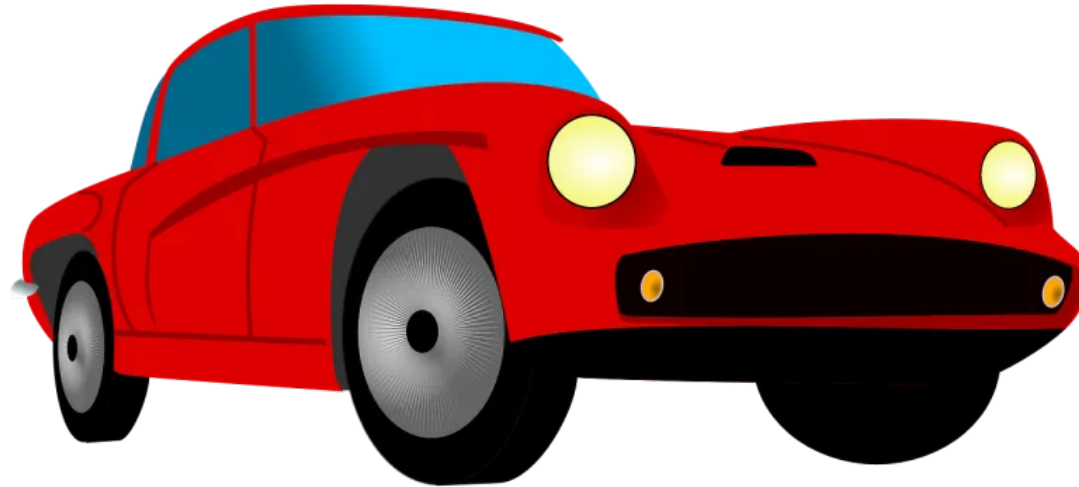


# Update decision private use car VAT

By **Editors** - June 25, 2020



## Update decision private use car VAT

The Private Use of Vehicle VAT Decree has been updated. The main changes are:

- The approval in § 2.2 in the case of a financial year that deviates from the calendar year has lapsed due to the amendment of Article 13 paragraph 4 of the OB Act.
- The judgment of the Supreme Court of 21 April 2017 has also been incorporated in § 2.2.
- Furthermore, it has been clarified in § 2.2 in which case application of the fixed amount may result in more being owed than the VAT deducted in that year for the car (s) concerned.
- In § 2.4 the concepts of 'costs incurred' and 'depreciation costs' have been clarified.
- In connection with the lapse of time, § 3.2. (Connecting BUA) and § 3.3. (Deduction for private car use (situation until 1 July 2011) has been canceled.

Decision

## Sales tax. Private use tax for car and application of BUA

Directorate General of the Tax and Customs Administration / Corporate Service

Decision of 25 June 2020, no. 2020-4366.

**The State Secretary for Finance has decided the following.**

*This decision updates the decision of 11 July 2012, No. BLKB 2012 / 639M, as last amended by the decision of 20 December 2019, No. 2019-20734. In addition to textual changes, the main changes are as follows. The approval in § 2.2 in the case of a financial year that deviates from the calendar year has lapsed due to the amendment of Article 13, paragraph 4, of the Turnover Tax Act 1968. Also in § 2.2 the judgment of the Supreme Court of 21 April 2017 has been incorporated, No. 15/02212, ECLI: NL: HR: 2017: 713. Furthermore, it has been clarified in § 2.2 in which case application of the fixed amount may result in more being owed than the VAT deducted in that year for the car (s) concerned. In § 2.4 the concepts of 'costs incurred' and 'depreciation costs' have been clarified. In connection with the lapse of time, § 3.2. (Connecting BUA) and § 3.3. (Deduction for private car use (situation until 1 July 2011) has been canceled.*

## 1 Introduction

This decision concerns the determination of VAT that is payable for the private use of (also business-used) cars. The private use of a car is taxed on the basis of Article 4 (2) of the Sales Tax Act 1968. The decree includes approval in § 2.2. to determine the VAT due for private use per car by means of a flat-rate calculation. This approval applies both to entrepreneurs who use a car for private purposes themselves and to entrepreneurs who also make a car available to their employees for private purposes. Use for private purposes (for both employees and entrepreneurs) also includes so-called commuting. Section 3 deals with the application of the Decree on the exclusion of deduction of turnover tax 1968 for the provision of parking facilities,

### 1.1. Terms and abbreviations used

This decision is based on the following terms and abbreviations:

law:

Sales Tax Act 1968

concludes:

Implementing Decree on turnover tax 1968

decision:

Implementation decision turnover tax 1968

BUA:

Exclusion of sales tax deduction of 1968

VAT:

sales tax

bpm:

Taxes on passenger cars and motorcycles

AWR:

General State Taxes Act

CJEU:

Court of Justice of the European Union

## 2. Levy related to private use of the car

### 2.1. Commuting definition

For the application of the tax on private use, commuting is understood to mean:

Traveling (and / or returning) from the place of residence or stay to the permanent workplace (s) agreed under an employment contract where people perform their work (one or more days).

If such an agreement has not been concluded, then both the entrepreneur and the employee apply that all trips (there and / or back) from the place of residence or stay to a business address of the entrepreneur <sup>1</sup> qualify as commuting.

In this definition of commuting, the costs of which are private, it is assumed that it is usually up to the employee or entrepreneur to choose his place of residence / residence. In doing so, the employee or entrepreneur takes into account his permanent workplace (which determines the length of the route) and the way in which the commuting route is completed <sup>2</sup>.

As a result of the definition, journeys (back and / or back) to places other than the aforementioned permanent workplace or the business address are not considered commuting. For example, traveling from a construction worker to the construction site will generally not be commuting (unless this has been agreed as a permanent workplace). Also, for example, traveling from a maintenance technician to a customer's address is not covered.

For the sake of clarity, it is noted that the means of transport used is not important. This means, for example, that the use of vans for commuting to work also qualifies as private

use, even if this occurs only sporadically.

## 2.2. Application flat rate

The use of cars for private purposes by the entrepreneur himself or his staff without compensation is a taxable service if the car has been entitled to a deduction (Article 4, second paragraph, of the Act). This applies both to cars that belong to the business assets of the entrepreneur and to cars that have been made available to the entrepreneur in another way and that are also used or made available for private purposes.

The statutory regulation ensures that VAT applies to the private use of (also) business used cars. This arrangement is exactly in line with actual private use and the costs actually attributable to it. The statutory regulation entails that entrepreneurs must keep track of private kilometers and car costs in their records. The private kilometers are then compared to the total kilometers driven in that year. Compared to the costs incurred for the car in question, it follows from this ratio what amount of VAT is due for the private use of the car.

### **Flat-rate scheme**

The application of Article 4 (2) of the Act requires that the records of the entrepreneur show to what extent the car has been used for private purposes and which costs are attributable to this. To limit the administrative burdens and the implementation costs, I approve the following with the application of Article 63 of the AWR (hardship clause).

### **Approval**

I approve that the VAT payable as a result of the application of Article 4 (2) of the Act is set at 2.7% of the list price (including VAT and BPM) (hereinafter: the flat rate) of the car concerned .

If this approval is used, the following applies:

- a) Application of the approval is only possible if the administration does not show to what extent the car has been used for private purposes or what costs can be attributed to it;
- b) The entrepreneur deducts (subject to Article 15 of the Act) all VAT on the car costs incurred;

c) The fixed amount is payable over a period of one year. Once a year, the entrepreneur pays VAT for private use of the car during the last tax period of the financial year (Article 13 (4) of the Act). The VAT due then amounts to 2.7% of the list price of the car in question. The amount calculated in this way will be adjusted according to time if the car is not available for private use all year round. However, if the financial year is longer than one year, VAT is always due on the last day of the calendar year in which the services are provided.

The fixed amount does not tax actual private use, but the assumed private use. That means that a certain roughness has to be accepted. The application of the flat-rate scheme may result in an entrepreneur paying more VAT during the review period than was deducted in that year. This is because the fixed amount includes depreciation costs while the VAT on the purchase is deducted in one go in the year of purchase. When applying the fixed amount, however, the maximum amount owed is the amount of the VAT deducted in the year, increased during the review period by 1/5 of the VAT charged in respect of the purchase. For the same reason, the phenomenon that more tax is owed than deductible may also arise when applying the levy in Article 4, second paragraph, of the Act. This may, for example, be the case if, in a year after the year of purchase of a VAT-taxed car, little (but private) cars are driven, and in that year little VAT is deducted from car costs. Due to the effect of Article 5a of the decision, in which the VAT on the purchase of the car is depreciated over 5 years (including the year in which the car was put into use), VAT must still be paid on the depreciation component. Due to the application of the 1.5% flat rate (see § 2.7.1.), These types of cases are expected to occur less quickly. This may, for example, be the case if, in a year after the year of purchase of a VAT-taxed car, little (but private) cars are driven, and in that year little VAT is deducted from car costs. Due to the effect of Article 5a of the decision, in which the VAT on the purchase of the car is depreciated over 5 years (including the year in which the car was put into use), VAT must still be paid on the depreciation component. Due to the application of the 1.5% flat rate (see § 2.7.1.), These types of cases are expected to occur less quickly. This may, for example, be the case if, in a year after the year of purchase of a VAT-taxed car, little (but private) cars are driven, and in that year little VAT is deducted from car costs. Due to the effect of Article 5a of the decision, in which the VAT on the purchase of the car is depreciated over 5 years (including the year in which the car was put into use), VAT must still be paid on the depreciation component. Due to the application of the 1.5% flat rate (see § 2.7.1.), These types of cases are expected to occur less quickly. Due to the effect of Article 5a of the decision, in which the VAT on the purchase of the car is depreciated over 5 years (including the year in which the car was put into use), VAT must still be paid on the depreciation component. Due to the application of the 1.5% flat rate (see § 2.7.1.), These types of cases are expected to occur less quickly. Due to the effect of Article 5a of the decision, in which the VAT on the purchase of the car is

depreciated over 5 years (including the year in which the car was put into use), VAT must still be paid on the depreciation component. Due to the application of the 1.5% flat rate (see § 2.7.1.), These types of cases are expected to occur less quickly.

Application of the levy of Article 4, second paragraph, of the Act, or the calculation of a fee for use for private purposes does not, however, have the consequence that entrepreneurs have an integral right to deduct VAT on (purchase) costs of cars that are both used for private purposes as for non-taxable transactions (such as entrepreneurs who (also) perform VAT-exempt services). After all, the VAT attributable to non-taxed transactions is not eligible for deduction pursuant to Article 15 (1) of the Act. Not being able to deduct VAT in full does mean that the fixed amount of 2.7% of the list price will be reduced proportionately.

An entrepreneur is also obliged to keep a record of this in his administration for services as referred to in Article 4, second paragraph, of the Act (Article 34 of the Act). If no records have been kept to determine the extent to which a car has been used for private purposes, the inspector will use the flat rate as referred to above to determine the turnover tax due for private use. It is then up to the entrepreneur to demonstrate that, and if so to what extent, application of this fixed amount leads to a levy that is higher than the levy that would be payable under the statutory regulation. The entrepreneur must take into account all circumstances of the case. This assessment should take into account circumstances such as [3](#) :

- the nature of the business,
- the business purposes for which the car can be used within that company, as well
- the position and activities within the company of the person using the car, and
- what is known about the way in which the car may be used or has been used for private purposes, such as commuting.

All the aforementioned circumstances will always have to be tested in conjunction with each other. If, in addition, other circumstances are important for determining the tax owed in this regard, these will also have to be taken into account.

When recourse is made to statistical data, it must be demonstrated, on the basis of circumstances as referred to above, that this data is usable in the case in question.

### 2.3. Mileage administration and commuting

If the private use of a (delivery) car consists solely of commuting, it is not necessarily necessary to keep a mileage administration to calculate the VAT owed in this respect. In that case, it is sufficient to determine the distance between home and work and to keep track of how often such trips take place. This is no different if a (delivery) car (both business and commuting) is used alternately by different employees. In that case, it is sufficient to determine the distance for all employees involved and to keep a record of the frequency per employee. In those cases, the private kilometers driven in this way are related once a year to the total kilometers driven with the car in that year in order to be able to determine the VAT due.

Instead of actually updating the frequency, a fixed number of 214 working days per calendar year can also be assumed. This number takes into account incidental working from home, illness, holidays, sabbatical leave and care leave.

The number of working days (214) can be applied proportionally in case that:

- The employee works less than 5 days a week.
- The employment starts or ends in the course of the calendar year.

Perhaps unnecessarily, the following is noted. The entrepreneur is (of course) not liable for VAT if cars are not used at all (ie for commuting or otherwise) for private purposes. Maintaining a mileage administration to determine private use is of course not an issue.

### 2.4. Normal value.

If a fee is charged for the private use of the car, it may happen that the taxable amount referred to in Article 8 (4) of the Act applies (the so-called normal value calculation) for the levying of VAT. In short, application of the normal value means that it must be determined what amount the entrepreneur would have to pay 'in the market' to be able to use the car for private purposes for (for example) an employee. The normal value calculation may encounter practical problems because the aforementioned competitive market price cannot always be determined. For the sake of reasonable application of the law, the Tax and Customs Administration, only for this situation, therefore take the position that for determining the 'normal value' for the car in question, the costs incurred by the entrepreneur for that car can be used (including the costs in respect of which no right to full or partial deduction of the VAT has arisen, such as BPM, MRB, insurance costs and the like)

and insofar as these costs are attributable to private use. The costs must also include the commercial depreciation costs.

#### 2.4.1. Fixed and normal value.

The aforementioned 'normal value calculation' may encounter problems if, for example, its use for private purposes is not known. To comply with this, I approve the following with the application of Article 63 AWR (hardship clause).

#### **Approval**

I approve under the following condition that for the determination of the VAT payable, the provisions in § 2.2, § 2.7. or § 2.7.1. The fixed amount and what applies in that case will be applied if VAT is to be calculated on the normal value because the fee charged is less than this value. There is no payment of VAT on the fee charged during the year. The fixed VAT amount is paid on the declaration in the last declaration period of the (financial) year.

#### **Prerequisite**

The following requirement applies to this approval:

- The VAT due on the fees charged is no more than what would be due according to the fixed amount.

This approval provides that the flat-rate calculation may be applied if the VAT is to be calculated on the normal value because the fee charged is less than the normal value. However, the flat rate may not be applied if the VAT due on the fees charged is more than what would be owed under the flat rate.

#### 2.5. Deduction restriction in proportion to use.

It is possible that it is clear from case law or otherwise that Article 4 (2) (a) of the Act (in certain cases) does not apply to the free provision of a lease / rental car for private purposes. In that case, Article 4 (2) (b) of the Act applies. However, if it appears that Article 4 (2) (b) of the Act also does not apply because the present service does not constitute a taxable service within the meaning of the Act, the expenses incurred relate to the private use of the car. no right to deduct VAT because the car is not used for taxable transactions. In that case, VAT can therefore only be deducted in proportion to use for taxed transactions.



## 2.6. Scheme for car (rental) companies

At car (rental) companies it regularly happens that employees or the entrepreneur use various (demonstration) passenger cars for private purposes, the value of which differs (greatly). For practical reasons, I approve the following under Article 63 of the AWR (hardship clause).

### **Approval**

I agree under the following conditions that the list price referred to in § 2.2 is based on the unweighted average list price of the cars available for private use.

### **Prerequisite**

The following two conditions apply to this approval:

- a. The entrepreneur or the employees of the car (rental) companies makes use of various (demonstration) passenger cars for private purposes.
- b. This list price serves as the basis for calculating the VAT due for all parties involved.

If the person concerned has only had a car referred to here for part of the year, this will be taken into account according to time.

## 2.7. Reduced flat rate for car bought without deducting VAT

It is possible that the entrepreneur was not able to deduct VAT when purchasing a car (for example because the car was purchased under the margin scheme). The VAT that applies to the use and maintenance is eligible for deduction insofar as the car is used for taxable transactions. In many cases, no mileage administration is available that shows to what extent the car has been used for business and private purposes.

In these cases, the VAT on the car costs is deducted on the basis of the expected use for taxed transactions, whereby the private use does not result in a deduction (unless Article 4 (1) of the Act applies because the car becomes available for a fee. to an employee). If the expected use is not known, the most accurate estimate can be assumed on the basis of objectively determined facts and circumstances, including, for example, experience data. For practical reasons, I approve the following in accordance with Article 63 of the AWR (hardship clause).

## Approval

Under the following conditions, I agree that in case the car was purchased without a right of deduction in question and the car is used for both business and private purposes, the VAT on car costs is deducted as if the car were not for private purposes is used.

## Prerequisite

The following two conditions apply to this approval:

- a. In the tax return for the last tax period of a year, the entrepreneur pays a VAT amount equal to 1.5% of the list price (incl. VAT and bpm) 4 ;
- b. The administration does not show to what extent the car has been used for private purposes or what costs can be attributed to it.

Application of this approval does not mean that entrepreneurs have an integral right to deduct VAT on the costs of cars that are used both for private purposes and for non-taxed transactions (such as entrepreneurs who (also) perform VAT-exempt services). After all, the VAT attributable to non-taxed transactions is not eligible for deduction pursuant to Article 15 (1) of the Act. The fact that VAT cannot be fully deducted does mean that the fixed amount of 1.5% of the list price will be reduced accordingly.

### 2.7.1. Extension of the application of a reduced fixed amount

If the statutory regulation of the fictitious levy (Article 4 (2) of the Act) is applied, this means that the purchase VAT after the fourth year after the year of putting into use no longer counts in determining the VAT due due to private use (Article 5a, fourth paragraph, decision). In order to bring the legal system and the flat rate more in line with each other on this point, I approve the following with the application of Article 63 AWR (hardship clause)

## Approval

I approve that after the fourth year following the year in which the entrepreneur started using the car, it is stated in § 2.2. the fixed amount will be reduced to 1.5% of the list price.

## 3. Corrections to the right to deduct VAT

### 3.1. General

This section deals with corrections that must be made on the basis of the BUA on VAT that has been deducted by the entrepreneur. The background to these corrections is that VAT must print on goods and services that, although they represent operating costs for the entrepreneur, are also of a consumer nature.

### 3.2. Parking facility

The classification as private use of commuter traffic may raise the question whether the provision of parking should be regarded as wages in kind or as being used for other personal purposes of the staff. Since Danfoss 5, it can be assumed that the provision of parking mainly has business motives in which the (possible) private element applies. For this reason, the position is taken that parking is provided for business purposes and not for the personal purposes of the staff.

### 3.3. BUA and the provision of bicycles

Occasionally, entrepreneurs provide or provide bicycles to their employees within the framework of a so-called cafeteria system. This system means that the employee pays a fee in exchange for the bicycle made available. For example, he can waive a number of days off. He may also agree that the gross wages expressed in money be proportionally reduced. A consideration in kind, for example the performance of work, can also be regarded as compensation. The entrepreneur can purchase or lease the bicycle that he provides or makes available. If this section states 'purchase price' or 'purchase price', this also includes the total lease installments to be paid. If 'purchase' or 'purchase' is stated, this also includes lease.

An entrepreneur who (whether or not in the context of such a cafeteria system) stipulates a fee for the provision or making available of a bicycle to his employees, carries out a taxed supply or service as referred to in Article 3 or 4 of the Act. If the employee's personal contribution is lower than the purchase price of the bicycle, the BUA may still be addressed in those situations if the bicycle is only provided or made available for private purposes.

If the purchase price or the production costs of the bicycle are higher than the maximum amount of € 749 including VAT referred to in Article 1, third paragraph, part c, 1<sup>e</sup>, of the BUA, I approve the following in application of Article 63 of the AWR (hardship clause).

#### **Approval**

I approve that the purchase price is reduced by the employee's personal contribution for the bicycle provided to him. If the balance does not exceed € 749 including VAT, the VAT charged to the entrepreneur for the purchase of the bicycle will be fully deductible in accordance with Article 15 of the Act.

For practical reasons, I approve the following using Article 63 of the AWR (hardship clause).

### **Approval**

I agree that the entrepreneur will not correct the deduction of the deducted VAT in respect of the bicycle provided to the employee in the context of commuting if the employee can also use the bicycle for other private purposes.

If the bicycle is not provided for a fee or for a symbolic fee by an entrepreneur who performs services exempt from VAT, the VAT relating to the purchase of the bicycle cannot of course be deducted.

If the purchase price of the bicycle provided to the employee after deduction of the employee's personal contribution exceeds € 749 including VAT, the deduction of VAT is excluded for the amount that exceeds € 749. Up to the limit of € 749 including VAT VAT is fully eligible for deduction (provided the entrepreneur is fully entitled to deduct). For lease bicycles, the VAT amount included in the lease installments can be fully deducted until the total of those deducted amounts has reached the maximum of € 130 ( $21/121 \times € 749$ ).

### **3.4. Pay in kind; free Christmas gifts**

Entrepreneurs provide their employees with goods or services such as wages in kind as referred to in Article 1, first paragraph, part c, of the BUA, such as free Christmas packages.

An entrepreneur can deduct the input tax attributable to the provision if he only performs taxable transactions and the total of the benefits in kind per employee per year remains below the limit of € 227 (Article 4, first paragraph, of the BUA). If an entrepreneur only performs exempt transactions, he is not entitled to deduct input tax, even if the limit of € 227 is not exceeded.

In the event that an entrepreneur carries out both taxed and exempt transactions, the following applies. If the purchased services are fully attributable to the exempt transactions, the entrepreneur is not entitled to deduct input tax. If the purchased services are fully attributable to the taxed transactions, he is entitled to deduct input tax, provided that the

limit of € 227 is not exceeded. If the purchased services are not specifically attributable to the taxed or exempt transactions of the entrepreneur, this is a general cost. The input tax is then deductible according to the pro rata. Exclusion of that deduction will take place if the limit of € 227 is exceeded.

#### 4. Repealed scheme

The following decision has been repealed with effect from the entry into force of this decision:

- The decision of 11 July 2012, no. BLKB 2012 / 639M ( [Government Gazette 2012, no. 14822](#) ).

#### 5. Entry into force

This decree shall enter into force on the day after the date of the Government Gazette in which it is published.

This decision will be published in the Government Gazette.

The Hague, June 25, 2020,

The State Secretary for Finance - Taxation and the Tax and Customs Administration, On behalf of this, J. de Blicq Chief Director of Fiscal and Legal Affairs

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1

This means the entrepreneur who makes the car available to the employee or the entrepreneur who has the company car at his disposal.

2

See also CJEU, October 16, 1997, C-258-95 (Fillibeck).

3

See HR, April 21, 2017, No. 15/02212, ECLI: NL: HR: 2017: 713

4

The 1.5% percentage is the 2.7% percentage less depreciation.

5

CJEU, December 11, 2008, no. C 371/07, ( [Danfoss and AstraZeneca](#) ).  
[Government Gazette 2020, 35053](#)

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