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Circular No. 02/2024

Bolzano, 6 January 2024

Subject: Private use of company cars 2024

The new kilometre costs under the ACI scale for the year 2024 were published in the Official Gazette of 22 December 2023. They serve both to determine the benefits in kind for employees and also to determine the appropriate consideration for the private use of cars by the shareholders and by the family members of companies and businesses.

1. Calculation of the benefit in kind for 2024:

The calculation of the benefits in kind for the private use of cars for the current year 2024 remains complicated, since a distinction must still be made between the following 3 cases:

1. vehicles first registered before 1 July 2020 and also made available to the employee before 1 July 2020,
2. vehicles first registered after 1 July 2020 and also made available to the employee after 1 July 2020, and
3. vehicles first registered before 1 July 2020 but made available to the employee for mixed use after that date.

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Re 1) The benefit in kind for the private use of company vehicles which were made available to employees before 1 July 2020 is calculated using the specific ACI scale of the vehicle concerned for 15.000 km, namely for a (legally) presumed private use of 4.500 km per year (equal to 30% of 15.000 km), less any cost contribution by the employee.

Re 2) For agreements concluded from 1 July 2020 which concern the free-of-charge provision of vehicles that were likewise registered only after that date, the benefit in kind is instead determined, pursuant to Art. 1 para. 632 of Law 160/2019, according to the emissions of those vehicles as follows, always by reference to the ACI scale for 15.000 km:
- up to 60 g/km: 25% of 15.000 km (equal to 3.750 km/year instead of the general 4.500 km),
- above 60 g/km and up to 160 g/km: 30% of 15.000 km (corresponding to the previous rule of 4.500 km/year),
- above 160 g/km and up to 190 g/km: 50% of 15.000 km (equal to 7.500 km/year),
- above 190 g/km: 60% of 15.000 km (equal to 9.000 km/year).

The presumed kilometres of private use per year thus determined are then multiplied by the specific ACI scale of the vehicle concerned for 15.000 km, and the benefit in kind for the private use results after deduction of any cost contribution by the employee.
This procedure applies to vehicles which, after 1 July 2020,

- were registered (first registration),
- were acquired by the employer as from that date by purchase, leasing or rental agreement, and
- were made available to employees as from that date, against payment or free of charge.

Re 3) The third case mentioned above, i.e. where a vehicle that was already registered before 1 July 2020 is made available to an employee after 1 July 2020, continues to lack any statutory rule. The Italian Revenue Agency (Ruling No. 46 of 14 August 2020) takes the following restrictive view here: according to the Agency, the value of the private use (so-called „fringe benefit“, benefit in kind) must be determined according to the general criteria of normal value (e.g. the rate charged by professional car rental companies), less the proportionate value of the use of the vehicle in the employer’s interest and less any cost contributions by the employee. In this connection the Agency refers to Ruling No. 74 of 2017 in the field of the private use of telephone equipment. One consideration put forward in the specialist press is to work on a ratio of 5/7 – 2/7, on the assumption that the vehicle is used 5 days a week for business purposes and 2 days for private purposes. It is obvious that such calculations – also in the absence of clear official guidance – are likely to give rise to countless future findings in the course of tax audits.

Although the inappropriateness of this rule compared with the other two cases has been criticised in the specialist press for years, no clarification has been provided to date.
Hence our recommendation: wherever it is still possible today, an attempt should be made, for vehicles with private use that were registered before 1 July 2020, also to have a corresponding agreement on the provision of the vehicle with the employee or director dated before 1 July 2020.

2. Benefit in kind and the effects on income tax:

Where the company vehicle is made available for mixed use to an employee for more than half of the financial year, pursuant to Art. 164 para. 1 letter b-bis of the Income Tax Code (TUIR) not only 20% but 70% of the acquisition and operating costs are deductible for tax purposes; in addition, the ceiling of 18.075,99 euro on the acquisition costs does not have to be observed, so that the costs exceeding that amount may also be depreciated for tax purposes.
These reliefs apply provided that the vehicle is made available to the employee for mixed use for the predominant part of the tax period. According to Circular No. 48/1998, this condition is met if the vehicle is made available for at least half of the tax period plus one day.
Please note: the relief described applies only to employees, but not to self-employed collaborators such as directors; for the latter, even in the case of mixed use, the deductibility of the expenses (net of any contributions or benefits in kind of the collaborator) remains limited to 20%, and the ceiling of 18.075,99 euro for the tax-recognised acquisition costs also continues to apply.

3. Benefit in kind and the effects on VAT:

For VAT purposes, particularly where acquisition and operating costs are high, it is advantageous from the company's point of view not to make the vehicle available to the employee free of charge, but to invoice the private use to him with VAT at 22%. In this way a full input VAT deduction for the acquisition and operating costs is granted both for employees and for collaborators treated as such, and thus in particular also for directors. If, on the other hand, the benefit in kind is only taken into account as a benefit in kind in the employee's payslip but is not invoiced, the general ceiling of 40% applies to the deduction of the input VAT on the acquisition and operating costs; the Italian Revenue Agency last confirmed this in Reply No. 631 of 29 December 2020. Since, on balance, the invoicing will be linked to the remuneration of the employees, each individual case must ultimately be examined separately.
In principle, however, it must be noted that the invoicing of the private use is all the more worthwhile for the company the higher the acquisition and operating costs of the vehicle are. In order to obtain the full input VAT deduction, it will be necessary to take the above classifications (see cases 1-3 above) into account for the invoicing for VAT purposes as well.

4. Benefits in kind of shareholder-directors and family members

Under the law currently in force, shareholder-directors who use a company car for mixed use must, where the vehicle is made available free of charge (loan agreement), tax between 3.750 and 9.000 km (depending on the emission class) at the ACI scale for 15.000 km as a benefit in kind within their employment income. This obligation ceases if an invoice for the private use is issued to them for this amount; however, unlike in the case of employees, the company does not thereby obtain the deductibility of the costs at 70%! At least, though, the company can deduct the VAT in full.

In this connection we also remind you once again that the benefit in kind arising from the private use must be taxed in the case of shareholders and family members. Art. 2 paras. 36-terdecies and 36-duodevicies of Law Decree 138/2011 introduced a rule under which, for the private use of business assets by shareholders of partnerships and corporations and also by family members of sole proprietorships and by shareholders, other income must be taxed on the benefit in kind where they use business assets partly or exclusively for private purposes and do not pay the business an appropriate consideration for this. At the same time, restrictions were provided for on the deductibility by the businesses of the acquisition and operating costs connected with those assets. With regard to passenger cars, the tax authorities stated in Circular No. 36/E of 24 September 2012 that the benefit in kind is calculated using the ACI scale as shown above. Conversely: if this amount is invoiced, no other income arises.
In a press release, the Italian Revenue Agency has set up permanent access to the current ACI tables with reference to the Official Gazette. The ACI scales applicable to the respective vehicle for the current year can be consulted at the following address:

https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2023-12-22&atto.codiceRedazionale=23A06840&elenco30giorni=truehttps://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2023-12-22&atto.codiceRedazionale=23A06840&elenco30giorni=true

The „fringe benefit annuale“ shown in the last column of the respective tables reflects the benefit in kind of the private use for the whole of 2023 and already includes VAT. If, therefore, the private use for one month is to be invoiced, for example, the value shown in the table must be divided first by 12 and then by 1,22, and VAT of 22% is then calculated on that amount.

We remain at your disposal for any further information.

Yours sincerely
Josef Vieider