

Memo

Behandeld door:
Madeleine Merkx

Datum:
June 23, 2017

Aan:

Ons kenmerk:
Car/23617/001a

Onderwerp:
Guidance for supplying additional data on private use of
company car for the period 2011-2016

Uw kenmerk:

Dear Sir/Madam,

This memo provides guidance to enable you to determine whether it may be interesting to you to provide additional data to the Tax Administration, as indicated in our Alert, to prove that the tax on private use of a company car was excessive in your situation.

Step 1: What is your situation?

To determine whether it would be interesting to provide additional information to the Tax Administration, it is first of all relevant to determine what your situation is. We distinguish four different situations. Please note that the situations of different employees may, of course, vary. So you will have to examine for each employee individually which situation occurs.

1. Your employee generally performs his activities in a fixed place of work and also uses the company car for private purposes (hereinafter: standard situation).
2. Your employee generally performs his activities in a fixed place of work but does not use the car for private purposes (hereinafter: situation with commuting traffic only).
3. Your employee performs his work in various places, e.g., with clients or in several locations of the company, (and the employment contract only indicates one of those locations as a fixed place of work). The employee uses the company car for private purposes (hereinafter: situation of itinerant employee with private use).
4. Your employee performs his activities in several places, e.g., with clients or on several locations of the company (and the employment contract only indicates one of those locations as a fixed place of work). The employee does not use the car for private purposes (hereinafter: situation of itinerant employee without private use).

Commuting traffic qualifies as private use for VAT purposes. A Decree by the State Secretary describes when a situation is classified as commuting traffic. For completeness' sake, the most relevant passage of this Decree is quoted below (unofficial translation):

*"Travelling (to and from) one's place of residence to the fixed place(s) of work agreed upon in the employment contract where the work is performed (for one or several days).
If no such contract has been concluded, all travels (to and from) the place of residence and the employer's business address qualify as commuting traffic for both the entrepreneur and the employee."*

Step 2: What are the possibilities?

After you have surveyed which situations occur in your business, you will have to examine whether it would be interesting to demonstrate based on statistical data that the tax on private use of a specific company car was excessive.

Situation 1: Standard situation

Both commuting traffic and private use are regarded as private kilometers. Statistical data¹ shows that 48% of the kilometers driven by company cars relates to commuting traffic and 27% involves private use.² This implies that according to the statistical data, 75% of the kilometers driven should in this case be classified as private kilometers. In most cases, application of the percentage of 75% produces a higher VAT charge than application of the flat rate (see below under Method how you can determine this for your individual situation). So in this situation, we do not advise to provide additional information to the Tax Administration if the outcome is less favorable.

Situation 2: Commuting traffic only

In situations where an employee has no other private use than commuting traffic, the private use established using statistical data is 48%. This produces a percentage that is more favorable than in the standard situation (situation 1). However, in this situation as well, application of the statistical data will probably produce a less favorable outcome than application of the flat rate (see below under Method how you can determine this for your individual situation). So in this situation, we do not advise to provide additional information to the Tax Administration if the outcome is less favorable.

For the situation with commuting traffic only, however, the State Secretary provided for simplified rules for determining the number of private kilometers. To do so, you determine the distance between the employee's residence and his place of work, then you multiply this distance by two and then by 214. The employee is expected to commute to his place of work on 214 days a year. In case it concerns an employee who works part-time, the number of 214 days is adjusted accordingly. Since the effective private use is also calculated based on this simplified rule, the Tax Administration may also accept this rule to be used for an additional calculation of the private use. However, this is not certain. Should your employee have a statement of no private use (*verklaring geen privégebruik*) he can still drive 500 kilometers for private purposes. In that situation we advise you to still determine these kilometers using the employee's kilometer records. If this is not possible, you can add 500 kilometers to the number of commuting kilometers.

Situation 3: Itinerant employee with private use

These employees have limited private use for VAT purposes, because their commuting kilometers are largely classified as business kilometers. In this situation, it is difficult to solely use statistical data for private use only (a percentage 27%), since the employees do drive to their fixed place of work on some days. However, should you be able to reconstruct on which days your employees commuted to their fixed place of work, e.g., by using time sheets, this may provide possibilities for using the statistical data combined with the time sheets (see below under Method how you can calculate whether the flat rate resulted in excessive taxation). Application of the percentage of 27% in combination with a demonstrable lack or limited use of commuting traffic may lead to a favorable VAT levy.

¹ 2011 Report by Ecorycs "Zicht op zakelijke mobiliteit"

² The abovementioned percentages are national averages. The report also indicates other percentages for specific situations which you may use.

Situation 4: Itinerant employee without private use

These employees only have limited commuting traffic on the days they work in their fixed place of work. For this type of employees it will be most interesting to demonstrate that application of the flat rate led to excessive VAT, since this will be the case. However, it is difficult in this situation to use a percentage of 0% for private use, because the employees sometimes do drive to their fixed place of work. However, should you be able to reconstruct on which days your employees commuted to their fixed place of work, e.g., by using time sheets, this may provide possibilities for using the statistical data combined with the time sheets (see below under Method how you can calculate whether the flat rate resulted in excessive taxation). Should your employee have a statement of no private use (*verklaring geen privégebruik*) he can still drive 500 kilometers for private purposes. In that situation we advise you to still determine these kilometers using the employee's kilometer records. If this is not possible, you can add 500 kilometers to the number of commuting kilometers.

Step 3: Method

To examine whether it would be interesting in your case use statistical data and prove that application of the flat rate leads to excessive VAT, you will have to compare the VAT charged under the flat rate applied and the VAT that would be charged based on the statistical data. The Tax Administration requires this comparison to be made for each car individually.

The flat rate

The flat rate is 2.7% of the list value of the car including VAT and Private Motor Vehicle and Motorcycle Tax (BPM). In certain cases the flat rate is 1.5%:

- for cars that have been acquired without VAT (e.g., margin scheme cars);
- for cars which the entrepreneur has used for more than five years.

Application of statistical data

If you wish to apply statistical data, you will first have to determine the costs attributable to the car in order to determine - based on this - the VAT that is attributable to the use of the car. This will particularly concern acquisition and lease costs, and fuel charges. Insurance costs do not have to be included since these are not subject to VAT. Considering the system of taxation on private use of company cars, it is justifiable to attribute the acquisition costs to the year in which the car was put into use and the four subsequent financial years. Then you apply the aforementioned percentages.

If application of statistical data leads to a lower amount of VAT, it may be interesting to add additional data to your notice of objection. We do observe in this respect that you will have to do more than show that more VAT has been paid than would be due based on statistical data. You will also have to prove that the statistical data in your case results in a reasonable determination of the private use. The following circumstances should be taken into account for this:

- the nature of the company;
- the business purposes for which the company car is used;
- the position and activities within the company of the person who uses the car; and
- what is known about how the car may be or has been used for private purposes, such as for commuting traffic.

For each car a reasonable case will have to be made as to why the statistical data can be used in your case. On top of that, evidence has to be submitted and a complete substantiation has to be provided. All in all it

will not be easy to use statistical data and only when the difference is substantial will it be worth while to supply additional data to the Tax Administration.

Period up to July 1, 2011

Many entrepreneurs objected against their VAT return of 2011. In 2011, two regimes applied for determining the private use of company cars. For completeness' sake we would like to remind you of the approval by the State Secretary that applies for the period up to July 1, 2011. For the period from January 1, 2008 up to and including July 1, 2011, 27% of the car costs effectively incurred and recorded that are subject to VAT can be classified as attributable to kilometers driven for private purposes if these cars have been used for business and private purposes (including commuting traffic).