

## BELGIAN VAT AUTHORITIES PUBLISH CIRCULAR 2023/C/72 REGARDING THE VAT TREATMENT OF THE USE OF COMPANY CARS BY EMPLOYEES



### REMINDER OF THE EUROPEAN RULES AND THE LUXEMBOURG INTERPRETATION

On 20 January 2021, the Court of Justice of the European Union (CJEU) released its decision on the German referral which raised the question on whether Article 56(2) of the VAT Directive is to be interpreted as meaning that "hiring of a means of transport" should include the use of company cars by employees.

Following this court case, the Luxembourg VAT authorities published Circular n° 807 dated 11 February 2021 and Circular 807bis dated 28 April 2023, with the purpose of easing the understanding and application of Circular 807.

From this second Circular, it follows that a Luxembourg taxpayer who has the obligation to regularize the VAT of the country where the employee using the vehicle resides, is authorized to regularize the VAT taxable basis or the initial input VAT deducted in Luxembourg for the relevant periods sought for amendment in the neighboring countries, even where the Luxembourg VAT returns of those years have already been finally assessed. However, this is only applicable to regularizations respecting the Luxembourg statute of limitation (i.e., five years).

### BELGIAN CIRCULAR

On 4 September 2023, the Belgian VAT authorities released their Circular 2023/C/72. This Circular in particular is relevant if Belgian VAT is due on the hiring of the means of transport, as it clarifies the VAT taxable basis as well as the date of entry into force.

The taxable basis is either the consideration or the normal value. This basis should be multiplied by the difference between the input VAT deduction right of the employer and the percentage of professional use of the car. The Circular allows a general lump sum method of 35% for professional use. An employer with a full input VAT deduction right would thus have to pay the Belgian VAT on 65% of the taxable basis (100% - 35%) if they choose this method.

The Belgian VAT authorities indicated in the Circular that they will allow regularizations to be done as of 1 July 2021. On the one hand this date is in line with the principles of good governance and on the other hand has the advantage that regularizations for the past can be done by using the one-stop-shop (OSS), which might avoid a need to register for Belgian VAT.

### NEXT STEPS

For Luxembourg employers which offer company cars to their employees, this may lead to additional VAT registrations, VAT filings and/or record-keeping requirements in respect of their employees residing in Belgium, France or Germany.

Therefore, it is recommended that employers review their arrangements to determine how this decision and the Belgian Circular impacts their offerings to employees. As indicated, Circular 807bis from the Luxembourg VAT Authorities confirmed that employers, who have to pay VAT retroactively in other EU Member States, are allowed to regularize the VAT taxable basis or the initially deducted input VAT in Luxembourg, even if the annual returns are already assessed. As such, if Luxembourg input VAT has been paid by a Luxembourg employer, whilst Belgian VAT is due since 1 July 2021, the employer is allowed to regularize the unduly paid Luxembourg VAT as from that date.

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