

VAT treatment of the private use of company cars by an employee resident in another country

On 20 January 2021, the Court of Justice of the European Union (CJEU) issued its decision regarding the VAT implications for making company cars available to non-resident employees¹.

It specified the conditions for a long-term rental of means of transport and clarified that the benefit in kind resulting from the private use of a business asset cannot be assimilated to an effective payment of a rent.

The main facts:

QM, a Luxembourg investment fund management company, made available two vehicles to two members of its staff, employed in Luxembourg and resident in Germany. The vehicles were used for private and professional purposes. One of the employees disposed of the vehicle for free, while the other employee paid a remuneration for the private use of the car which was deducted from his salary. Being registered under the simplified VAT regime in Luxembourg, QM was not entitled to deduct any input VAT related to both company cars.

In order to comply with the German administrative practice according to which the provision of a company car for private purposes is considered as a long-term hiring of means of transport, QM registered for VAT purposes in Germany and declared taxable supplies of services provided to German end-consumers. QM brought an action against the German VAT assessment before the Finanzgericht des Saarlandes who decided to ask the CJEU for a preliminary ruling.

The question:

The CJEU was asked if putting the vehicles at the disposal of employees working in Luxembourg and resident in Germany can be considered as a supply of services for consideration, more exactly as a supply of long-term hiring of means of transport to a non-taxable person and therefore constitutes a transaction subject to VAT in the country of residence of the employee.

The judgment:

The CJEU distinguished the provision of the company car free of charge from the one against remuneration.

It decided that granting the use of a company car **free of charge** does not constitute a supply of services for consideration as long as the employee

- does not make any payment for the car made available to him;
- does not dedicate a part of his cash remuneration thereto;
- does not choose between various benefits offered by the employer under an agreement according to which the entitlement to use the company car would be contingent on the forgoing of other benefits.

¹ Case C-288/19, QM v. Finanzamt Saarbrücken



Therefore, aforesaid transaction should not be considered as a long-term hiring of means of transport to a non-taxable person.

Regarding the consideration condition, the CJEU clarified that the absence of a payment cannot be compensated by the fact that, for income tax purposes, the private use of goods forming part of the assets of the business in question is viewed as constituting a benefit in kind and therefore, as part of the remuneration which the beneficiary has given up as consideration for the goods in question being made available to him or her.

As long as the above conditions are met, Luxembourg employers allowing the private use of the company car do not have to register for VAT in the country of residence of the employee.

However, the provision of a company car **against remuneration** qualifies as long-term hiring of means of transport if the following conditions are met:

- the employee has an uninterrupted right to use the company car for private purposes and to exclude others from using it;
- the employee pays a rent for the use of the vehicle;
- the vehicle is made available to the employee for an agreed period exceeding 30 days.

The rent which may be paid directly or deducted from the salary is subject to VAT in the country of residence of the employee.

Hence, when a non-resident employee is involved, the Luxembourg employer has to register for VAT purposes in the country of residence of the employee and to declare the collected VAT there.

The judgment does not give any guidance on how the taxable amount has to be determined in case the company car is hired, how the deduction right of the employer is affected or how a Luxembourg taxable person who has registered for VAT in Germany and taxed the private use of company cars can reclaim German VAT paid in previous years.

Luxembourg employers which allow the private use of company cars to non-resident staff members should analyze the potential impact of the judgment and monitor the feedback of the VAT authorities of Luxembourg, Belgium, France and Germany.

For further information, please do not hesitate to contact one of our team members, who will be glad to assist you at any time:

Michael Probst, Partner

Phone: +352 266 322-318

Matthias Gutknecht, Partner

Phone: +352 266 322-330

Asbed Chahbazian, Partner

Phone: +352 266 322-315

Christel Begué, Director

Phone: +352 266 322-325

Alexia Christodoulou, Director

Phone: +352 266 322-321

