



Understanding VAT & car company !

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.

Key criteria to be considered

Based on the CJUE's judgement, **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).



To keep in mind

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.

In practice, 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.

>>> 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*.

Further still

The Luxembourgish employer, who is now obliged to observe new VAT requirements in the driver's country of residence, must also be aware of how the Luxembourgish and cross-border authorities reacted to the Court of Justice of the European Union's judgement of January 2021.

>>> Position of the Luxembourg VAT Authorities

After this judgement, **the Luxembourg VAT Authorities** published **circular no. 807**, of 11 February 2021 regarding VAT on company cars, which clearly uses the criteria and findings developed by the CJEU.

Then, **VAT circular no. 807 b** of 28 April 2023 further clarified the matter.

Thus, when the employer and the employee agree to a monetary amount that the employee may have for the provision of a company car or when they set the criteria to determine the monetary cost of such a provision, the "cost" aspect of the provision is therefore established. Such is the case, inter alia, when the parties agree to a "car budget" entitlement in the employment contract or amendment to the contract that corresponds to a set amount.



Furthermore, when a company car is used by an employee residing in Luxembourg, the circular states that Luxembourgish VAT must be applied to “the market value” of this provision. For a leased vehicle, this is generally the amount of the lease including all extra costs incurred to the employer for the leasing. If the employer owns the car, the tax base should be the depreciation value of the car calculated over a period of 5 years, including ancillary costs.

Neither of these two circulars clearly state the date from which these new rules must apply for Luxembourgish residents. As there are no explicit references, the publication date of the judgment of February 2021 should therefore be retained.

>>> Position of neighbouring countries

For Belgian residents, **circular 2023/C72** of 1 September 2023 should be taken into account with retroactive application from 1 July 2021.

This circular uses exactly the same 3 criteria for application as the Court of Justice and confirms that the provision of a vehicle by a Luxembourgish employer to a Belgian resident constitutes, if the conditions are met, a long-term lease service of a vehicle, this means Belgian VAT is applicable.

The tax base is constituted by a “normal value,” which is either the lease payment (excl. VAT) plus additional expenses (excl. VAT) for the leased vehicle, or the purchase price (excl. VAT) divided by 5 plus additional expenses (excl. VAT) for the vehicle the employer owns.

Unlike the Luxembourgish administration, the Belgian administration accepts the use of a **general flat-rate of 35%** that represents the share of professional use. Based on the flat-rate principle, the employee is therefore only subject to VAT on their share of private use, which is estimated at 65%. Thus, a Luxembourgish employer who can deduct 100% of the VAT beforehand for a leased vehicle they provide to their Belgian resident employee, will calculate the normal value as follows, if they wish to apply the 35% general flat-rate: (Lease payment excl. VAT + Expenses excl. VAT) x 65%. If the company is only entitled to a partial deduction (and not 100%), the pro rata deduction should be taken into account this way: (Lease payment excl. VAT + Expenses excl. VAT) x 65% x deduction pro rata.

The transposition of the judgment has not been fully finalised for **Germany**, whilst the **French** authorities have not yet reacted officially.

>>> Conclusion

	Luxembourg	Belgium	Germany	France
VAT rates	17%	21%	19%	20%
Circulars	Circular no. 807 of 11 February 2021 + circular no. 807 b of 28 April 2023	Circular 2023/C72 of 1 September 2023	Circular of June 2013 behind the QM judgement No new circular since the QM judgment	No circular No official comments after the QM judgement
Position	<p>Luxembourgish VAT must be applied to the employee residing in Luxembourg if the 3 key criteria are met.</p> <p><u>Tax base:</u></p> <p>For a lease vehicle: cost of the lease payment + ancillary costs</p> <p>For a vehicle owned by the employer: depreciation value over 5 years + ancillary costs</p>	<p>Belgian VAT must be applied to the employee residing in Belgium if the 3 key criteria are met.</p> <p><u>Tax base:</u></p> <p>For a lease vehicle: cost of the lease payment + ancillary costs</p> <p>For a vehicle owned by the employer: purchase price divided by 5 + ancillary costs</p> <p>In both cases, a general flat rate of 35% may be applied</p>	<p>The employee residing in Germany is liable for German VAT if the vehicle is used for personal use (whether there is compensation from the employee or not)</p>	
Effective date	February 2021	July 2021	June 2013	Risk of retroactive application



Based on this technical and multi-disciplinary subject, we recommend the following approach:

- Determine whether your policy for the provision of a company car falls under the scope of the judgement or not.
- Calculate the financial impact by estimating the VAT amounts due country by country and making the necessary provisions if needed.
- Take the necessary decisions and actions in terms of VAT (calculations, declarations, etc.).
- Take into account the impact on employees' pay and implement for those affected by this.

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