



## Company cars: some clarifications given by the Luxembourg VAT Authorities regarding the application of the Circular 807

**In February 2021, the Luxembourg VAT authorities issued Circular 807 (“Previous Circular”) following the QM Case related to the VAT impact of the provision of company cars to employees. On 28th April 2023, they has provided some clarifications in a supplementary Circular, the Circular 807 bis (“Supplementary Circular”).**

As a reminder, the QM Case had determined in which scenario the provision of a car by an employer to an employee is considered as a taxable long-term lease hiring of vehicle from a VAT point of view, at the place where the employee has is permanent address.

This Supplementary Circular provides some clarifications on the application of the Previous Circular.

### **Notion of consideration in view of the “car budget” contractually agreed**

In the framework of this Supplementary Circular, the Luxembourg VAT Authorities come back on the notion of consideration that they explained in their Previous Circular. And they notably specify that this notion of consideration covers the case where the employer and the employee in their contractual relationship agree on a cash amount which the employee can use for the provision of a company car or when they set criteria for determining the cost in cash of such provision. They give as an example the “car budget” covered by an employment contract (or its amendments).

**Taxable basis: normal value**

Then, the Supplementary Circular also states that in such a situation the taxable basis must correspond at least to the normal value of the service. In this regard, the Luxembourg VAT Authorities consider as acceptable that the normal value corresponds to the amount of costs incurred by the taxable person for the execution of the supply. They specify that in the case of vehicles hired or leased by the employer, the normal value consists of at least the amount of the rents or lease payments and all other related costs incurred by the employer; in case of vehicle acquired by the employer, at least the amortization value of the cars calculated over a period of 5 years and all other related costs incurred by the employer.

Finally, they clarify that this notion of normal value is to be reduced accordingly when the vehicle is used for the needs of the economic activity of the employer in order to take into account only the private use of the employees.

**What about regularization of past years?**

Furthermore, the Circular precises the case when an employer established in Luxembourg is required by foreign regulations to collect retroactively VAT on the provision of a company car in the State in which the user/employee of the vehicle resides. In such a case, the employer is authorised to regularize in its Luxembourg VAT returns the taxable basis for the private use, or the recovery right of the input VAT linked to these company cars, for the period to which the taxation relates. This will also be possible even if a VAT assessment would have been issued (but only on the years not yet expired). To do so, the taxable person would have to contact the Luxembourg VAT Authorities beforehand with all the related justifications and only afterwards to submit corrective VAT returns.

Finally, the Luxembourg VAT Authorities conclude that, in case of company cars granted to employees residing in another country, the determination that such a provision is made for consideration is carried out exclusively according to the criteria set out in the Previous Circular and the Supplementary Circular.

Following this Supplementary Circular, it should be expected that the Luxembourg VAT Authorities be more attentive to the provisions of company cars to employees in the future but also for the past years. Consequently, it is essential to ensure that the calculation methods are correctly managed to avoid any VAT risks.

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 discuss the implications for your company, assist you with the regularization for the past years and set up with you the most accurate calculations to be used in your VAT returns. Do not hesitate to reach us!

# Contacts

## Mazars FAS



Hugo Dumas  
Partner - Head of Tax  
+352 27 114 602  
[Hugo.Dumas@mazars.lu](mailto:Hugo.Dumas@mazars.lu)



Sophie Plancher  
Director - VAT  
+352 27 114 603  
[Sophie.Plancher@mazars.lu](mailto:Sophie.Plancher@mazars.lu)



Alexandre Ceugniez  
Manager - VAT  
+352 27 114 620  
[Alexandre.Ceugniez@mazars.lu](mailto:Alexandre.Ceugniez@mazars.lu)

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