

Handing over a business car to the family, sometimes without VAT

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When withdrawing a car from business activity for its own needs or donating it to a person from the closest family, the taxpayer is not obliged to tax the VAT of such transfer. It is important, however, that at the time of purchasing the car, it is not entitled to a VAT deduction. The taxpayer should also not modify the car so as not to increase its market value.

The taxpayer has been running a business since 2015. In 2016, as a VAT taxpayer, he bought a new passenger car and received a VAT invoice. The car is included in the register of fixed assets and used for mixed purposes (both for the provision of services subject to VAT and exempt from VAT). When purchasing the car, he did not deduct VAT – he was not entitled to a VAT deduction as he was not yet an active VAT payer. Since 2017, he is already an active VAT taxpayer and deducts 50 percent. VAT on running costs (fuel, service). The taxpayer did not purchase more expensive components that would permanently increase the value of the car. The taxpayer applied for an interpretation as to whether when withdrawing the car from business or donating it to a person from the immediate family, he would have to pay 23 percent

When handover free of charge is not a delivery

In the opinion of the taxpayer, the free car transfer in this case is not understood as a "supply of goods" – in accordance with Art. 7 sec. 2 of the VAT Act – because at the time of purchasing the car, the taxpayer was not entitled to deduct VAT. **Therefore, the taxpayer believes that in this situation no VAT will arise on his side.**

Read in LEX: Free transfer of a motor vehicle in the tax on goods and services>

The director of the National Tax Information stated that the taxpayer was right. He reminded that the free transfer of goods (free of charge transfer of goods for personal purposes of the taxpayer or donation to a member of the taxpayer's immediate family) is subject to taxation after meeting the conditions contained in Art. 7 sec. 2 of the Act, i.e. if: the person making the free transfer is a taxpayer of the tax on goods and services, the transferred goods belong to his enterprise and also when the subject of the free transfer is goods for which the taxpayer was entitled, in whole or in part, to reduce the amount output tax by the amount of input tax charged on the purchase, import or manufacture of the goods or its components.

Read in LEX: If a limited liability company buys a leased passenger car, should it pay VAT by donating it to its sole shareholder? >

This means that the free-of-charge transfer of goods is considered to be a supply of goods for consideration, if the taxpayer was entitled, in whole or in part, to a deduction of input tax on their acquisition, import or manufacture, including component parts. In the case of component parts, it is important whether their replacement has resulted in a permanent increase in the value of the car. **On the other hand, if the taxpayer**

did not have the right to deduct input tax on the purchase or production of goods or components of goods that increase the value of the goods, then the free transfer of these goods remains outside the scope of taxation (the taxpayer does not have to tax them), regardless of the purpose for which they were they passed on.

See also: Civil law partnership will deduct the cost of using the car rented from the partner >>

Operating costs irrelevant

Therefore, in the case of the inquirer, the free transfer (withdrawal from fixed assets) for personal purposes of the taxpayer or donating to a person from his / her immediate family a passenger car used in business as a fixed asset will be made by the VAT taxpayer. Moreover, it should be assumed that the transfer will concern goods belonging to the taxpayer's enterprise. **However, when purchasing the car, the taxpayer did not deduct VAT (he was not entitled to deduct VAT as he was not an active taxpayer at the time). Moreover, the taxpayer did not purchase any component parts that would permanently increase the value of the car.** Thus, the last of the conditions necessary for the free transfer of the car in question to be taxable has not been met – there was no right to deduct the input tax, either in whole or in part, when purchasing the car, and the taxpayer did not purchase components that would permanently increase the value of the car .

Read in LEX: Can a taxpayer removed from the VAT register who purchased a car a few years ago under the margin procedure apply the exempted rate? >

The Director of KIS indicated that for the application of Art. 7 sec. 1 in connection with Art. 7 sec. 2 of the VAT Act, the deduction of 50% by the taxpayer does not matter. tax on purchasing fuel and servicing, as these are the running costs of the car that do not increase its value. He admitted that in the described circumstances, when withdrawing the car from business activity for his own needs or donating it to a person from his immediate family, the taxpayer was not obliged to tax such transfer, because at the time of purchasing the car he was not entitled to deduct VAT and he did not install it in the car component parts that would increase its market value.

Interpretation of the director of the National Tax Information of 20 July 2020 No. 0114-KDIP1-3.4012.309.2020.1.JF