of five years for movable property and ten years for immovable property.

Is exclusion of VAT deduction manageable?

Since the company car is no longer covered by BUA, it may generate significant savings to investigate in advance whether it might be possible to stay below the EUR 227 (excluding VAT) threshold for each employee. A small difference in the total supplies per employee can lead to not exceeding the threshold in which case no VAT adjustment would have to be made under BUA.

It is our experience that several possibilities exist for optimising BUA adjustments. You could perhaps even argue that the amount of the employee's personal contribution reduces 'the total value' of the supplies used for calculating the EUR 227 threshold. However, this point of view has not yet been challenged in Court. Based on this argument, a supply for the benefit of an employee with a total value of EUR 250, whereby the employee's contribution amounts to EUR 25, will then not result in a VAT adjustment under BUA.

Your PwC Indirect Tax advisor would be happy to explore the possibilities with you for reducing the VAT adjustment amount for your company.





VAT on deemed supplies

The most important VAT adjustment in addition to BUA is the levy of VAT on the so-called 'deemed supplies'. This adjustment only applies to supplies that are not covered by BUA.

If BUA is applicable, albeit only formally, but no adjustment is made because the EUR 227 threshold has not been exceeded, an adjustment on the basis of deemed supplies does not apply.

An example of a situation in which BUA does not apply, but where an adjustment needs to be made by levying VAT on deemed supplies, is a business owner using or applying his business assets for private use.

Furthermore, a VAT adjustment applies to supplies of promotional gifts or presents not covered by BUA. In addition, there are a number of situations of private use without BUA being applicable, including the private use of a company car. In all these cases, the business should make a VAT adjustment for deducted input VAT in a different way. In certain cases, this is accomplished by calculating VAT on the free supply (the deemed supply).

Levying VAT on deemed supplies only applies to situations in which no consideration is charged for private use.

Deemed supplies are not subject to VAT if they concern samples or gifts of small value provided for free (the cost price of these gifts must be less than EUR 15 per item).

Case law shows that VAT can only be levied on deemed supplies if it involves private use by a natural person. In this mechanism, 'own' private use does not apply to non-business use by legal entities. However the mechanism of deemed supplies is applicable when legal entities make their business assets available for private use by their staff.

The VAT on deemed supplies has to be accounted for as payable in the last VAT return of the financial year. The VAT adjustment is calculated proportionally if the private use only lasted for part of the year.

Private use of company car (by the entrepreneur and/or its employee)

If a business makes a company car available to an employee or to the (business) owner, the following points need to be taken into account when determining the VAT due in respect of this deemed supply.

Calculating VAT based on actual use

The business is entitled to deduct the VAT incurred on the purchasing costs of the car and the costs made in relation to the car, such as petrol, tires, maintenance and repairs, in full (insofar as he is entitled to deduct VAT).

At the end of the financial year, the business makes a VAT adjustment. The adjustment is, in principle, based on the actual private use of the car; according to the State Secretary of Finance based on conclusive kilometre records.

A Supreme Court decision in 2017 offers room to use other means of proof than the use of a conclusive kilometre record to evidence the extent of private use of the company car. The Supreme Court has held that when the administration of a taxpayer contains no data from which can it be derived to what extent the car has been used for private purposes (in short: a kilometre record) and application of the flat-rate adjustment method leads to a too high VAT-levy, the amount of the private use should be determined within reason taking into account all circumstances of the case.

When a conclusive kilometre administration is limited or not available, the Dutch Supreme Court allows entrepreneurs to prove the extent of actual private use of the company car using:

- the nature of the company;
- the business purposes for which the company car is used within the company;
- the position and the activities of the employee within the company;
- the way in which the company car is used or may be used for private purposes (e.g commuting);
- Statistical data: When invoked, it must be demonstrated that these data can be used in this particular case.

Yearly attributable purchase costs

The total amount of private kilometres is set off against the total amount of kilometres on an annual basis. Commuting is also considered private use for VAT purposes. Travelling from home to a permanent work address agreed in the employment contract is considered commuting. Travelling (even though the journey starts from home) to clients or a building site is not considered commuting. The Supreme Court has yet to rule whether this also applies to employees who frequently work from home.

The proportion of the total number of kilometres for private use compared to the total number of kilometres travelled in one year, multiplied by the VAT on the actual costs of the car, determines the amount of VAT due related to the private use.

Actual costs

The actual costs include the costs subject to VAT such as the purchase costs attributable to that year, paid lease instalments, and costs of maintenance and petrol.

When it involves a car purchased by the business itself, the allocation of the purchase costs to a specific year is determined on the basis of a depreciation of the car in five years. This means that, in the year of purchase and in the four subsequent years, one fifth of the costs must be taken into account. If no VAT could be deducted upon purchasing the car (for example a so-called margin scheme car) or if the car was put into use more than five years ago, the purchase costs do not have to be taken into account (any longer).

Calculating VAT on the basis of the flat-rate method

If the actual private use or the actual costs are unknown, it has been approved that the VAT on the car costs is deductible in full during the year, if a flat-rate adjustment is made at the end of the year for the amount of 2.7 per cent of the listed (dealer) price of the car (including VAT and private motor vehicle tax (further: BPM)).

In the case of a car purchased by the taxable person for which the taxable person has not been able to deduct the VAT on the purchase costs of a car (for example for a 'margin scheme' car) and this car is also used for private purposes, the State Secretary of Finance has approved that the flat-rate adjustment made at the end of the year amounts to 1.5 per cent of the listed (dealer) price of the car (including VAT and BPM). This is also applicable for cars purchased by a taxable person for which the taxable person has deducted the input VAT and which were bought or – in short – taken into use more than five years ago.

Special rules for VAT calculation

Pro rata

Businesses who provide both taxed and exempt supplies of goods and services are only entitled to a partial deduction (pro rata) of the VAT on the costs incurred related to the car. By nature the adjustment on the basis of the actual use or the flat-rate method is also calculated pro rata.

Employees with statement 'no private use'

For employees with a statement of 'no private use' for payroll tax purposes ('LB-verklaarder') who commute on a daily basis, the employer has to calculate a VAT adjustment for private use of company cars since commuting qualifies as private use for VAT purposes. The same applies to vans that are used for commuting. Please note that for VAT purposes daily business trips to a client do not qualify as commuting.

When a business in this case has decided to apply the actual use method rather than the flat-rate method, the State Secretary of Finance has issued a Decree for the calculation of the amount of (private) kilometres for the company cars. The amount of (private) use kilometres is determined as follows:

- determine the daily distance for travelling to and from work and tallying the number of days of commuting;
- for vans with alternating drivers, the same calculation method applies, whereby for each driver the distance for travelling to and from work as well as the number of times need to be recorded;
- instead of tallying the number of times, it is also allowed to take 214 working days of commuting per year (to be reduced proportionally for part-timers or when employment starts or terminates during the year).

Adjustment based on actual use.

PwC sees possibilities for a more favorable VAT adjustment for private use based on actual use for companies with employees who have to perform work for clients.

It is our experience that it is important the entrepreneur keeps a thorough administration showing the nature of the expenditure and the purpose of it clearly.

For more information we recommend that you contact your PwC VAT advisor.

Open market value

Private use of company car with personal contribution

If a consideration for the use of the car is charged or withheld, the deemed supply provisions are in principle not applicable, and no VAT adjustment can be made. Without further regulations, this would mean that businesses charging or withholding a small personal contribution for the private use of a company car would not have to make VAT adjustments and would only need to pay VAT included in these small contributions.

In order to prevent this, a statutory provision was introduced regarding the application of the open market value as the taxable amount for these transactions. This means that a business needs to examine whether the personal contribution for private use is high enough (the 'open market value'). If the contribution for private use is less than the costs for making the car available, the value of the contribution is considered to be 'too low', and must be increased to the open market value.

In a Decree the State Secretary of Finance has stated that the Dutch Tax Authorities take the point of view that the open market value of the private use of a car (including commuting) is the same as the costs made by the business owner, including depreciation, in proportion to the private use of the car.

When the actual costs or the amount of private use cannot be determined, the State Secretary of Finance has approved that businesses can calculate the 'open market value' on the basis of a flat-rate of 2.7 per cent of the listed value of the car (including VAT and BPM).

If a business has not been able to deduct the VAT on the purchase costs of a car, the State Secretary of Finance has approved that the open market value can be determined on the basis of a flat-rate of 1.5 per cent of the listed value of the car (including VAT and BPM).

This approval is also applicable when the car purchased by the taxable person, for which VAT was deducted, has been bought or – in short – taken into use more than five years ago for the calculation of the open market value.

If the calculation method applied is based on the above approval, VAT will not be due on the contributions during the year, but will need to be included in the last VAT return of the year, based on the open market value on the basis of the fixed percentage.

The flat-rate may not be applied if the VAT due on the fees charged is more than what would be due under the flat-rate. Moreover, the flat-rate may not lead to more VAT payable than was deducted in that year (including the attributable part of VAT on capital goods).



In practice

In practice, it is often difficult to determine in which cases the rules relating to levying VAT based on the open market value have to be applied. Determining the open market value in itself is also challenging.

We would advise you to always consult your PwC Indirect Tax advisor if the situation arises whereby VAT may be levied on the open market value.



Private use of immovable property labelled as a business asset

If an immovable property that is fully labelled as a business asset is also used for private purposes, an adjustment will have to be made for this private use.

This is done by only allowing VAT deduction proportionately, insofar as the immovable property will be used for business purposes, based on the actual use of the property.

Consequently, the private use is not taxed as a deemed supply as discussed above.

At the end of the year of first use and the nine following years, the deducted input VAT should be adjusted if the proportional use changes. See the grey section for more details on these revisions.

The regulation concerning the adjustments for immovable property are complicated and we recommend to contact your PwC Indirect Tax advisor.

For the purpose of VAT adjustment and revisions, the following is relevant:

- 1. The taxable period in which the VAT on the costs of the immovable property labelled as a business asset was incurred by the business.** This VAT may be deducted in proportion to the expected (taxable) business use;
- 2. The taxable period in which the property is first taken into use.**
The VAT initially deducted has to be adjusted if the estimated proportion between business and private use at that time differs from the original estimate. Taxable periods 1 and 2 coincide if the property is taken into first use immediately after the purchase;
- 3. The last taxable period of the financial year in which the property is taken into first use.**
The deducted VAT will have to be adjusted if the actual proportion between business and private use during the (part of) this year differs from the estimate at the time of taking the property into first use;
- 4. Each final taxable period of the financial year for the nine years following the year of taking the property into first use.**
One tenth of the amount of VAT originally deducted at the end of the first year will have to be adjusted based on the actual proportion between business and private use during the financial year, set off against the final proportion at the end of the first year (see 3). If the amount payable/receivable for this year is less than 10%, no adjustment needs to be made;
- 5. The taxable period in which the property is sold, if the sale takes place during one of the nine years following the year of taking it into first use.**
The VAT amount originally deducted will have to be adjusted in full and at once for the remaining time in which the adjustment as described under 4) has not yet occurred. In short, if the sale is subject to VAT, the sale will be treated as if the property is fully used for business purposes for the remainder of that period; if the sale is VAT exempt, the sale will be treated as if the property is fully used for private purposes for the remainder of that period.



Alternative views adopted for the VAT adjustment?

There are a number of possibilities to take a different view for the adjustment of VAT, which may differ from the view of the Dutch Tax Authorities. We recommend that you consult your PwC Indirect Tax specialist before adopting one of these views. PwC sees possibilities for a different point of view in the taxation of VAT hospitality costs (prevention of double taxation), the company car and the calculation of the BUA threshold.

What can you do if you would like to adopt or benefit from one of the different views set out

For periods that are irrevocable (for example because the statutory period for objecting to the VAT return concerned has ended), you have, formally, no options left. If adopting a new, different point of view results in a lower amount of payable VAT, we would recommend contacting your PwC Indirect Tax specialist to discuss any options that you may have to reclaim VAT that was - in your opinion - overpaid.

Please note that it is not possible to lodge an appeal (with the competent court) against a negative decision on a refund application which has been submitted after the statutory time limit.

For open tax periods and future tax periods, you could opt to:

- determine your VAT position directly in the VAT return on the basis of the views set out before, or
- follow the steps described in the first part of this publication and submit a (timely) objection against this VAT return.

If you would like to take one or more of the points of view in this publication, we recommend that you should always discuss this first with your PwC Indirect Tax specialist in order to obtain a better insight into the possible outcome and tenability of adopting a particular view, the potential risk of incurring a penalty, or the approach towards the Dutch Tax Authorities.

Company car

A Supreme Court decision in 2017 offers room to use other means of proof than the use of a conclusive kilometre record to evidence the extent of private use of the company car. The Supreme Court has held that when the administration of a taxpayer contains no data from which can it be derived to what extent the car has been used for private purposes (in short: a kilometre record) and application of the flat-rate adjustment method leads to a too high VAT-levy, the amount of the private use should be determined within reason taking into account all circumstances of the case.

When a conclusive kilometre administration is limited or not available, the Dutch Supreme Court allows entrepreneurs to prove the extent of actual private use of the company car using:

- the nature of the company;
- the business purposes for which the company car is used within the company;
- the position and the activities of the employee within the company;
- the way in which the company car is used or may be used for private purposes (e.g. commuting);
- Statistical data: When invoked, it must be demonstrated that these data can be used in this particular case.

Particular points of attention COVID-19

VAT on free provision of medical relief supplies and equipment

The State Secretary of Finance approves - until 31 December 2020 - that the free provision of medical relief supplies and medical equipment to hospitals and similar establishments and institutions or to general medical practitioners has no consequences for the levying or deduction of VAT for the entrepreneur who provides these goods. VAT deduction restriction does not apply or VAT is not levied, when these two main conditions are met:

- It only concerns goods that are mentioned in the list of the World Customs Organization; classified as outbreak medical facilities COVID-19;
- The entrepreneur must state on the invoice that he makes use of this corona approval and he must include the data pertaining to the application of the approval in his administration.

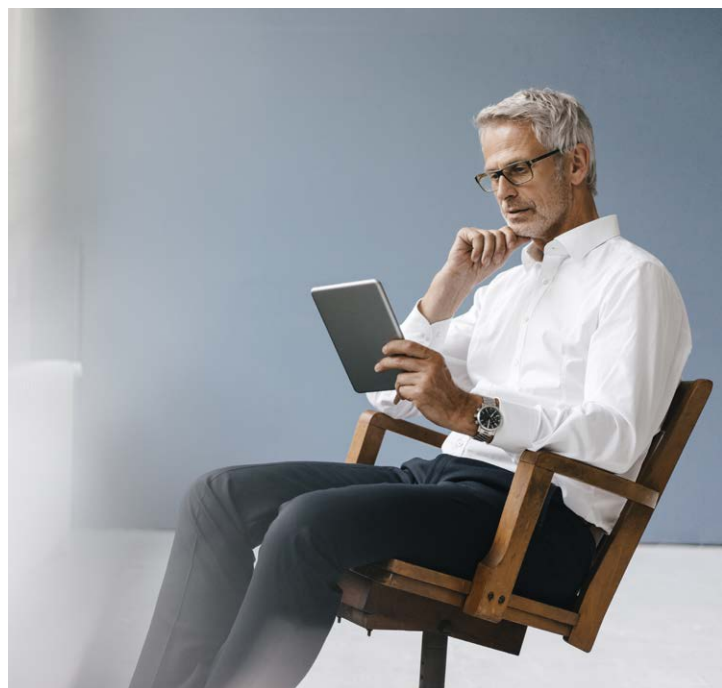
Working from home

Both because of the COVID-19 situation and because of the structural working from home, employers want to facilitate their employees with things like an office chair, second monitor or otherwise facilities that improve the home working situation. The VAT on the provision of these facilities is deductible when the employer is the recipient, the employer is in possession of a correct invoice, and if the personal importance of the provision for the staff is of secondary importance compared to the business importance for the employer.

When the personal importance of the facility is not of secondary importance, it must be checked whether at the end of the year a BUA correction is necessary. In practice we see different ways in which the facilities for working from home are made available and also a great variety of types of supplies. We recommend that you investigate whether the conditions for the right to deduct VAT on provision of facilities for working from home to the staff are met.

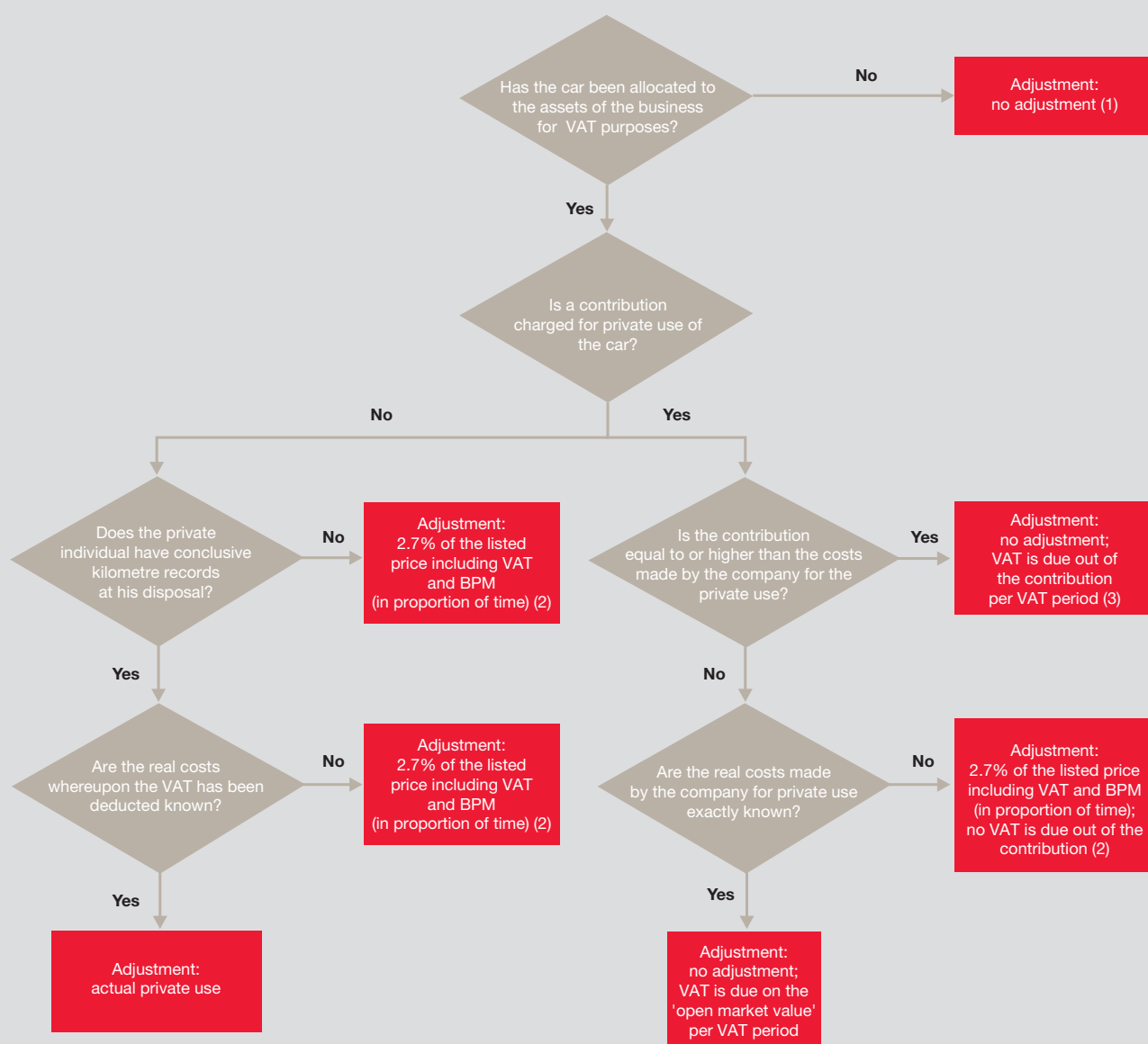
For completeness sake, we note that this type of benefits in kind also affects payroll taxes. Unfortunately, Budget Day (Prinsjesdag) has proven that the legislature has not created new tax facilities for payroll taxes. You need to use existing capabilities of the work-related costs scheme (WKR), including the specific exemptions for health and safety provisions and necessary ICT facilities. In practice, we see that the Dutch Tax Authorities interpret these exemptions to a limited extent. In that case a final levy of payroll tax of 80% over the value of the provision may be levied. Wrong choices cannot be restored afterwards. We therefore advise you to build in tax frameworks when drawing up policy on facilitating working from home. A PwC payroll tax specialist can support you with this.

The corona crisis can also lead to an atypical use of your car fleet in 2020. There is probably less commuting, but perhaps also fewer business kilometers. Certainly if your organisation does not make use of the flat-rate, we recommend investigate the VAT effects of this.



Appendix:

Adjustment for private use of a company car*



General notes:

(*) If you are considering an adjustment based on actual use, please contact your PwC VAT advisor.

(1) Deduction of VAT on costs for the business use of a car made by the company (fuel, etc.) may still be possible.

(2) When the car is purchased without VAT (purchased from a private person or a so-called margin-car) no adjustment has to be made, unless the VAT included in the costs of use is deducted. In that case the adjustment will amount to 1.5 per cent of the listed price including VAT and BPM (in proportion of time). This also applies for cars which were - in short - taken into use more than 5 years ago.

(3) The flat-rate may not be applied if the VAT due on the fees charged is more than what would be due under the flat-rate. Moreover, the flat-rate may not lead to more VAT payable than was deducted in that year (including the attributable part of VAT on capital goods).

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