



## Company cars : the start of a new era?

**The Luxembourg State currently encourages the companies and their employees to move towards a more sustainable mobility scheme (in particular through tax incentives for hybrid and electric vehicles). But that is definitely not the only challenge that the employer is facing. On 20<sup>th</sup> January 2021, the Court of Justice of the European Union finally released its decision on company cars, notably for border employees...**

In the QM Case on 20<sup>th</sup> January 2021 (C-288/19), the Court develops the criteria that determines in which scenario the provision of a car by an employer to an employee is considered as a long-term hiring of vehicle, taxable at the place where the employee has his permanent address. There are three cumulative conditions:

- the employee needs to have the permanent right to use the vehicle for private purposes and to exclude others from it;
- a consideration must be made : the payment of a rent or the consent to a reduction of salary for the use of the vehicle;
- the vehicle is put at the disposal of the employee for a period of more than 30 consecutive days.

## **The confirmation of a new interpretation**

These criteria are also clearly stated in the Circular n°807 issued by the Luxembourg VAT authorities on 11<sup>th</sup> February 2021 as a result of this case. In this respect, the Luxembourg VAT Administration clearly stipulates that if the conditions are met and the employee has a residence address in another Member State other than Luxembourg, the employer must register for VAT himself in that Member State in order to comply with his local VAT obligations.

In this respect, it is important for each Luxembourg employer who would be faced with such a situation with regard to its employees to identify the possible impacts and the actions to be taken (in particular in terms of review of employment contracts and VAT obligations that could arise in each Member State concerned). Especially since each Member State could have their own way to interpret this Case-Law and if they consider that their local VAT must be applicable, in particular on how the taxable basis on which it will be due will be determined.

Thus, in the light of all these concerns, the case of each employer will have to be looked at on a case-by-case basis and it would be necessary to determine in the border States as from which date the new approach will have to be taken (only for the future, also for the past?).

## **Some previous VAT rules remain applicable**

The Luxembourg VAT authorities also confirmed that in case a company car is put at the disposal of an employee for free and that the employer benefitted from an input VAT recovery right on the acquisition of the car (or the leasing of the car), a part of private use by the employee must be calculated at the level of the employer.

Following the Circular n°807, we cannot exclude that the Luxembourg VAT authorities will more and more challenge the determination of this private use and so it is essential to ensure that the current calculation methods are correctly managed by each employer to avoid any VAT risks.

Finally, it is also outlined by this Circular, that in the scenario where a company put cars at the disposal of his employees and that the first one did not benefit from any input VAT recovery right on the related expenses, the transaction remains outside the scope of VAT.

Our Luxembourg VAT team with the help of our network in the border countries (Germany, France and Belgium) remains at your entire disposal should you have any question or query related to the above. We can notably go through your car policies and determine, if necessary, the formalities to be carried out in Luxembourg and the border countries. Do not hesitate to contact us!

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