Comploj Vieider Lorenzon
Lechner Zanellato

PDC Partner
Wirtschaftsprüfer und Steuerberater
Dottori Commercialisti

Senior partner
Dott. Lodovico Comploj
Dott. Emilio Lorenzon
Dott. Josef Vieider
Dott. Alessandro Zanellat
Dott. Martin Lechner

Wirtschaftsprüfer und Steuerberater / Dottori
Dott.ssa Elena Gattolin
Dott.ssa Sabrina Tabiador
Dott.ssa Monika Mattivi
Dott. Nicola Sartori
Dott. Thomas Pichler
Dott. Samuel Vittur
Dott. Christian Gentilini
Dott. Stefan Lanznaster
Dott.ssa Martina Santin
Dott.ssa Serena Giacomo
Dott. Lorenz Bonadio
Dott.ssa Giulia Fortin

Bilanzbuchhalter / Esper
Dott. Antonio Gocev

To all
clients

Circular No. 06/2023

Bolzano, 6 January 2023

Subject: Private use of company cars 2023

The kilometre costs under the ACI scale for 2023 were published in the Official Gazette of 28 December 2022. They serve, on the one hand, to determine the benefit in kind for employees and, on the other, to determine the appropriate consideration for the private use of passenger cars by shareholders and by family members of companies and businesses. Whereas in the previous year the ceiling for tax-free benefits in kind was exceptionally raised to 3.000 euro and thus in many cases also covered the private use of company cars, in 2023 the ceiling of 258,23 euro must again be observed under the law as it currently stands.

<u>1. Calculation of the benefit in kind 2023:</u>

The calculation of the benefits in kind for the private use of passenger cars for the current year 2023 remains complicated, since a distinction must still be made between the following 3 cases:

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

GGI A GLOBAL ALLIANCE OF INDEPENDENT PROFESSIONAL FIRMS

39100 Bozen, via F.Crispi / F.-Crispi-Straße 9
tel +39 0471 288333, fax +39 0471 272521
e-mail info@pdc-partner.it

20121 Milano / Mailand
Foro Buonaparte 70
tel +39 02 36687469

39036 Stern / La Villa di Badia
Str. Ninz 63
tel +39 0471 847360

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 respective vehicle for 15.000 km, namely for a (statutorily) presumed 4.500 km of private use per year (equal to 30% of 15.000 km), less any cost contribution by the employee.

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

The presumed km of private use per year determined in this way are then multiplied by the specific ACI scale of the respective vehicle 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,

- have been registered,
- have been acquired by the employer as from that date by way of a purchase agreement, leasing or rental agreement, and
- have been made available to employees, against payment or free of charge, as from that date.

Re 3) The above-mentioned 3rd case, i.e. where a vehicle registered before 1 July 2020 is made available to an employee after 1 July 2020, continues to lack any statutory rule. And the Italian Revenue Agency (Ruling No. 46 of 14 August 2020) takes the following restrictive position here: according to the Agency, the value of the private use (so-called „fringe benefit“) must be determined according to the general criteria of the 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 concerning the

private use of telephone equipment. One approach discussed in the professional press is to work with a ratio of 5/7 – 2/7, on the assumption that the vehicle is used for 5 days a week for business purposes and for 2 days for private purposes. It is obvious that such calculations – also in the absence of clear official guidance – will most likely give rise to countless future assessments during tax audits.

Although the professional press has for years criticised the inappropriateness of this rule compared with the other two cases, no clarification has been provided to date.

Hence our recommendation: wherever this is still possible today, an effort should be made to also have, for vehicles with private use registered before 1 July 2020, 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 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 apply, so that the costs exceeding this amount may also be depreciated for tax purposes. Finally, the leasing costs do not necessarily have to be spread over 4 years; rather, it is sufficient if the leasing contracts have a minimum term of 2 years (3 years in the case of „old“ leasing contracts entered into before 1 January 2014).

These reliefs apply provided that the vehicle is made available to the employee for mixed use for the predominant part of the tax period. Pursuant to Circular No. 48/1998, this requirement 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, not however to freelance collaborators such as, for example, directors; for the latter, even in the case of mixed use, the deductibility of the expenses (adjusted for any contributions or benefits in kind of the collaborator) remains limited to 20%, and the ceiling of 18.075,99 euro for the acquisition costs recognised for tax purposes also continues to apply.

3. Benefit in kind and the effects on value added tax:

For VAT purposes it is advantageous from the company’s perspective, in particular where acquisition and operating costs are high, not to make the vehicle available to the employee free of charge, but rather to invoice the private use to the employee applying VAT of 22%. In this way a full input VAT deduction for acquisition and operating costs is granted both for employees and for collaborators treated as such, in particular therefore also for directors. If, on the other hand, the benefit in kind is only taken into account as a benefit in kind on the employee's pay slip but is not invoiced, the general ceiling of 40% applies to the deduction of input VAT on acquisition and operating costs; the Italian Revenue Agency most recently confirmed this in Answer No. 631 of 29 December 2020. However, since invoicing will ultimately be linked to the remuneration of the employees, each individual case must in the end be examined separately.

In principle, however, it must be noted that invoicing the private use is the more worthwhile for the company the higher the acquisition and operating costs of the vehicle are. In order to benefit from the full input VAT deduction, it will be necessary to take the new provisions (see cases 1-3 above) into account for invoicing purposes for VAT purposes as well.

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

Shareholder-directors who use a company car for mixed use must, where the vehicle is made available free of charge (loan for use agreement), under the law as it currently stands pay tax on 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 in this amount is issued to them as well; however, unlike in the case of employees, the company does not thereby obtain the deductibility of the costs to the extent of 70%! At least, however, the company can deduct the value added tax in full.

In this connection we also remind you once again that the benefit in kind arising from private use is taxable in the hands of shareholders and family members. Art. 2, paras. 36-terdecies and 36-duodevicies 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 in respect of the benefit in kind, insofar as they use business assets partly or exclusively for private purposes and do not pay the company appropriate consideration for this. At the same time, restrictions were provided on the deductibility, at the level of the companies, of the acquisition and operating costs connected with these 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 set out 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 for the current year for the respective vehicle can be accessed at the following address:

https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2022-12-28&atto.codiceRedazionale=22A07181&elenco30giorni=falsehttps://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?

atto.dataPubblicazioneGazzetta=2022-12-28&atto.codiceRedazionale=22A07181&elenco30giorni=false

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, for example the private use for one month is to be invoiced, 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