REGULATIONS FOR COMPANY CARS IN GERMANY

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Content

Nowadays, company cars are commonly used in many businesses. They are offered by employers and enhance the attractiveness of the job for employees. Often, a company car also serves as a status symbol for employees. The better the company car, the higher the professional position—this rule of thumb also applies to vehicles provided by employers. The topic of company cars raises numerous questions that have proven to be relevant in practice and should be carefully considered from both the employer's and employee's perspectives.

What is a Company Car?

Although company cars are increasingly a part of corporate policies, there is no legal definition for a company car. This also applies to the term "business car." Neither term has been explicitly defined by lawmakers.

In practical terms, a company car is a vehicle owned by the employer and made available to the employee for business-related travel. However, the company car does not necessarily have to be owned by the employer. It can also be provided under a leasing agreement, with the employer leasing the vehicle and subsequently passing it on to the employee for use.

From both a tax and business perspective, there is no difference between a company car and a business car. Both terms describe the same process outlined above and are therefore used interchangeably.

Who is Eligible for a Company Car?

In the past, company cars were typically reserved for executives, but this has changed in recent years. Company cars are usually offered to employees who, as part of their job, need to travel significant distances and therefore require mobility in the employer's interest.

The size of the company also plays an important role. The general rule is: the larger the company, the higher the percentage of employees with company cars. Statistics also show that larger companies tend to provide higher-quality vehicles, both for professionals and executives.

Typically, the employer's car policy is applied in such cases. This policy defines who is entitled to a company car and establishes the specific terms and conditions under which the car can be used

Is There a Right to a Company Car?

As appealing as the idea may be, there is no legal entitlement to the allocation of a company car. The only exception to this rule arises if there is a violation of the principle of equal treatment under labor law. For example, if all employees at a certain level or within a specific department are provided with a company car, but an individual employee is excluded from this arrangement without any objective justification.

Private Use of a Company Car

As attractive as the idea of equipping employees with a company car may seem, only when it can also be used privately is a noticeable benefit given for many company car owners.

Important: The use of the company car for personal purposes is not always desired by the employer. Whether this option is even available can be found in the Car Policy. This may restrict private use; for example, many employers prohibit driving the company car abroad or on vacation for personal purposes. What is allowed and what is not in the private sphere is determined by the agreements between employer and employee.

The private use of a company car is a so-called "non-cash benefit" that an employee must tax according to the provisions of the Income Tax Act. There are two recognized methods of calculation: the flat-rate method and the documentation method.

· Taxation through the flat-rate method (also known as the 1% rule)

According to the 1% rule - also known as the list price method - when calculating income tax, 1% of the gross list price of the company car (the list price at the time of first registration) is added to the monthly salary. This so-called non-cash benefit increases the gross salary and thereby increases the monthly income tax.

Example: For a car with a list price of 50,000 euros, the non-cash benefit resulting from private use amounts to 500 euros per month (50,000 x 1%). On this amount, you must pay monthly income tax, solidarity surcharge, church tax, and social insurance contributions.

Often, you are also allowed to use your company car for trips between home and workplace. If so, the 1% rule applies, increasing the monthly flat-rate non-cash benefit by 0.03% of the list price for each kilometer of the one-way trip.

Example: For a commute of 20 kilometers and a list price of 50,000 euros, the additional amount added is 300 euros (50,000 x 20 km x 0.03%). This brings the total monthly non-cash benefit under the 1% rule to 800 euros, meaning you would need to declare this amount for the private use of the company car.

The flat-rate method covers all expenses related to the company car, including depreciation, fuel, interest, taxes, insurance, maintenance, TÜV, inspections, and repairs.

These costs are regularly borne by the employer and therefore do not financially burden the employee.

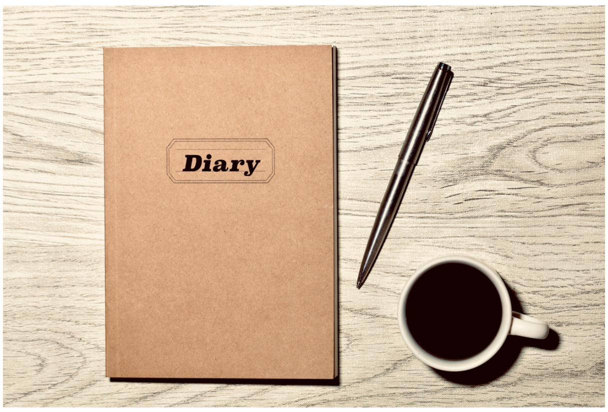
· Taxation through the documentation method (also known as the mileage log method)

Taxation of private use is also possible through the so-called documentation method. In this case, a mileage log of the company car is kept. It contains detailed information about all trips taken for business purposes. This includes: date, mileage at the start and end of the trip, exact destination, purpose of the trip, and any detours.

The basis for calculating the non-cash benefit is not the list price, but the actual purchase costs including VAT. The proportion of private kilometers out of the total kilometers driven in the year is determined. This amount is then multiplied by all related costs such as fuel, maintenance, and vehicle insurance. This gives the value of private use of the company car for the year, which must be taxed.

Example: With the company car, you drive 25,000 kilometers in a year, of which according to the mileage log, 10,000 km are for private trips. The total costs are 8,000 euros per year.

The private share is: 10,000 km / 25,000 km x 100 = 40%
The private usage value is: 40% of 8,000 euros = 3,200 euros



· Special taxation for electric vehicles from 2024

Special taxation regulations for electric vehicles effective from 2024.
From 2024, electric vehicles with a gross list price (at the time of first registration) up to 70,000 euros (previously up to 60,000 euros) can only be taxed at 0.25% of their gross list price. Electric company cars above this price threshold are subject to a tax of 0.5% of the gross list price. For electric vehicles acquired before 2024, the previous threshold of 60,000 euros will still apply, even if the vehicle is used in 2024.

These reduced rates promote the transition to more environmentally friendly alternatives and offer financial advantages for electric company cars. Thus, electric vehicles provide significant tax benefits compared to conventional vehicles.

These regulations are initially valid until the end of 2030.

Which taxation method is suitable for whom?

When choosing the optimal taxation method, the best method is always the one that generates the lowest tax liability for the employee. The amount of tax depends primarily on the extent to which the car is used for business purposes.

Therefore, the documentation method is especially recommended for company car owners who are primarily traveling for business purposes, with minimal private usage. On the other hand, the flat-rate taxation is particularly advantageous for employees who frequently use the company car for private purposes and cover many kilometers for personal use.

Costs of the company car for employers

It is clear that the company car can impact an employee's salary. However, employers are also keen on keeping the costs associated with company cars as low as possible. From the employer’s perspective, providing company cars to employees has often proven to be profitable.

This is because, on one hand, the company car reduces the gross salary and, consequently, the additional costs related to wages through the non-cash benefit. On the other hand, purchasing company vehicles offers another tax advantage: the business can reclaim the VAT on new vehicle purchases. The acquisition and maintenance of company cars can be claimed as business expenses for tax purposes.

More money instead of a company car?

Since, from a tax perspective, the company car always represents a non-cash benefit granted independently of performance to the respective employee, opting out of a company car could at best be compensated with an increase in monthly salary.

Experts suggest a simple calculation: If the company car is inexpensive and the distance to the workplace is short, the employee's tax burden will be correspondingly low. In such cases, it makes sense to compare whether converting the company car into salary is worthwhile in the specific individual case.

Important: Just as there is no general right to be assigned a company car, there is no right to convert this privilege into a salary advantage. Therefore, employees depend on the employer's discretion, and the employer may have a legitimate interest in not converting the company car into salary.

Return of the company car

When it comes to returning the company car, conflicts often arise in everyday business life between employees and employers. It is clear that once the employment contract ends, the company car must be returned to the employer. Return regulations are often clearly outlined in the company car assignment agreement and are frequently part of the company's car policy.

Things become complicated when there is uncertainty about when the employment relationship between the two parties has officially ended. For example, in cases where the employer terminates the contract, and the employee disputes this through a dismissal protection lawsuit in court.

· **Return of the company car in the case of a lawful termination of employment**

In practice, employers will typically request the return of the company car as soon as the termination of employment is issued. Employees are advised to comply with this request, even if they plan to challenge the termination legally. The reason is as follows: If the employee retains possession of the company car despite the return request, and the termination is later deemed lawful within the context of a dismissal protection case, they may be held liable for damages. The employer may have been unable to utilize the company car otherwise and may have had to arrange for a replacement vehicle.

· Return of the company car in the case of an unlawful termination by the employer

Conversely, employees are also protected if the termination issued by the employer is found to be unlawful. In such a case, they are entitled to compensation for the loss of use of the company car.

Liability for company cars

When using a company car, damages or even destruction of the vehicle can occur. The question then arises as to who is liable for accidents or other damages to the company car – the employee as the owner of the company car or the employer as the owner of the company vehicle?

The legal perspective regularly considers whether the employee can be held responsible for intentional actions or negligence. According to the principles of intra-company damage compensation or general employee liability, the employee is not solely responsible for damages that arise within the scope of the employment relationship.

· **Limitation of employee liability**

Whoever causes damage must be responsible for it. However, this principle is significantly restricted when it comes to a company car in an employment relationship. The rationale behind this limitation is the understanding that even with the utmost care and caution, mistakes can still occur. If the employee were fully liable, it would create an unpredictable risk that could potentially lead to existential threats.

Additionally, a key factor in limiting employee liability is the fact that damage is often only possible due to the employment relationship and the associated authority of the employer. It is therefore only fair to include this in the liability and relieve the employee accordingly.

The judiciary has developed three scenarios for this:

· · **Light negligence of the employee:**
No liability of the employee.

· **Moderate negligence of the employee:**
Liability is shared between employer and employee.

· **Gross negligence or intent of the employee:**
Full liability of the employee.

Important: The fact that the employer is included in the liability issue underscores the importance of the company car being in perfect technical condition. Technical defects that may lead to driving errors or even accidents with the company car can significantly affect the extent of employer liability. The same applies to the logistical planning of business trips. The employer is also responsible for ensuring that tight scheduling does not lead to driving errors.

Company car and employee absence

In an employment relationship, there are occasional periods of employee absence. These absences may or may not be work-related. The question arises whether the company car continues to be available to the employee during their absence. This is especially relevant when the employee is granted private use of the company car, which must then be appropriately taxed

· **Absence of the Employee Due to Illness**

In professional practice, employee absence due to illness is the most common reason. In cases of sick leave, the employee may continue to use the company car for private purposes.

For a prolonged illness, the employer is obligated to provide payment for up to six weeks. Since the provision of the company car is part of the compensation, the right to use the company car also ceases after this period: The employer can lawfully reclaim the company car after six weeks.

· **Absence of the Employee Due to Vacation**

When an employee is absent due to vacation, the entitlement to the company car continues. This is because the company car is considered part of the compensation package, and this does not end with the use of vacation time.

Important: If the company car is used for private purposes, the car lease agreement often includes provisions regarding vacation trips. The employer may allow or exclude private vacations with the company car. Additionally, the employer may explicitly exclude fuel costs for private vacation trips. In such cases, while the company car can be used for vacation, the employee bears the cost of fuel.

· **Absence of the Employee Due to Maternity Leave**

When an employee becomes pregnant and goes on legally mandated maternity leave, this is not the same as a medically necessary sick leave. Therefore, during the weeks before and after childbirth, the entitlement to the company car remains unchanged, and the employer is not allowed to reclaim the company car due to maternity leave.

Important: In certain cases, there is a specific ban on employment for pregnant employees. This applies, for example, when the employee performs particularly strenuous physical tasks or works with dangerous substances or is exposed to a high risk of infection. In such instances, the right to the company car continues, and the employer cannot reclaim the vehicle due to the employment ban.

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