



Understanding VAT & car leasing!

A short history

The facts date back to 2014 and follow a tax dispute between the German tax authorities and a Luxembourgish company, which gave company cars to two of their employees who lived in Germany. In 2014, the German tax authorities had published a circular according to which, if an employer provides a car for their employee this must be qualified as a long-term lease of a means of transport, and therefore subject to current VAT legislation in the driver's country of residence.

The **European Court of Justice** (CJUE) rendered its **decision on 20 January 2021** and provided indications about the circumstances under which the provision of a company car may be qualified as a "long-term lease of a means of transport," thus requiring the Luxembourgish employer to fulfil their VAT obligations in their employee's country of residence.

Following this judgement, **the Luxembourg VAT Authorities** published **circular no. 807**, of **11 February 2021** regarding VAT on company cars. This circular clearly reiterates the criteria established by the CJUE.

Key criteria to be considered

Based on the CJUE's judgement and the VAT circular no. 807 of 2021, **if an employer provides a car for their employee**, it is considered as "a long-term lease of a vehicle," and therefore **subject to the payment of VAT in the employee's country of residence** if the 3 following cumulative conditions are met:

- The vehicle is at the employee's disposal for a period **of more than 30 consecutive days**.
- The employee must be the only person to be **entitled** to use the vehicle for personal purposes on a **permanent basis**.
- **Financial compensation must be paid**. A vehicle must be put at their disposal for "**a fee**" either by way of:
 - a **payment** made by the employee to the employer (for example by deduction from their salary or payment towards the lease by the employee), and/or
 - a **withholding by the employer of part of the employee's cash remuneration** (salary sacrifice), and/or
 - the **employee's choice between various benefits offered by the employer** according to an agreement between parties by which the entitlement to use a company car would imply renunciation to other benefits (car allowance/mobility allowance which would allow the employee to choose between a car and/or another means of transport and cash remuneration for example).



On the other hand, when the employee does not make any payment, does not have any deductions of wages, or does not choose between the various benefits offered by their employer, the provision of a company car by the employer for their employee is not subject to VAT in the employee's country of residence.

In practice

When these 3 criteria are met, the current VAT in the employee's country of residence will be applied to the provision of a company car:

- **the employee is liable for this amount of VAT.** This is the case for all employees, including those that reside in Luxembourg.
- **the employer takes care of collecting this VAT,** as well as declaring and paying it to the relevant authorities in the employee's country of residence. The European ONE STOP SHOP registration system allows companies to fulfill their obligations to the various relevant national authorities.

Specifically, the employer is **free to decide whether they wish to cover the VAT amount** owed by the employee or not.

>>> Either the employer decides to cover the VAT. This means that the VAT owed by the employee (and covered by the employer) is *a benefit in kind* which should theoretically appear on their pay slip. The Luxembourg Tax Authorities have not officially communicated their position on this subject to this day.

>>> Or the employer decides to allow the employee to pay the VAT and it is then collected via a *deduction from the employee's net salary*.

Currently, the German and Belgian authorities are finalizing the transposition of the CJUE's judgement. However, uncertainties remain regarding how the taxable amount should be determined for the VAT and from which date (retroactively or not) this VAT will be implemented? So, until the relevant authorities provide us with more information about this, it is advisable to constitute VAT provisions that take into account the cost of the lease excluding tax as well as the current VAT rate in the employee's country of residence.

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