

Personal Use of Company Cars

Many employers provide their employees with a company car for personal as well as company use. This payment-in-kind has a material value and is thus subject to taxation and social security contributions as part of the employee's remuneration.

Determination of the private value-in-use under the 1% method

The value of the personal use of a company vehicle is to be set, per calendar month, at 1% of the domestic list price at the time of initial registration plus the expense for special accessories plus the sales tax (§ 8 subsection 2 sentence 2 EStG [income tax code]).

Electric cars

If the vehicle provided by the company is an electric car, taxation for its private use is reduced. For e-cars and hybrid vehicles, the value of personal use is set at 1% of either only half or only a quarter of the domestic list price in the year of the registration (as opposed to full list price for conventional cars).

- A quarter of the list price is applicable if the car has no carbon dioxide emissions, the domestic list price does not exceed € 60.000 and the car's purchase date was in 2019 or later.
- Half of the list price is applicable if the car's purchase date was in the period from 2019 to 2021 and the domestic list price is higher.
- Half of the list price is applicable also if the car's purchase date was in 2022 or 2023 and its carbon emissions do not exceed 50 gram/kilometer, or its electric radius exceeds 60 kilometers.

Value-in-use for commute between residence and workplace

If the employee can use the vehicle for the commute between residence and workplace, the value-in-use increases by 0.03% for each kilometer of the direct distance between residence and workplace (§ 8 subsection 2 sentence 3 EStG), for each calendar month. Alternatively, it increases by 0,002% of the list

price (or the reduced list price in case of electric cars), per day of use for each kilometer of the direct distance between residence and workplace (§ 8 subsection 2 sentence 3 EStG). The daily accurate method of calculation (0,002 % per each day of commuting by car) is preferable, but it is restricted to cases where the employee is commuting by car on less than 15 business days per month to his/her workplace.

Distance is determined as the shortest usable road connection. The kilometers travelled must be rounded down to full kilometers.

The monthly values must be applied even if the employee has use of the car only during parts of the month. The value may not be lowered if the car carries advertisements, or if the employee owns a private car as well, or if the employees have to pay the gasoline or garage costs out of their own pocket.

List price

List price is defined as the non-binding retail price suggestion by the manufacturer, rounded down to full hundreds of Euros, as given at the time of the car's original registration, plus costs of special equipment (e.g., air conditioning, navigational system, anti-theft system plus sales tax. Not to be added is the value of a car telephone, including the hands-off equipment, as well as an extra set of tires including rims.

Armored cars

A special rule pertains to protective fittings of the vehicle intended for the safekeeping of persons. If a car is armored for safety reasons, the list price of a lighter car without armor (i.e. without safety equipment) may be used.

Flat-rate taxation for trips between residence and workplace

The employer can choose a flat-rate taxation for the value of the employee being able to commute between residence and workplace in a company car. The flat rate taxation is set at 15% (plus SolZ [solidarity tax] and KiSt [church tax]) for 15 workdays per month. The flat-rate



taxation applied may not exceed the payment-in-kind value for trips between residence and workplace. This makes the flat-rate taxation especially interesting for cars with a list price of under € 15,000.

Example:

List price: €14,900.00
 Distance residence – workplace: 10 km
 0.03 % of list price x 10 km = € 44.70
 The employer may not apply the flat rate taxation method on more than (€ 0.30/km x 10 km x 15 days =) € 45.00.

The payment-in-kind value taxed under the flat-rate method for trips between residence and workplace is not subject to social security contributions.

Salary reduction in exchange for use of company car

If a salary reduction is agreed upon in connection with the use of a company car, the various evaluations under tax and social security legislation must be considered.

Example:

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|---|--------------|
| Non-exempt gross income | € 3,500.00 |
| Exempt supplement | + € 400.00 |
| Total gross salary | = € 3,900.00 |
| Salary reduction in the amount of monthly costs | € 500.00 |

Contributions and payment for use by the employee

If the employee pays a flat-rate or a cost-specific amount to the employer for the use of the car, the payment-in-kind value is reduced accordingly. Contributions made by the employee towards the acquisition costs may be offset toward the personal use value only in the year the payment is made.

Example:

Income tax

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| Salary reduction is recognized in full | |
| Reduced gross salary | € 3,900.00 |
| | -€ 500.00 |
| | € 3,400.00 |
| Payment-in-kind | +€ 350.00 |
| Gross salary subject to income tax | € 3,750.00 |

Soc. Sec. Contribution

| | |
|--|------------|
| Salary reduction is recognized only for the exempted share | |
| Reduced gross salary | € 3,500.00 |
| Payment-in-kind | +€ 350.00 |
| Gross salary subject to Soc. Sec. contribution | € 3,850.00 |

Carpool

If there are more persons entitled to a company car than there are cars available in a carpool, the payment-in-kind for personal trips must be determined by using 1% of the list prices of all cars and dividing this sum by the number of entitled persons. The usage value for trips between residence and workplace must be computed analogously using 0.03 %. This value must be multiplied by the number of kilometers driven by the individual employee.

Choice among several cars

If an employee has several cars at his or her disposal for personal use, the value of the payment-in-kind must be computed at 1% of the list price per month for each car. However, if no dependents or other third parties have the use of one of the cars, only the list price of the car used predominantly will be considered. The list price of the predominantly used car must be used to determine the value of the trips between residence and workplace in every case.

Used and leased cars

The list price at the time of original registration is applicable to pre-owned cars and leased cars as well.

Re-imported cars

For re-imported cars the original local list price applies. If the car is not being offered in Germany, the determining list price may be estimated. In this case the list price and the value of the special equipment may be determined by comparing it to an older domestic car.

Company car and social times

All travel for private purpose such as recreation, trips to relatives or friends, going shopping or to cultural or sporting events are considered personal use if the company car may be used for so-called social times.

Vacation: If employees are entitled to use the company car privately but the car is not available to them during their vacation, the employer must make reasonable reimbursements in cash for the payment-in-kind (§ 11 subsection 1 sentence 4 BUrlG [Federal German vacation act]).

Disability due to illness: The employee is entitled to continued salary payment for the period of six weeks (§ 3 Abs. 1 EFZG [salary continuation payment]). During the period of continued salary payment, the employee is fully entitled to use of the company car. At the end of the salary continuation payment, the entitlement to the company car ceases unless other conditions have been agreed upon in the employment contract.

Maternity protection: At the start of the maternity protection period, the employment relationship ceases. If during the last three months prior to maternity protection period use of the company car was part of the employment compensation, the right to continue the use of the company car for personal purposes remains. This applies during the protection periods before and after delivery (Decision of BAG [Federal Court of Employment Law]).

Permitted methods for establishing value in use

Keeping a journal in which every trip is recorded is permissible as an alternative to the 1% method for determining the private usage value of a company car for taxation purposes. In this case business and personal trips must be recorded separately. Detailed data is required for all business trips including date, route, destination and purpose as well as mileage before and after the trip. For personal use, information about kilometers driven is sufficient. The journal may take the form of an app or software provided that all changes to the data recorded are ascertainable. Alternatively, a handwritten paper journal may be used.

For e-cars and hybrid vehicles, the acquisition cost of the car as used to calculate the usage value will be set at only half or only a quarter of the actual acquisition cost pursuant to the criteria described above.

The chosen method of determining the value of private usage (1 % or a journal) must be adhered to for at least one calendar year. Mixing the methods is prohibited (e. g. applying one method for the general usage only and determining the usage value for trips between residence and workplace utilizing another method).

If usage value cannot be established precisely using the journal method during the calendar year, data of previous years may be used as a basis, for the time being. It is also permitted, during the course of the year, to temporarily assess personal trips at 0.001 % of the list prices per kilometer driven.

In both cases the actual usage value must be determined within the framework of the annual balance sheet preparation. Thereby any differences in income tax must be adjusted and the social security contributions must be corrected.