

Tax regime applicable to the leasing of company cars: Employers, what do you need to know?

With the participation of our guest speakers
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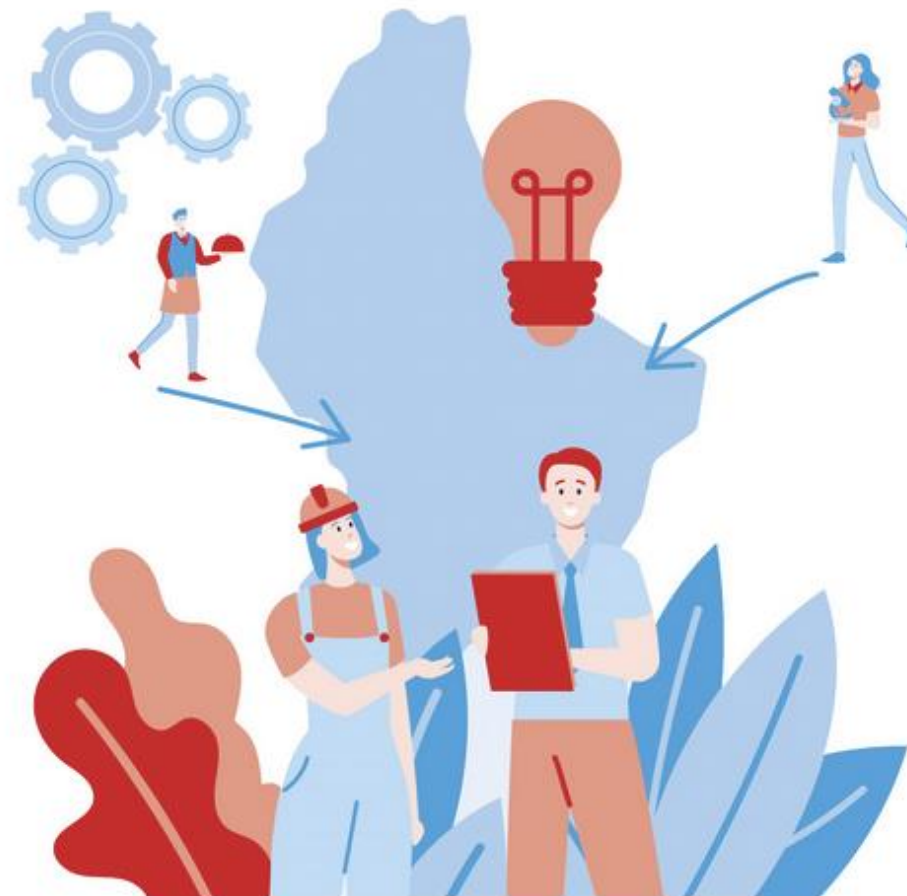
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- 📌 Situation before 2021
- 📌 Case QM C-288/19 of January 20, 2021
- 📌 Implementation of the QM judgment
- 📌 Implementation in neighbouring countries
- 📌 Payroll considerations
- 📌 Numerical examples
- 📌 Conclusions
- 📌 Q&A





SITUATION BEFORE 2021 **(BEFORE QM CASE C-288/19 OF 20TH JANUARY 2021)**

Private use of company cars

• BEFORE QM, C-288/19

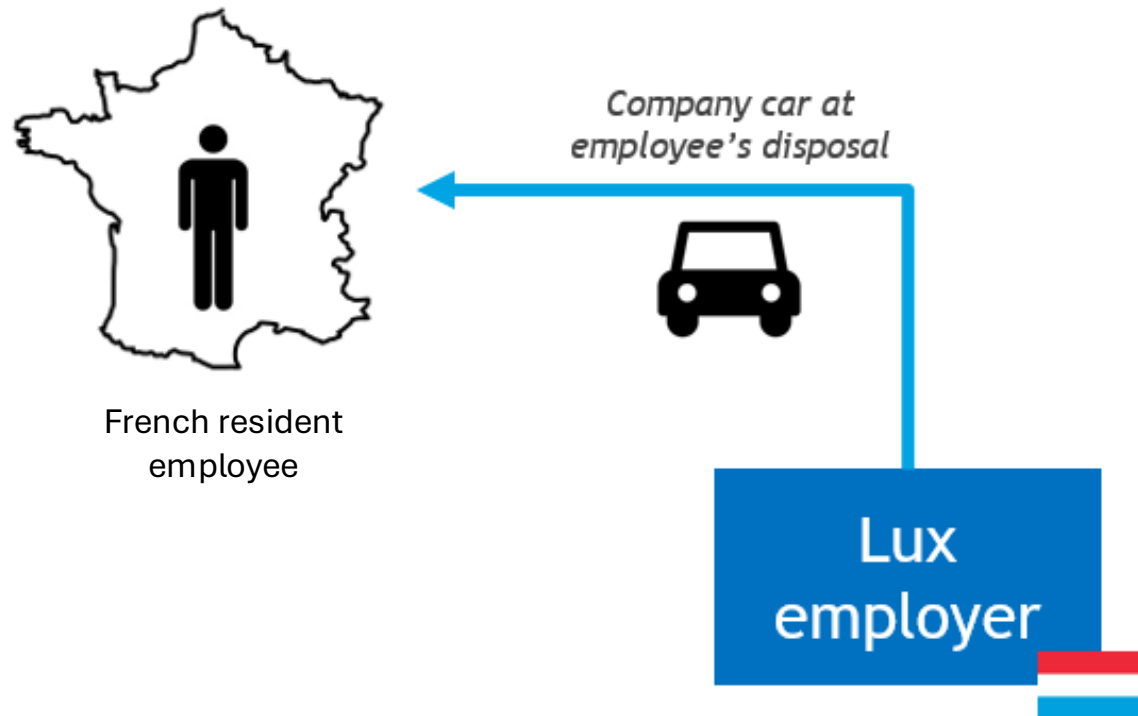
• VAT treatment

- ▶ When a company vehicle was made available to an employee and that vehicle was wholly or partly used for private purposes, the employer (taxpayer) had to pay the VAT due on the private use of the vehicle (“deemed turnover”).
- ▶ **Rationale:** the use by a taxpayer of a business asset for private purposes, or for those of his staff or, more generally, their application for purposes other than those of his business, shall be treated as a supply for VAT purposes. This provision applies only if the input VAT on the said asset has been wholly or partially recovered.



• BEFORE QM, C-288/19

• Illustration



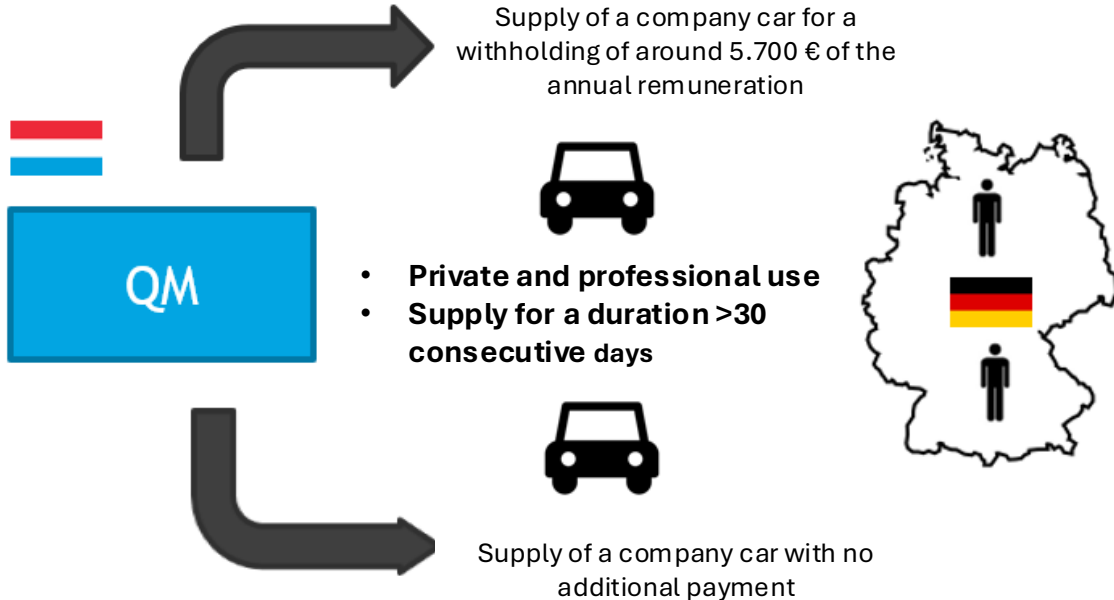
- ▶ Company car put at the disposal of employees residing in FR, BE, DE or LUX
- ▶ Assimilation to a supply for consideration for VAT purposes (deemed taxable turnover) (**article 16, a) LTVA**)
- ▶ Taxable at the place where the taxpayer is established i.e in Luxembourg
- ▶ Taxable proportion of the costs (% of private use) determined based on various methodologies
- ▶ Employers usually bear the costs of this VAT



QM CASE C-288/19 OF 20TH JANUARY 2021

• QM CASE C-288/19 OF 20TH JANUARY 2021

• Facts



- ▶ QM = Luxembourg based fund management company, VAT registered under the “simplified” regime;
- ▶ QM did not recover any input VAT on the 2 vehicles put at the disposal of 2 German resident employees;
- ▶ Due to the VAT legislation in place in Germany since 2014, QM was registered for VAT in Germany and considered the situation as a supply, subject to German VAT;
- ▶ QM subsequently challenged its own position:
 - i. not a supply for consideration or only partially, for one of its employee
 - ii. does not correspond to a rental of the vehicles to the employees (place of supply)

• QM CASE C-288/19 OF 20TH JANUARY 2021

• Decision of the Court



• Question:

Is the provision of a vehicle (company car) forming part of the assets of the business of a taxable person to his staff assimilated to the rental of that car, if the employee does not provide consideration for it that does not consist in (part of) the work performed by him, and thus does not make any payment, does not use any of his cash remuneration for it, and also does not choose between various benefits offered by the taxable person under an agreement between the parties according to which the entitlement to use the company car is contingent on the forgoing of other benefits?

• Conclusions of the Court:

- ▶ The provision of a company car for free to an employee is not subject to VAT when the employer did not recover any input VAT on that vehicle;
- ▶ When, to the contrary, the employee contributes to this supply (salary sacrifice or in any other way) → long term hiring of a means of transport => VAT due in the MS where the employee (=lessee) resides.



SITUATION POST 2021 (AFTER QM, C-288/19)

Implementation of the decision

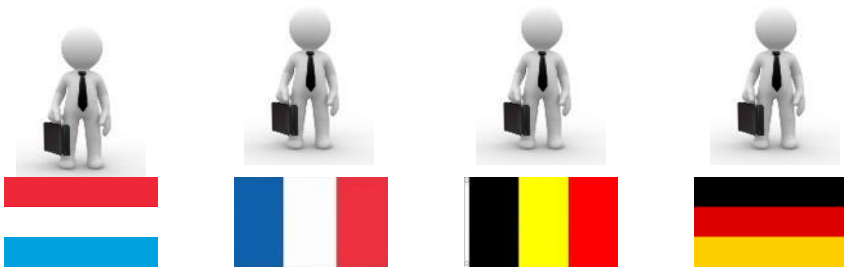


• SITUATION POST 2021

- Circular n°807 of 11 February 2021 – Application of the CJEU ruling
- In accordance with the CJEU ruling, the AEDT confirmed the VAT treatment applicable to 3 different scenarios of provision of company cars

No	Scenario	VAT Treatment
1	Provision of the car 1) in return for consideration, 2) long period > 30 days, 3) the employee obtains the right to use it and exclude other persons from using it	Supply qualifying as a long-term hiring of a means of transport/Subject to VAT in the employee's country of residence (article 17, §2, 7°, b) LVL). Taxable basis = the agreed rent
2	Provision of the company car without any consideration, but the employer has (fully or partially) deducted the input VAT in Luxembourg on costs linked to the acquisition or leasing of such car	The employer shall declare in Luxembourg the private use of the company cars (article 16, a) LVL). Taxable basis = the percentage of private use applied to the amount of expenditure for which the employer has deducted input VAT
3	Provision of the company car free of charge & the employer has not deducted the input VAT	Outside the scope of VAT

• SITUATION POST 2021



- ▶ The employee gives up part of his remuneration ✓
- ▶ Car put at the disposal of the employee for a period which exceeds 30 days ✓
- ▶ The car remains permanently at the employee's disposal, including for private purposes ✓

Supply taxable where the employee is established or has his domicile or habitual residence



• SITUATION POST 2021

- Circular n°807bis of 28 April 2023 – Clarifications on Circular n°807
- The AEDT issued a new Circular in order to provide some clarifications on the Circular n°807 of 11 February 2021 and notably the following aspects:

The definition of "consideration"

Confirmation that it also covers the situation where the employer and the employee agree in their contractual relationship on a cash amount that the employee can use for the provision of a company car or where they set criteria for determining the cost of such provision in cash, e.g. mobility/car budget

Taxable basis

Taxable basis shall correspond at least to the normal value of the service, i.e. **the amount of costs incurred by the employer for the execution of this supply;**

For leased vehicles, the normal value consists of at least the amount of the rents/lease payments plus other related costs;

For vehicles acquired by the employer, at least the amortization value of the cars calculated over a 5 years period plus other related costs.

• SITUATION POST 2021

- Difficult question of the private use


“When the vehicle is also used for the needs of the economic activity of the employer, then the normal value shall be reduced accordingly. Thus, for Luxembourg residents only the private use shall be taxed.”

Possible methodologies

- ▶ Log book
- ▶ Proportion (?) or full amount of costs



IMPLEMENTATION IN NEIGHBOURING COUNTRIES

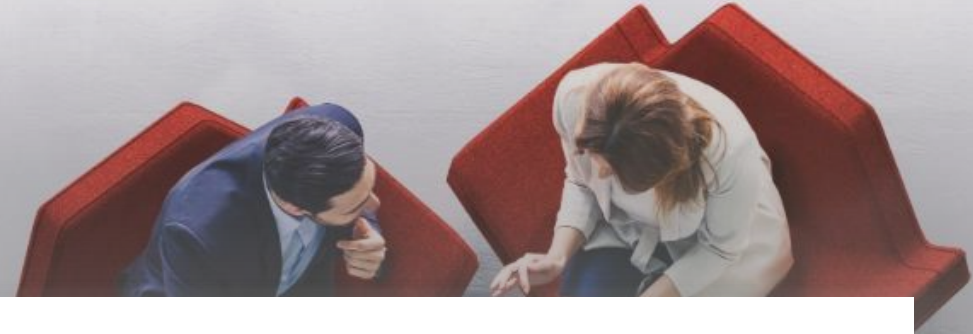


	BELGIUM	GERMANY	FRANCE
Legal basis (apart from QM case itself)	Circular 2023/C/72 of 1st September 2023 and Circular 2024/C/85 of 19th December 2024		BOI-RES-TVA-000161 of the 30 th April 2025
Applicability of the case	Yes	Yes	Yes
Retroactivity	Administrative tolerance: 1st July 2021	2014 (change in place of supply legislation in June 2013)	Statute of limitation of 3 years, 5 years in case of fraud, evasion or bad faith) (confirmed 1st January 21)
Taxable basis	Normal value (rent + costs subjects to Belgian VAT – insurance) x « professional percentage » Ex: 1.000 x (100%-35% PP) x RP	1% of the gross list price (P) of the vehicle + 0,03% of P per km between the office and the domicile 0,002% for family home trips in case the employee has two places of dwelling	Normal value (rent and ancillary costs) (confirmed)



PAYROLL CONSIDERATIONS

• PAYROLL



- Since 2020, the benefit in kind has been calculated on the basis of the gross list price (including VAT) with the CO₂ emissions measured according to the World Harmonised Light Vehicle Test Procedure WLTP.
- New rates from 2025 :
 - Application of a 2% rate for non-electric vehicles
 - Continuation of the favourable regime for electric vehicles 0.5% - 0.6%
- Two-stage reform - differentiated scale according to the date of registration and signature of the leasing contract :
 - New vehicles are subject to the new rates from 2025
 - The old ones remain temporarily under the old regime
- Grand-Ducal Regulation (“GDR”) of 23 December 2016 relating to Article 104, paragraph 3 of the Luxembourg Income Tax Law (“LIR”); Circular No. 104/1 LIR of 16 July 2018; GDR of 8 May 2023 (amendment); New GDR of 20 December 2024, applicable from 1 January 2025.

• PAYROLL



Transitional regime (since 2023)

CO2 emission category	Percentage of the value of the vehicle (new, including options and VAT)					
	Vehicle without diesel engine	Vehicle with diesel engine	Hydrogen fuel cell vehicle	100% electric vehicle		
				a)	b)	Other: in case a) and b) are not applicable
				≤18kWh/100km	≤20kWh/100km & Propulsion system power ≤ 150Kw	
0g/km	-	-	0,5	0,5	0,5	0,6
>0-50g/km	0,8	1,0	-	-	-	
>50-80g/km	1,0	1,2	-	-	-	
>80-110g/km	1,2	1,4	-	-	-	
>110-130g/km	1,5	1,6	-	-	-	
>130g/km	1,8	1,8	-	-	-	

New regime applicable from 2025

	Percentage of the value of the vehicle (new, including options and VAT)				
	Internal combustion engine vehicles (diesel or petrol), including hybrids	Hydrogen fuel cell vehicle	Véhicule 100% électrique		
			a)	b)	c)
			≤18kWh/100km	≤20kWh/100km & Propulsion system power ≤ 150Kw	Other: in case a) and b) are not applicable
2025	2,0	0,5	0,5	0,5	0,6
2027		1,0	1,0	1,0	1,2

• PAYROLL

Union des Entreprises Luxembourgeoises (“UEL”) sent a letter to the tax authorities at the end of 2023 to confirm the impact of the QM case on the calculation of the benefit in kind.

- Before adjustment - when the budget allocated to the employee did not provide for VAT (net amount), and the employer decides to cover the cost of VAT according to QM - > no additional benefit in kind
- After adjustment - when the employer decides to charge the cost of VAT to the employee -> employee's contribution deducted from the calculation of the benefit in kind within the limit of the threshold of 20% of the leasing cost
- Regularization (prescription and methodology)



• PAYROLL



Car policy

- Based on the applicable legal framework the provision of a company car is taxable for VAT (as the case may be, at the place of residence of the employee)
- The employee should be aware that such VAT will be charged to the employee in his capacity as beneficiary of the service (i.e. provision of a company car)
- The employer reserves the right to deduct such amount from the monthly salary payment.
- The employer keeps the right to change the amount of the benefit in kind to be declared if the Tax Administration's position changes.

EXAMPLES



• RESIDENT IN LUXEMBOURG



Company car (VAT excl)	51.964,94	Monthly leasing (VAT excl)	600,00	
VAT 17%	8.834,04	VAT 17%	102,00	
Company car (VAT incl)	60.798,98	Monthly leasing (VAT incl)	702,00	
BIK 2025 (0.5%)	303,99	VAT country of residence 17%	102,00	
		Max Ded. (20%)	120,00	
Monthly Budget	750,00			
Current situation		Application "Arrêt QM (2025)"		
Gross salary	5.000,00	Gross salary	5.000,00	
Car Allowance	48,00	Car Allowance	150,00	
BIK Company Car (Gross)	303,99	BIK Company Car (Gross)	201,99	
Total Gross	5.351,99	Total Gross	5.351,99	
Withholding tax	- 859,80	Withholding tax	- 859,80	
VAT borne by EE	-	VAT borne by EE	- 102,00	
PP company car	-	PP company car	-	
Net to be paid	3.531,75	Net to be paid	3.531,75	-

• RESIDENT IN FRANCE



Company car (VAT excl)	51.964,94	Monthly leasing (VAT excl)	600,00
VAT 17%	8.834,04	VAT 17%	102,00
Company car (VAT incl)	60.798,98	Monthly leasing (VAT incl)	702,00
BIK 2025 (0.5%)	303,99	VAT country of residence 20%	120,00
		Max Ded. (20%)	116,40
Monthly Budget	750,00		
Current situation		Application "Arrêt QM (2025)"	
Gross salary	5.000,00	Gross salary	5.000,00
Car Allowance	48,00	Car Allowance	150,00
BIK Company Car (Gross)	303,99	BIK Company Car (Gross)	187,59
Total Gross	5.351,99	Total Gross	5.337,59
Withholding tax	- 859,80	Withholding tax	- 853,50
VAT borne by EE	-	VAT borne by EE	- 120,00
PP company car	-	PP company car	-
Net to be paid	3.531,75	Net to be paid	3.521,81 - 9,94

• RESIDENT IN GERMANY



Company car (VAT excl)	51.964,94	Monthly leasing (VAT excl)	600,00	
VAT 17%	8.834,04	VAT 17%	102,00	
Company car (VAT incl)	60.798,98	Monthly leasing (VAT incl)	702,00	
BIK 2025 (0.5%)	303,99	VAT country of residence 19%	114,00	
		Max Ded. (20%)	117,60	
Monthly Budget	750,00			
Current situation		Application "Arrêt QM (2025)"		
Gross salary	5.000,00	Gross salary	5.000,00	
Car Allowance	48,00	Car Allowance	150,00	
BIK Company Car (Gross)	303,99	BIK Company Car (Gross)	189,99	
Total Gross	5.351,99	Total Gross	5.339,99	
Withholding tax	- 859,80	Withholding tax	- 855,60	
VAT borne by EE	-	VAT borne by EE	- 114,00	
PP company car	-	PP company car	-	
Net to be paid	3.531,75	Net to be paid	3.525,42	- 6,34

• RESIDENT IN BELGIUM



Company car (VAT excl)	51.964,94	Monthly leasing (VAT excl)	600,00	
VAT 17%	8.834,04	VAT 17%	102,00	
Company car (VAT incl)	60.798,98	Monthly leasing (VAT incl)	702,00	
BIK 2025 (0.5%)	303,99	VAT country of residence 21%	81,90	
		Max Ded. (20%)	124,02	
Monthly Budget	750,00			
Current situation		Application "Arrêt QM (2025)"		
Gross salary	5.000,00	Gross salary	5.000,00	
Car Allowance	48,00	Car Allowance	150,00	
BIK Company Car (Gross)	303,99	BIK Company Car (Gross)	222,09	
Total Gross	5.351,99	Total Gross	5.372,09	
Withholding tax	- 859,80	Withholding tax	- 866,00	
VAT borne by EE	-	VAT borne by EE	- 81,90	
PP company car	-	PP company car	-	
Net to be paid	3.531,75	Net to be paid	3.543,20	11,45

• CONCLUSIONS



- The implementation of the QM case is no longer doubtful
- Requires coordination between HR (Car policy / payroll / communication, etc.) and finance departments (risk assessment for the past, regularization, collection and payment of VAT for the future)
- Could impact the attractiveness of vehicles in salary packages
- Implies additional VAT compliance obligations
- Potential high risks for employers (penal procedures going on in Germany)



QUESTIONS ?



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Thank you for your attention !

For further information on this topic, feel free to contact
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