



VAT NEWSLETTER

## German Federal Ministry of Finance on the private use of electric/hybrid vehicles and bicycles

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### 1 Background

The relationship status of VAT and wage tax/income taxes is complicated. At first glance, these two types of taxation do not seem to be connected, but at second glance, the exact opposite is, in fact, the case. If business transactions meet an interface with income tax and VAT law, the VAT partly follows the assessment under wage tax for simplification purposes. Entrepreneurs welcome this because it simplifies the fulfillment of tax obligations. On the other hand, it becomes even more complex and time-consuming, if the facts are apparently identical, but the determination of the tax base is different.

Increased environmental awareness and income tax benefits have recently made electric vehicles and company bicycles more popular. This has led to questions relating to the definition of an electric vehicle, the private use by the entrepreneur and by employees, as well as the applicability of income tax benefits in the area of VAT.

### 2 Letter of the German Federal Ministry of Finance of 7 February 2022

In a letter dated 7 February 2022, the German Federal Ministry of Finance made its first statement on the VAT treatment of electric vehicles and bicycles. Sec. 15.23 of the VAT Circular will be adapted, in conformity with the content of this letter. In addition, the new Sec. 15.24 of the VAT Circular considers the case of increasingly popular company bicycles.

The German Federal Ministry of Finance makes a distinction between "vehicles" (formerly: "company cars") and "bicycles". The definition of vehicles includes all types of motor vehicles and therefore also electric bicycles, which are required to carry a license plate, insurance or are subject to a driving license requirement (Sec. 15.23 of the VAT



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Circular). Bicycles include ordinary bicycles and electric bicycles, which are not categorized as motor vehicles under traffic law (Sec. 15.24 of the VAT Circular).

In the case of non-business (private) use, VAT is payable on the supply without consideration. The income tax benefits (0.5% or 0.25% regulation for certain electric or hybrid electric vehicles; tax exemption/reduction for (electric) bicycles) do not apply for VAT purposes.

In the case of bicycles, non-business usage cannot be determined based on a logbook due to the lack of a tachometer. Provided that the proportion of the private usage is not determined by way of an appropriate estimate, the 1% regulation can, from now on, also be applied to company bicycles for simplification purposes (Sec. 15.24 (1) of the VAT Circular). However, a distinction must be made according to the user of the (electric) bicycle:

- Use by the entrepreneur (Sec. 15.24 (2) of the VAT Circular):  
The calculation based on the 1% regulation is possible. The gross list price of the bicycle is not rounded down. A deduction of 20% can be made to compensate for costs that do not include input VAT. The amount determined in this way is the tax base for VAT purposes, i.e. the net value.
- (Remunerated) issuing to personnel (Sec. 15.24 (3) of the VAT Circular):  
The calculation based on the 1% rule is possible. The manufacturer, importer or wholesaler's RRP is rounded off to a full EUR 100 at the time of commissioning of the bicycle. No deduction is permitted for costs that do not include input VAT. The value determined in this way is a gross value from which the VAT must be deducted.  
If the value to be assessed for the bicycle is less than EUR 500, taxation may be waived.

Finally, the German Federal Ministry of Finance points out that the effects of the European Court of Justice decision *QM* (KMLZ VAT Newsletter 03 | 2021) on the question of taxation of the transfer of use of vehicles to staff are still under discussion.

### 3 Consequences for the practice

The German Federal Ministry of Finance's letter has aroused mixed feelings. It clarifies that, even in the same circumstances, VAT and wage taxes do not conform with each other. Two different tax bases must be determined. This increases the chances of error and leads to disproportionately high administrative costs for companies. In addition, the letter unfortunately leaves some important practical questions in connection with, for example, free charging electricity provided by the employer or charging in private households, completely unresolved.

On the other hand, it is very positive that the 1% regulation now applies to all (electric) bicycles. Two letters issued by the Lower Saxony Regional Tax Office and the Bavarian State Tax Office, dated 3 August 2017 and 19 November 2021, respectively had, in certain constellations, suggested otherwise. Leasing contracts for (electric) bicycles are often designed for full amortization over 36 months. In a simplified manner, this means leasing costs of 2.78% (= 100/36) per month. The application of the 1% regulation consequently leads to a significantly lower VAT burden. The letter is to be applied to all open cases. Affected entrepreneurs should change their accounting and immediately check whether they can submit refund applications for the past using the 1% regulation.