



VAT correction private use of company car

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Now, for tomorrow

Table of contents

Introduction.....	3
Private use of company car.....	4
1. Commuting.....	4
2. Actual use.....	5
3. Only business use and commuting.....	5
4. Flat rate.....	6
5. Own contribution.....	7
6. Working from home.....	10
7. Rules for car dealerships and rental car companies.....	11
8. Car purchased without VAT deduction.....	11
9. Entrepreneurs for PIT / sole-proprietor businesses.....	11
Contact.....	12



Introduction

In recent years, several important developments have taken place in the area of the VAT correction for the private use of a company car. In this brochure, we will cover these developments.

If a company car is also used for private purposes, a VAT correction must be applied for this private use. The laws and regulations for determining the amount of the VAT correction have undergone significant changes since 1 July 2011. These changes followed a judgement by the Haarlem district court on 1 June 2011. The court held that the VAT correction may not differentiate between eco-friendly and eco-unfriendly cars. As a result, all cars could apply the most favourable percentage which was applicable with regard to the additional taxable benefit for the purpose of wage and personal income tax. The Amsterdam Court of Appeal confirmed the judgement of the Haarlem district court. However, in 2013, the Dutch Supreme Court quashed the verdicts of the Haarlem district court and the Amsterdam Court of Appeal. Shortly put, the Supreme Court held that no infringement of the principle of equal treatment had occurred.

Since July 2011, there is therefore no longer a distinction between eco-friendly and eco-unfriendly cars, with regard to the VAT correction. In addition to this, the link with the fiscal addition for the purpose of wage and personal income tax, which had previously existed, no longer applies. Furthermore, the BUA ('Besluit Uitsluiting Aftrek van voorbelasting'; Dutch Decree on Limitation of Deduction of input VAT) no longer applies to the private use of a company car.

In this brochure, we will discuss the latest rules. We shall use a number of examples to clarify the new regulations. Also, we will address the current state of affairs with regard to a number of test cases that have now been concluded. The Dutch Supreme Court ruled on 21 April 2017 that in cases where the use of the flat-rate arrangement has led to an entrepreneur paying more VAT than the VAT on the (actual) expenses that can be attributed to the private use, the entrepreneur is entitled to a refund to that extent. In such cases, the entrepreneur must provide data regarding the extent of the private use.

We would like to stress that this brochure only concerns VAT corrections. The rules discussed in this newsletter do not apply to the additional taxable benefit for the purpose of wage and personal income.



Private use of company car

With regard to the change of the rules as of 1 July 2011, it is of great importance to note that, for VAT purposes, commuting is also considered private use. Under the old rules, this was not the case in most situations, due to the alignment with the additional taxable benefit for the purpose of wage and personal income tax. Consequently, under the new rules, reportable VAT corrections for private use occur more often. This is for example the case for drivers who have a *Verklaring geen privégebruik* auto ('Declaration of no private use of car').

If a car is only used for business purposes, it is of course not necessary to report a VAT correction. This is for example the case if the car is left at the business premises after work, meaning that the car cannot be used for commuting.

If a car is used for both VAT-taxed and VAT-exempt supplies, the VAT correction only needs to be applied proportionally. For example, if the turnover consists of 50% VAT-taxed turnover and 50% VAT-exempt turnover, only 50% of the VAT correction needs to be reported. This also means that only 50% of the VAT on car expenses can be deducted.

1. Commuting

The Dutch State Secretary considers commuting to mean the following:

Example: An administrative employee who commutes from his place of residence in Utrecht to his employer's office in Amsterdam, on a daily basis.

“Travelling (there and/or back) from the place of stay or residence to the fixed place(s) of work, as agreed upon in the employment contract, where he carries out his work (during one or more days).”

Example: A self-employed person who travels from his place of stay or residence in Utrecht to the office of his business in Amsterdam, on a daily basis.

In the absence of an agreement as mentioned above, all travel from the (usual) place of residence to the business address of the entrepreneur qualifies as commuting.

Example: If a construction worker travels to the construction site, this is not generally considered commuting, unless it has been agreed that the construction site is the fixed place of work (e.g. in the case of long-term projects or project-based temporary employment).

Travel to locations other than the aforementioned fixed places of work or business addresses, are not considered commuting.

Example: The trips made by a service engineer to the addresses of clients do not qualify as commuting.

2. Actual use

As was the case under the old rules, it remains possible to determine the amount of the VAT correction based on actual private use. Indeed, that is the starting point. However, this does require keeping detailed mileage records. The Dutch Supreme Court ruled that the entrepreneur must in this event provide data regarding the extent of the private use. This could for example include the nature of the business, the business purposes for which the car can be used, the activities undertaken within the business by the person using the car, or statistical data. The mileage record is not the only admissible evidence in this regard.

Example: When the car was purchased, € 5,000 in VAT was charged. For the purpose of the VAT correction, this purchase VAT is amortised over five years: € 1,000 per year. For the other costs (maintenance, fuel, etc.) the total VAT charged in a year was € 3,000. The total VAT attributable to that year is therefore € 4,000 (€ 1,000 + € 3,000). The employer had a total mileage of 50,000 kilometres in that year, of which 30,000 kilometres concerned commuting, 10,000 business kilometres, and 10,000 private kilometres. For the VAT correction, 80% of the car's use therefore concerned private use ((30,000 kms + 10,000 kms) / 50,000 kms). Consequently, the VAT correction is € 3,200 (80% of € 4,000).

3. Only business use and commuting

If the private use only consists of commuting, it is not always necessary to keep mileage records of the private kilometres in order to calculate the VAT correction. In such cases, it is sufficient to determine the distance of the commute and the number of days that this commute took place. The same applies if the car is used by several different drivers. In that case, the number of days as referred to above must be determined per driver.

Rather than actually keeping track of the number of days, it is also possible to apply a fixed number of working days per year (214 working days). Incidentally working from home, sick days, vacations, sabbatical leave and carer's leave are already taken into account in this number. If the driver works part time, or if the employment starts or ends in the course of the same calendar year, this total of 214 days is adjusted in proportion to the part time percentage.

Example: A delivery van is used by an employee for commuting, on a daily basis (and not for any other private use). The commuting distance is 100 kms per day, i.e. 21,400 kms (100 kms x 214 days) per year. The business use totals 30,000 kms in that year. The total VAT on car costs attributable to that year amounts to € 4,000. The VAT correction is therefore € 1,665 (21,400 kms / 51,400 kms x € 4,000).

4. Flat rate

The Dutch State Secretary has approved that, in cases where no contribution is paid for the private use of a company car, the amount of the VAT correction may be determined based on a flat-rate calculation. In such cases, the VAT correction is 2.7% of the list price (including VAT and motor vehicle registration tax) of the specific car, during the year of commissioning within the business and the four subsequent years. Please note that this only applies if the private use cannot be established on the basis of the administration (e.g. if the business has not kept a mileage record). If the car is only used for part of the year, the VAT correction must be calculated proportionally.

Example: The list price of a car is € 30,000. The VAT correction is therefore € 810 (2.7% of € 30,000) regardless of the actual extent of the private use.

For partially VAT-exempt supplies, the VAT on car costs which are attributable to the VAT-exempt supplies, cannot be deducted as input VAT. This also means that the flat-rate percentage of 2.7% of the list price is reduced pro rata. Therefore, in cases where 50% of the supplies performed are VAT exempt, the flat-rate percentage that can be applied is 1.35% instead of 2.7%.

The State Secretary has also approved that the VAT due with regard to the private use of a car may be reported in the final VAT return of either the calendar year, or the book year (providing the book year does not exceed one year).

For cars that have been used within the business of that specific entrepreneur/employer for five years (including the year of commissioning), and for cars for which the purchase VAT was not deducted (e.g. because the car was purchased under the used goods margin scheme), it has been approved that a flat-rate percentage of 1.5% of the list price (including VAT and motor vehicle registration tax) may be applied.

Example: A car has already been used within the business for six years. The list price of the car is € 30,000, the VAT correction is € 450 (1.5% of € 30,000).

If, after five years, a car is also used for VAT-exempt supplies, the VAT correction only needs to be reported pro rata. If an entrepreneur for example performs 50% VAT-exempt and 50% VAT-taxed supplies, only 50% of the flat-rate percentage of 1.5% needs to be reported as a VAT correction. After all, only 50% of the VAT on the costs is deductible.

For the sake of completeness, we note that the application of the 2.7% flat-rate percentage may lead to a higher amount than the VAT deducted in that year. This is because the 2.7% flat-rate amount includes the amortisation of the purchase VAT. One-fifth of the purchase VAT is attributed to each year. It is not permitted to cap the VAT payment at the amount of the deducted VAT. As has already been mentioned, in such cases, a VAT correction based on the actual use, in line with the Supreme Court's judgement in 2017, might prove beneficial..

5. Own contribution

If the driver of a car pays an own contribution, the entrepreneur should in principle included in the own contribution received. The examples below will clarify this.

However, if the own contribution is lower than the 'normal value' (a term which we shall explain below), the entrepreneur must in principle pay VAT based on that normal value. We note that the normal value is solely relevant for the VAT correction. The driver is not required to pay an own contribution to the amount of the normal value. For situations in which the own contribution is lower than the normal value, the State Secretary has approved that VAT need not be paid based on the normal value, but that the flat-rate scheme (as mentioned in paragraph 4 'Flat rate') may be used instead. However, the flat-rate percentage may not be applied if the VAT due from the own contribution is higher than what would have been due under the flat-rate percentage.

In cases where the driver pays an own contribution which is higher than the normal value, VAT must always be paid with regard to the own contribution.

In order to determine whether the own contribution is higher or lower than the normal value, the normal value must first be established. The State Secretary has indicated what should be understood to be the normal value:

“Shortly put, the application of the normal value means that the amount must be determined that the entrepreneur would have to pay ‘in the market’, to be able to make the car available to (for example) an employee, for private use.”

Therefore, the normal value is based on a market-based price. In practice, it is not always possible to determine a market-based price. The Dutch Tax Authorities will in such cases approve that the normal value is based on the costs incurred by the entrepreneur (including amortisation costs), insofar as these costs are attributable to private use.

In our opinion, the explanation offered by the State Secretary does not offer practical guidelines for cases in which, for example, there is no mileage record. In such cases, there is no data available regarding the extent of the private use, which means that it is simply not possible to determine what part of the costs is attributable to private use.

In such situations, we hold the view that alignment can be sought with, for example, the Ecorys-report of 13 May 2011 titled 'Zicht op de zakelijke (auto)mobiliteit', for the determination of the extent of the private use. In this report, it was concluded that, on average, 25% of the use of company cars is for business purposes, whilst the remaining 75% concerns private use (including commuting). Based on these percentages, the normal value would be 75% of the actual costs per year (with the purchase costs divided over five years).

We would like to emphasize that the State Secretary has provided no further instructions regarding the determination of the normal value. Consequently, the Dutch Tax Authorities may be of the opinion that such a (practical) calculation is incorrect. However, in our view this method provides a simple and practical starting point for approximating the normal value.

Example with mileage records:

A car with a value of € 30,000 is made available to an employee. For this, the employee pays an own contribution of € 1,800 per year (€ 150 per month). In 2022, the employee uses the car for 30,000 commuting kms, 10,000 business kms and 10,000 private kms. The total costs of the car (including amortisation) amount to € 12,000.

In this example, 80% of the car's use qualifies as private use. Therefore, € 9,600 (80% of € 12,000) is attributable to private use. The normal value is therefore € 9,600. As the own contribution is lower (€ 1,800), the entrepreneur must pay 21% VAT on the normal value. In other words, the correction amounts to € 2,016 (21% of € 9,600).

If the employee were to pay an own contribution of € 11,700 per year, the own contribution would be higher than the normal value. In that case, the VAT is paid out of the own contribution. The correction for 2022 then amounts to € 2,030 ($21/121 \times € 11,700$).

Example without mileage records:

A car with a value of € 30,000 is made available to an employee. For this, the employee pays an own contribution of € 1,800 per year (€ 150 per month). The total costs of the car (including amortisation) amount to € 12,000.

As it is unclear to what extent the car is used privately, the private use can be determined as 75% based on the Ecorys-report. The costs attributable to private use in 2022 amount to € 9,000 (75% of € 12,000). The normal value is € 9,000. The own contribution (€ 1,800) is lower than the normal value. Therefore, VAT must be paid based on the normal value, amounting to € 1,890 (21% of € 9,000). Alternatively, it is possible to opt for the flat-rate calculation, as it is not clear how much private use is made of the car. In that case, a VAT correction of € 810 (2.7% of € 30,000) is due.

If the employee were to pay an own contribution of € 11,700 per year, the own contribution would be higher than the normal value. In that case, the VAT is paid out of the own contribution. This amounts to € 2,030 ($21/121 \times € 11,700$).

“Based on the above, we expect that the normal value will often be higher than the own contribution that is paid, even if the own contribution is equal to the additional taxable benefit for the purpose of wage and personal income tax (which is often the case for director-majority shareholders).”

6. Working from home

During the corona crisis, many VAT entrepreneurs and employees worked from home (mandatorily or voluntarily). As a result, the number of private kilometres from commuting was significantly lower. This effect on commuting is still noticeable, as many employees are now allowed (and able) to work from home more often.

If the VAT entrepreneur uses detailed mileage records to determine the VAT correction with regard to the private use, working from home could lead to a shift in the ratio of business to private-use kilometres. This in turn can mean that, based on the actual use, there may be a lower VAT correction as a result of the (decreased) private use of the company car.

In a judgement by the Arnhem-Leeuwarden Court of Appeal of 14 July 2020 the qualification of commuting was under dispute, amongst other matters. Generally speaking, commuting is designated as private use. However, in the case before the Court of Appeal, the employer argued that there should be an exception to this rule as the employees in question had the option of working from home. The employer had provided them with the necessary equipment to do so. The distance between the place of residence and the place of work is reduced to nil as a result of working from home and no longer plays a role in where the employees choose to live. According to the employer, as a result of the option of working irrespective of location, the employees no longer had a fixed place of employment.

The Court of Appeal disagreed with this argument. The possibility of working from home may reduce the number of commuting kilometres, but it does not alter the nature of the trips between home and the office. According to the Court of Appeal, covering this distance when making the trip to and from the office (either voluntarily or as a matter of necessity) remains a private matter for the employees.

As noted in paragraph 3, a VAT entrepreneur may - if no detailed mileage records are kept, and the application of the flat-rate percentage leads to an excessively high VAT levy - demonstrate in all reasonableness the extent of the private use of the company cars in other ways.

A VAT entrepreneur can use statistical data to do so. In such cases it must be demonstrated per individual car that these data are suitable for determining the private use.

In this regard, it may be possible to argue that employees have, during a particular period, worked (or have had to work) from home in order to prevent the spread of the coronavirus. This argument might be strengthened by the fact that the office or workplace was closed for a certain period of time, or alternatively, if an attendance register is available, with which it can be demonstrated that an employee worked from home (i.e. did not commute).

In our view, this is primarily beneficial for employers / VAT entrepreneurs that have made a car available to their employees (or themselves) under the condition that it is only used for commuting. This may for example be the case if private use is forbidden, or if an employee has requested and signed a Verklaring geen privégebruik auto ('Declaration of no private use of car'). Bearing in mind that, for Dutch wage tax purposes, commuting is (by contrast) regarded as having a business purpose, the cars in these specific circumstances are only used for (i) purely business use and/or (ii) commuting. However, as commuting is, for VAT purposes, considered private use, the employer / VAT entrepreneur is in such cases obligated to pay a VAT correction for private use.

If the above is applicable and it can subsequently be demonstrated that the specific employee has driven fewer (or no) commuting kilometres during the corona crisis, a VAT entrepreneur may be able to demonstrate that a lower VAT correction for private use is justified, using statistical data.

If a VAT entrepreneur can demonstrate that company cars have been locked away during the corona crisis, we also see possibilities for reducing the VAT correction for private use.

7. Rules for car dealerships and rental car companies

If several (showroom) cars are made available to one or more drivers, the State Secretary has approved that the (unweighted) average list price of these cars can be used as the basis for the calculation of the amount of the VAT correction. This is an unweighted average, which means that the amount of time that the cars were made available should not be taken into account. Of course, a VAT correction can also be calculated on the basis of the actual private use.

Example: During the year, a car dealership makes three showroom cars available to two employees, for private use. These cars have a list price of € 30,000, € 40,000 and € 50,000 respectively. The employees take turns driving these cars. The (unweighted) average list price is € 40,000 ((€ 30,000 + € 40,000 + € 50,000) / 3). The amount of the VAT correction per employee is € 1,080 (2.7% of € 40,000).

8. Car purchased without VAT deduction

It may have been the case that it was not possible to deduct VAT with regard to the purchase of a car, for example because the car was purchased under the used goods margin scheme. For these cars, the State Secretary has approved that all VAT on the costs associated with the car can be deducted during the year (maintenance, fuel, and so on), assuming that the supplies which are carried out are entirely subject to VAT. In the final VAT return of the year, a VAT correction should be made for the amount of 1.5% of the list price (including VAT and motor vehicle tax) of the car.

If the car is also used for VAT-exempt supplies, the VAT correction need only be reported pro rata. If an entrepreneur carries out supplies which are 50% VAT taxed and 50% VAT exempt, only 50% of the flat-rate percentage of 1.5% needs to be reported as a VAT correction. However, the VAT on the costs of the car is also only deductible for 50%.

Example: An entrepreneur has purchased a car under the used goods margin scheme (list price € 50,000). The fuel and maintenance costs are paid by the entrepreneur. The entrepreneur can deduct the VAT associated with this. In the final VAT return of the year, the entrepreneur must report a VAT correction for the amount of € 750 (1.5% of € 50,000).

9. Entrepreneurs for personal income tax / sole-proprietor businesses

In addition to the VAT correction, which needs to be reported for cars which are used by employees, a VAT correction must also be reported for cars which are used by the entrepreneur himself. Before July 2011, alignment was possible with the additional taxable benefit for the purpose of wage and personal income tax.

This regulation has also expired. For the VAT correction for cars used by entrepreneurs, the same rules now apply as for the VAT correction for cars used by employees.

Contact

If you have any questions about this flyer, please don't hesitate to reach out to Rakesh Ghirah or Stevie Mols. They are pleased to assist you.

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