ADVANCING E-MOBILITY: SUBSIDIES AND TAX ASPECTS

E-mobility currently appears as a basic building block for the turnaround in energy policy in order to sustainably reduce environmental pollution. The available range covers e-bikes, electric motorbikes, e cars, e-buses and e-trucks. With regenerative/renewable solutions for electric energy, e-mobility should become low-emission; traffic-related emissions and air pollutants as well as noise could decrease and ultimately reduce the dependency on fossil fuels.

The legislator is therefore promoting a transition to e-mobility with subsidies and tax benefits. The most important measures and their consequences are presented below.

I. GRANTS

1. ENVIRONMENTAL BONUS AND INNOVATION PREMIUM

In order to achieve the 2030 climate targets, an amended directive to promote sales of electrically powered vehicles (environmental bonus) came into force on 19 February 2020. The so-called environmental bonus is a joint contribution by the German government and manufacturers aimed at boosting sales of electrically powered vehicles. Eligible for the bonus are purchased or leased electric vehicles[1], hybrid electric vehicles[2] or young used electric vehicles[3]. The responsible Federal Office of Economics and Export Control has published a list of eligible vehicle models. The subsidy is limited until 31 December 2025.

Further amendments to the above-mentioned directive came into force on 8 July 2020 and 16 November 2020. The amendment effective from 8 July 2020 introduced the so-called innovation premium. Due to the adjustment on 16 November 2020, the environmental bonus can also be combined with other funding programs. The prerequisite for this is that the respective funding provider has entered into an agreement with the German Federal Ministry of Economics (BMWi). In addition, it is stipulated that the subsidy for leasing will be staggered depending on the duration of the lease if the contract has a term of less than 24 months.[4]

a) Environmental bonus

The environmental bonus can be applied for with registration from 5 November 2019 up to and including 3 June 2020 and - as per current knowledge - from 1 January 2023 up to and including 31 December 2025 at the Federal Office of Economics and Export Control. It should be noted that - according to the new federal government[5] - from 2023 onwards only electric vehicles that have been confirmed to have a positive climate protection effect will be subsidized; this is to be defined by the share of electric driving and the minimum electric range.

[1] Pure battery electric vehicle as defined in § 2 No. 2 EmoG (Elektromobilitätsgesetz) or fuel cell vehicle as defined in § 2 No. 4 EmoG.

[2] Externally chargeable hybrid electric vehicle as defined in § 2 No. 3 EmoG.

[3] In the case of a second registration, the vehicle must have been registered for the first time for a maximum of 12 months, have a maximum mileage of 15,000 km and have not been subsidized by the environmental bonus or a comparable government subsidy in another EU country.

[4] The amounts stated below apply to a lease term of more than 23 months. Different, lower premiums are granted in each case for a lease term of 6 to 11 months or 12 to 23 months.

[5] BMWI, press release of 13.12.2021.

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For the period 4 June 2020 until presumably 31 December 2022, the innovation grant shown under b) will be paid.

List new price up to EUR 40,000:	Federal share	Manufacturer share	Purchase premium
Battery electric or fuel cell vehicles	3,000 EUR	3,000 EUR	6,000 EUR
Externally chargeable hybrid electric vehicle	2,250 EUR	2,250 EUR	4,500 EUR

List new price up to EUR 65,000:	Federal share	Manufacturer share	Purchase premium
Battery electric or fuel cell vehicles	2,500 EUR	2,500 EUR	5,000 EUR
Externally chargeable hybrid electric vehicle	1,875 EUR	1,875 EUR	3,750 EUR

b) Innovation premium

For the period from 4 June 2020 to 31 December 2022, the federal share of the environmental bonus will be doubled for a limited period and paid out as the so-called innovation premium. The increased premium can be applied for the following purchased or leased vehicles:

- new vehicles registered after 3 June 2020 and up to and including 31 December 2022 and
- young used vehicles whose first registration was effected after 4 November 2019 and the second registration takes place between 3 June 2020 and 31 December 2022.

List new price up to EUR 40,000:	Federal share	Manufacturer share	Purchase premium
Battery electric or fuel cell vehicles	6,000 EUR	3,000 EUR	9,000 EUR
Externally chargeable hybrid electric vehicle	4,500 EUR	2,250 EUR	6,750 EUR

Listenneupreis bis EUR 65.000:	Federal share	Manufacturer share	Purchase premium
Battery electric or fuel cell vehicles	5,000 EUR	2,500 EUR	7,500 EUR
Externally chargeable hybrid electric vehicle	3,750 EUR	1,875 EUR	5,625 EUR

2. COMMERCIAL AND INCOME TAX TREATMENT OF GRANTS

Even though the grants in the form of the environmental bonus or the innovation premium are generally non-repayable grants from the state, companies entitled to receive them must take them into account as operating income for commercial and tax purposes.

A fundamental distinction must be made between investment grants and expense or income grants. An investment grant is primarily awarded for the acquisition or production of an asset; an expense or income grant is also intended to support other projects, such as the leasing of certain electric vehicles.

In the case of investment grants, the grant recipient has a choice: He can immediately tax the grant as operating income or deduct it from the acquisition or production costs of the assets. If the recipient opts for immediate taxation, however, a deferred income item must be disallowed for income tax purposes - in contrast to the procedure under commercial law.

Expense and income grants are operating income to be recognized immediately; capitalization is not an option. However, income must be recognized on an accrual basis over the period of the grant by means of deferred income. This applies equally to the commercial and tax balance sheets.

II. TAX INCENTIVES

With the “Act on the Further Fiscal Promotion of Electromobility and on the Amendment of Other Tax Regulations”[6], various tax incentives came into force in December 2019. The BMF takes up these, among other things, in its letter dated 5 November 2021. The subsidies always relate to electric vehicles, zero-emission electric vehicles, hybrid electric vehicles and electric bicycles (e-bikes). Their prescribed technical requirements must be taken into account in each case for the “vehicles” listed below.

1. INCOME TAX

a) Commercial electronic utility vehicles or bicycles: special depreciation pursuant to § 7c EStG

The special depreciation allowance pursuant to § 7c of the German Income Tax Act (EStG) can be used for the first time for new electric utility vehicles or electrically powered cargo bicycles acquired after 31 December 2019 and before 1 January 2031, but not for hybrid electric utility vehicles. The prerequisite is the acquisition of new vehicles that have not been used to date; used electric utility vehicles and electrically powered cargo bicycles are therefore not eligible. Furthermore, the respective vehicle or cargo bike must be part of the fixed assets; the special depreciation can thus only be claimed in the area of profit income, not in the area of surplus income.

[6] BGBl. 2019 I, 2451.

NOTE: However, the regulation as a whole will only come into force after the conclusion of the state aid proceedings conducted by the EU Commission, which is why § 7c EStG is not yet applicable law at present.

In addition to the standard straight-line depreciation (§ 7 (1) EStG), 50 % of the actual acquisition costs can be claimed as special depreciation in the year of acquisition. The law does not provide for a limit on the amount. However, (subsequent) reductions in the assessment basis (e.g. environmental bonus) must be taken into account.

The special depreciation is only eligible in the year of acquisition. It is not possible to spread it over several years, to retake it or to deviate from the 50 % rate. When claiming depreciation pursuant to § 7c EStG, no other special depreciation, such as that for the promotion of small and medium-sized enterprises within the meaning of § 7g (5) EStG, may be claimed for the same asset; however, the claiming of the investment deduction within the meaning of § 7g (1) EStG is not excluded.

The acquisition costs as well as the information on the requirements are to be transmitted to the tax authorities by remote data transmission in accordance with officially prescribed data records.

b) Private use of company electric and hybrid electric vehicles

With regard to the taxation of the non-cash benefit from the private use of company electric vehicles and externally chargeable hybrid electric vehicles, a number of concessions have already been introduced in recent years (§ 6 (1) No. 4 EStG). These have since been extended or even improved in some cases. The subsidies benefit freelancers and tradespeople, but also employees with company cars. Depending on the time of initial registration, different determination variants for the assessment basis are to be applied within the framework of the 1 % method or the (driver's) logbook method:

For all electric and hybrid electric vehicles purchased from 2013 to 2018, the gross list price is reduced by the costs for the battery system included in the calculation of the non-cash benefit ("geldwerter Vorteil"); this also applies correspondingly to the logbook method.[7] Since 2019 - and according to the current legal situation until 2030 - the subsidization of electric and hybrid electric vehicles is no longer based on the flat-rate reduction described above, but on bisection of the gross list price.[8]

Only if the conditions for bisection of the assessment basis are not met is the gross list price for vehicles that were or will be acquired before 1 January 2023 to be reduced by the cost of the battery system, if applicable. The reduction and maximum amounts to be used for this purpose depend on the year of acquisition of the vehicle. If electric and hybrid electric vehicles are purchased as used vehicles, the reduction amount is based on the year of initial registration. The scale is graduated as follows:

Acquisition year	Reduction amount per kWh Storage capacity EUR	Maximum amount EUR
2013 and earlier	500 EUR	10,000 EUR
2014	450	9,500
2015	400	9,000
2016	350	8,500
2017	300	8,000
2018	250	7,500
2019	200	7,000
2020	150	6,500
2021	100	6,000
2022	50 EUR	5,500 EUR

From the 2020 assessment period, there will even be a **quartering** of the gross list price for purely electric vehicles if the vehicle acquired in the acquisition period from 1 January 2019 to 31 December 2030 has no carbon dioxide emissions per kilometer driven and the gross list price of the vehicle does not exceed EUR 60,000; if the gross list price exceeds EUR 60,000, the gross list price will remain halved.

For externally chargeable hybrid electric vehicles, only the **bisection** of the gross list price applies if the vehicle has carbon dioxide emissions of 50 g CO²/km or less or the minimum range is 40 kilometers.[9] From 2022, the minimum range to be achieved will be subject to progressively stricter requirements:

- 1 January 2022 to 31 December 2024: range of at least 60 kilometers
- 1 January 2025 to 31 December 2030: range of at least 80 kilometers

[7] Administrative Assistance Directive Implementation Act of 26 June 2013, BGBl. 2013 I, 1809.

[8] Act to Promote Electric Mobility in Road Transport of 7 November 2016 (BGBl. 2016 I, 2498), Act to Avoid Losses of Value Added Tax on Trade in Goods on the Internet and to Amend Other Tax Regulations of 11 December 2018 (BGBl. 2018 I, 2338) and Act to Further Promote Electric Mobility for Tax Purposes and to Amend Other Tax Regulations of 12 December 2019 (BGBl. 2019 I, 2451) and Second Corona Tax Assistance Act of 29 June 2020 (BGBl. 2020 I, 1512).

[9] § 3 (2) No. 1 or 2 Electromobility Act.

However, the specifications regarding pollutant emissions of no more than 50 g CO^2/km remain unchanged.

As in the past, the statutory cost cap must be observed when determining the non-cash benefit, i.e. the lump-sum valuations must be applied at a maximum of the amount of the total costs of the vehicle.

Electricity costs are already compensated when applying the 1 % method.

Under the logbook method, the expenses, e.g. rent, leasing costs, etc., are only taken into account at 50 % or 25 % for determining the non-cash benefit. In addition, the costs for the electricity power charging provided tax-free by the employer must be deducted from the total costs; the costs for the charging device are also not taken into account.

The changes in the technical requirements as well as in the calculations of the 1 % method or the logbook method are also applicable to electric bicycles[10] to be classified as motor vehicles under traffic law.

For VAT purposes, no reduction may be made to the gross list price for electric and hybrid electric vehicles. Similarly, under the logbook method, no reduction is made to the total expenses incurred by expenses attributable to the battery system for electric and hybrid electric vehicles.

c) Tax exemption for electric charging (§ 3 No. 46 EStG)

The benefit granted by the employer for the electric charging of a private used electric or hybrid electric vehicle at a fixed operational facility of the employer or an affiliated company is exempt from income tax if the charging facility is in addition to the remuneration owed in any case.[11] This also applies to company charging facilities temporarily provided to the employee for private use. With the BMF letter dated 29 September 2020, the tax authorities now extend this tax exemption to the free or discounted charging of miniature electric vehicles.[12]

The regulation has been in effect since 1 January 2017 and is currently applicable until 31 December 2030.

However, the benefit does not apply to charging at a third party (e.g. electric charging stations); in this case, however, the exemption limit for benefits in kind in the amount of EUR 44 (from 1 January 2022: EUR 50) can be claimed, provided it has not already been exhausted. Likewise, the tax exemption cannot be extended to the use of charging devices by business associates or customers.

The employer may opt for a flat-rate taxation of 25 % pursuant to § 40 (2) sentence 1 No. 6 EStG for the provision of a charging device or related allowances to its employees at a reduced price or free of charge.

d) Tax exemption for an electric bicycle (§ 3 No. 37 EStG)

An electric bicycle that does not meet the requirements of a motor vehicle[13] is to be classified as any common non-motorized bicycle. If the employer covers the costs of a bicycle in addition to the remuneration owed anyway, the benefit is free of tax and social security contributions. In accordance with the legislator's intention to promote environmentally friendly activities, this benefit does not reduce the employee's expenses for his commute between home and the first place of work; therefore, it is not offset against the so-called commuting allowance ("Entfernungspauschale").

However, the tax exemption does not apply if the bicycle is co-financed by a proportionate salary conversion of the employee. In addition, private use must be taken into account using the 1 %, 0.03 % or logbook method. If a standard bicycle model is provided, the flat-rate taxation of 25 % pursuant to § 40 (2) sentence 1 no. 7 EStG must be observed.

The regulations were initially set to expire in 2021, but were extended to the end of 2030 by the "Act to Further Promote Electric Mobility for Tax Purposes and to Amend Other Tax Regulations" of 12 December 2019.[14]

e) Reimbursement of expenses for electricity costs (§ 3 No. 50 EStG)

If electricity costs for a private electric or hybrid electric vehicle of the employee are reimbursed by the employer, this constitutes taxable remuneration. However, if costs are reimbursed for a company electric or hybrid electric vehicle that has been provided to the employee for private use, this is a reimbursement of expenses that is exempt from tax and social security contributions.

The BMF letter dated 26 October 2017 already allowed fixed flat rates to simplify the reimbursement of expenses. In the BMF letter dated 29 September 2020, the flat rates for charging a company car were increased as follows from 1 January 2021:

	Charging facility at the employer's premises		No charging facility at the employer's premises	
	1.1.2017 until 31.12.2020	1.1.2021 until 31.12.2030	1.1.2017 until 31.12.2020	1.1.2021 until 31.12.2030
Electric vehicle	EUR 20	EUR 30	EUR 50	EUR 70
Hybrid electric vehicle	EUR 10	EUR 15	EUR 25	EUR 35

[10] Speed over 25 km/h; liability insurance and registration required; e.g. s-pedelec or e-bikes.

[11] For § 3 no. 46 EStG, it does not matter who owns the vehicles. It can be a private vehicle of the employee or one of the employer, which the employer has left to the employee for private use.

[12] Vehicles with an electric drive system and a maximum speed of not less than 6 km/h and not more than 20 km/h, e.g. pedal scooters or Segways.

[13] Bicycles are not motor vehicles if they are equipped with an electric auxiliary drive of 0.25 kW or less and do not reach a speed of 25 km/h or more.

[14] BGBl. 2019 I, 2451.

If the costs for private charging of the company car are higher than the flat rates, the actual costs proven via a separate electricity meter (stationary or mobile) can be reimbursed free of tax and social security contributions. Records for a representative period of three months are considered sufficient to prove the business use portion of the otherwise private electricity costs. In addition to the purchase price for the kilowatt hours of electricity consumed, a basic price to be paid must also be taken into account on a pro rata basis.

f) Additionality criterion

All of the above-mentioned benefits can only be claimed if the above-mentioned benefits are granted in addition to the remuneration owed in any case. Salary conversions are excluded. In this regard, the BMF referred to the letter dated 5 February 2020, according to which the additionality criterion was only met if

- the benefit is not offset against the entitlement to remuneration,
- the entitlement to remuneration is not reduced in favor of performance,
- the use or earmarked benefit does not take the place of an already agreed future increase in the remuneration is granted and
- if the service is discontinued, the remuneration is not increased.

With the JStG 2020 of 21 December 2020[15], the additionality criterion was legally regulated with exactly this wording in a new § 8 (4) EStG to safeguard the legal situation.

2. TRADE TAX

The promotion of electromobility also includes a concession in the trade tax additions within the meaning of § 8 No. 1 letter d) of the German Trade Tax Act (GewStG). If purely electric vehicles or externally chargeable hybrid electric vehicles (carbon dioxide emission of no more than 50 g per kilometer driven or range with exclusive use of the electric drive unit of at least 60 km[16]) are rented or leased, the expenses need only be added at 10 % (previously or, in the case of other assets, 20 %) when determining the trade income. This also applies to bicycles, which are not motor vehicles. However, the relief is only applicable to charges based on contracts concluded from 2020 onwards.

The related expenses should therefore be recorded in a separate bookkeeping account (SKR 03: 4575; SKR 04: 6565).

3. VAT

The environmental bonus or similar is a genuine grant pursuant to section 10.2 (7) of the Circular on Application of the German VAT Act (UStAE), as it is granted independently of a specific service and is paid in the predominantly public interest (promotion of environmental policy aspects). A genuine grant is not taxable for VAT purposes and is therefore no subject to tax.

Commercial lessees may assign the claim to the federal share of the environmental bonus to the lessor or the dealer. If assigned to the lessor, the environmental bonus constitutes a special lease payment subject to sales tax. In the case of assignment to the dealer, this is a pass-through payment. In both cases, the lessee is entitled to an input tax deduction.

4. MOTOR VEHICLE TAX

Electric vehicles as defined in § 9 (2) of the German Motor Vehicle Tax Act (KraftStG)[17] are currently exempt from motor vehicle tax for a period of ten years from the date of first registration (§ 3d KraftStG). This applies to first-time registrations from 18 May 2011 to 31 December 2025[18]. The tax exemption applies until 31 December 2030 at the longest. The regulation also applies accordingly to vehicles that have been converted to an electric car pursuant to § 9 (2) KraftStG between 18 May 2016 and 31 December 2025. Hybrid electric vehicles are excluded from the benefit. After the expiry of the ten-year period or after 31 December 2030, a 50 % tax exemption of the motor vehicle tax actually payable can be claimed.

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[15] BGBl. 2020 I, 3096.

[16] For contracts from 1 January 2025, a range of 80 km is required, cf. § 36 (4) GewStG.

[17] This only applies to vehicles powered exclusively by electric motors that are fed completely or predominantly from mechanical or electrochemical energy storage systems or from zero-emission energy converters (§ 9 (2) KraftStG).

[18] Seventh Act Amending the Motor Vehicle Tax Act of 16 October 2020, BGBl. 2020 I, 2184.

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