

Internet consultation on draft bill VAT adjustment on services to immovable property

As the government previously announced in a letter accompanying the 2024 Tax Plan, the Ministry of Finance has published a draft bill for consultation on the adjustment of VAT on services to immovable property such as buildings. This includes, for example, investments such as renovations, repairs and (major) maintenance. Under the current VAT adjustment rules, the VAT recovery applied for such immovable property services is in principle final at the end of the financial year in which use was first made of the services. If, for example, a renovated building (the renovation of which does not result in a new immovable property for VAT purposes) is put into use on July 1, the VAT recovery on the renovation service is in principle final at the end of the financial year of first use. A changed VAT use in a later financial year does not lead to an adjustment of the previous VAT recovery. Based on the proposed draft bill, a VAT adjustment period of approximately five years will apply, during which changes in the VAT use of the renovated immovable property may lead to an obligation to partially repay VAT previously recovered or to an additional VAT recovery right.

The proposal

The Ministry of Finance intends to extend the current VAT adjustment scheme to services to immovable property of at least EUR 30,000, such as renovations and major maintenance. A VAT adjustment period of four financial years following the financial year in which the services are first put into use will apply to such immovable property services. Including the year of first use, an entrepreneur must therefore annually (re)assess 20% of the initial VAT recovery for five financial years on the basis of the VAT use of the service (for VAT-taxed or VAT-exempt services) in the relevant financial year. If the VAT use in the relevant financial year deviates from the VAT use in the financial year of first use, the initial VAT recovery must in principle be adjusted.

The intention is for the measure to come into effect on January 1, 2026. This means that the new adjustment scheme applies to the intended services to immovable property that are put into use after this date.

The proposed change has a significant impact in practice. Because investments must be monitored for a period of five financial years, the administrative burden increases.

Background to measure and impact in practice

The background of the measure lies in combating situations in which, according to the government, undesired VAT savings are made by temporarily subjecting homes to VAT (for example, by means of 'short stay') after an investment such as a renovation, and then subsequently renting out these homes as residential spaces exempt from VAT after VAT recovery is final. In addition, the government believes, more generally, that the measure creates a more level playing field between entrepreneurs who rent immovable property. However, the proposed measure has a broader scope than simply combating tax savings. After all, for each individual immovable property service(s) provided to that immovable property, an annual record must be kept of whether the use of the service(s) corresponds to the VAT recovery previously received. Fluctuations in use for VAT-taxed or VAT-exempt services may require an annual VAT adjustment. This means that the VAT must be repaid in whole or in part or, on the other hand, can be

additionally reclaimed. When selling immovable property, possible adjustment of VAT on purchased services in the preceding years must also be taken into account.

An internet consultation on a similar bill took place in 2017. At the time, the proposal was not pursued, partly as a result of the responses to the consultation. Criticism then mainly concerned the enormous complexity and broad scope of operation. For this reason, the Ministry of Finance has focused the new proposed measure on services to immovable property above a threshold amount of EUR 30,000.

The Ministry of Finance offers interested parties the opportunity to respond to the proposed amendment via this internet consultation, which closes on April 2, 2024. Following the internet consultation, a stakeholder meeting is planned for April 12, 2024, after which the input and interests of the various parties will be assessed. You can respond to the internet consultation via the following link:

<https://www.internetconsultatie.nl/btwherziening/b1>.

Update new consultation

On September 6, 2024 the Ministry of Finance included a new version of the VAT adjustment scheme, along with explanatory notes, in the [consultation draft](#) of the end-of-year scheme. There are several changes compared to the previous consultation. These are briefly addressed below. Further clarification is expected to follow on Budget Day as part of the 2025 Tax Plan.

- As an additional step in determining which services to immovable property (hereinafter: 'immovable property services') need to be adjusted, there will be a legal definition of immovable property services. That definition has not yet been made public and will probably appear in the Tax Plan. What is already clear is that these services must have a long-term character and must serve the immovable property on a 'multi-year' basis. As a result, adjustment is limited to services such as the renewing, enlarging, repairing or replacing of immovable property and (major) maintenance thereof and services of a more short-term nature such as window cleaning will remain outside the scope of the adjustment scheme. In addition to this definition, the threshold of EUR 30,000 will remain in place. There will therefore be a dual test in order to have services qualify for adjustment.
- The VAT adjustment period begins in the year the immovable property service is used for the first time. That moment has now been further clarified. It concerns the date on which the service is actually used for the first time and on a long-term basis in accordance with the objective purpose thereof. The date on which the immovable property service is used will generally coincide with the date on which the agreed work is completed and accepted by the contracting party.
- According to the explanatory notes, ongoing services are unlikely to be regarded as immovable property services (due to the new dual test), but if they are, the ongoing service will then be deemed to be performed at least once a year.

- According to the explanatory notes, vacancy ('as such and unreservedly') does not in itself constitute a change in use that could be reason for adjustment. This can be otherwise if there are other additional facts.
- To assess whether as part of the EUR 30,000 test there is one or more separate immovable property services, contractual reality will in principle prevail. According to the explanatory notes, whether the service is used for one or more immovable properties is irrelevant for the purposes of this test. If, for example, a service is artificially split into separate invoices in order to stay below the threshold amount, this can be regarded as abuse of law and the service can thus be regarded as an immovable property service.

The tax advisors of KPMG Meijburg & Co's Real Estate Indirect Tax Group would be pleased to help you identify the possible impact of the proposed amendment on your business. Our advisors can also be of assistance during the internet consultation. Feel free to contact one of them or your regular contact for more information.

KPMG Meijburg & Co
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