

NEWSLETTER CIRCULAR ON COMPANY CAR TAXATION

NEWSLETTER ON THE VAT AND PERSONAL INCOME TAXATION OF THE TRANSFER OF MIXED VEHICLES TRANSFERRED TO EMPLOYEES

Due to the change in the criteria of the Central Economic Administrative Court in its Resolution of 22 February 2022 as well as various rulings by the Audiencia Nacional and the High Court of Justice of the European Union (hereinafter, CJEU), the AEAT published a Note on issues relating to mixed-use vehicles transferred to employees. This note covers aspects relating to personal income tax and VAT.

Firstly, we need to consider what constitutes a mixed-use vehicle lent to an employee. It is when a company provides its employees with a vehicle that can be used for both work and personal purposes.

The points covered in the AEAT Note are as follows:

1. Availability criterion for private use for VAT and personal income tax purposes

It is the responsibility of the employer to prove the necessity of the use of the vehicle for the employee's work.

It is also the taxpayer's responsibility to prove that the vehicle is not available for private use.

Once the need for the vehicle for the performance of the work activity has been proven and there is a private use of the vehicle, the applicable criterion is that of availability for private use.

The criterion of availability for private purposes has been specified by the Audiencia Nacional taking into consideration the total annual time that does not correspond to the employees' working day and for this purpose, for employees and managers, the working hours provided for in the collective agreement applicable to the company and the time of availability for the employees, specified in weekends, public holidays, holidays and the time outside the working day, on working days, are taken into account.

Therefore, the working hours provided for in the corresponding collective bargaining agreement, considering the particularities that may affect the worker's performance or job category, will determine the percentage of use for the work activity.

According to AEAT criteria, the presumption of 50% VAT allocation and the usual practice among companies of allocating 5/7 parts as work use is dismantled.

2. Consideration of the supply of employer's vehicles as a supply for consideration or free of charge for VAT purposes

According to the CJEU, transfers of vehicles are supplies of services and are subject to VAT when they are made for consideration.

A supply for consideration is deemed to be a supply for consideration where:

- The employee pays for part of the use of the vehicle or the amount for that use is deducted from his salary.
- The worker chooses the use of the vehicle from among various forms of remuneration.

The mere fact that, for Personal Income Tax purposes, the transfer of the vehicle is considered to be remuneration in kind does not determine that, for VAT purposes, it is a transfer for consideration.

It is understood that the transfer of use is free of charge when:

- The use of the vehicle is voluntary for the employee and, furthermore, whether or not the employee avails himself of this option has no repercussion whatsoever on his remuneration.
- Where the employee does not make any payment or use any part of his remuneration in cash, nor does he choose between various benefits offered by the taxable person in accordance with an agreement between the parties whereby the right to use the company car is linked to the waiver of other benefits.

3. Deductibility of charges borne by the entrepreneur or professional for the purchase, lease or other transfer of use of vehicles

This issue is also addressed in the Note.

The degree of use will determine the deductible amount and therefore in the case of a free transfer without VAT it will determine the non-deductibility of input VAT.

The VAT Law establishes a presumption of deductibility of 50% of the input VAT when the vehicle is transferred to the employee and for some types of vehicles the presumption is raised to 100%. This presumption can be modified by the taxpayer as well as by the tax administration, provided that the percentage of allocation can be proved.

It follows from the Note that this legal presumption of deductibility would be called into question if it is directly linked to the availability criterion.

4. Self-consumption of services

It is taxed as self-consumption of services when the company has deducted VAT on the purchase of a vehicle and subsequently lends it to employees without charging a price for it.

There is no self-consumption of services if the company acquires a vehicle with the intention of partially using it for the activity and then lends it free of charge to employees. Only the percentage used for the activity will be deductible.

5. Taxable amount for VAT and personal income tax purposes

Although the degree of availability is the same for personal income tax and VAT, this does not mean that the taxable base has to be the same.

- VAT

If the supply is for consideration, the taxable amount coincides with its market value.

In the case of onerous transfer for self-consumption of services, there will be a taxable amount only if the company deducted VAT on the acquisition of the vehicle and the market value will have to be taken into account.

If the transfer is not for consideration, no taxable amount has to be determined.

- PERSONAL INCOME TAX

The basis of the payment on account in the case of use will be 20% per annum of the acquisition cost for the payer, including the taxes levied on the operation, if the vehicle is owned by the payer.

If the vehicle is not owned by the payer, the percentage of 20 per cent per year shall be applied to the market value of the vehicle if it is new (which may be reduced by up to 30 per cent in the case of vehicles considered to be energy efficient).

In the case of vehicles transferred to administrators, the above valuation rule will be used.

All these rules for the quantification of the base of the IRPF payment on account refer to those cases in which the private use of the vehicle is 100% and should therefore be modulated according to the percentage of availability for private use.

We remain at your disposal for any clarification or extension of the content of this circular. We are also available to advise you on the implementation of the various measures and on the preparation of the planned instruments.

Cordially,

Tax Department

LAUDIS CONSULTOR, SLP

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