Flash News

Company car tax — New Circular introduces cap on the taxable benefit in kind in the hands of employees purchasing a company car

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On 10 March 2015, the Luxembourg Direct Tax Authority issued Circular 104/1 on the assessment of certain benefits in kind awarded by employers to their employees.

Compared to the previous Circular of 20 November 2014, this Circular provides details on how employees can deduct the purchase price of the vehicle under the so-called 100% cap method.

Background

A common practice in Luxembourg is for employers to provide their employees with a company car through leasing arrangements including a repurchase option which can be exercised at an agreed price at the end of the lease. The option is subsequently transferred to the employee, who can then purchase the vehicle at a price which is generally lower than its market value.

A few years ago, and after a lengthy period of leniency, the Direct Tax Authority moved to tax the benefit in kind arising from the difference between the vehicle's estimated market value on the purchase date and its actual purchase price, sparking much debate and several legal proceedings brought by taxpayers before the Luxembourg Administrative Tribunal. In October 2013, the Tribunal rendered its decision confirming the legality of taxation applied to benefits in kind derived from the purchase of a company car (cf. Flash News published in January 2014 http://www.pwc.lu/en/tax-consulting/docs/pwc-tax-190214-fr.pdf).

On 25 September 2014, the Luxembourg Administrative Court confirmed this decision, but qualified the Tribunal's decision by capping the taxable benefit in kind (hereinafter **the Decisions**).

New cap on the taxable benefit in kind derived from the purchase of a company car

The Luxembourg Administrative Court has ruled that employees may not be taxed on more than 100 % of the company car's value, taking into account the total value of the benefit in kind derived from (i) using the car during the lease (assessed at a monthly flat rate of 1.5 % of the purchase value of the vehicle); and (ii) purchasing the vehicle at a preferential price at the end of the lease.

The principle of capping the taxable benefit in kind at 100% of the car's value was also included in the circular issued by the Direct Tax Authority. Moreover, the Circular also provides a flat-rate scale setting the estimated value of the vehicle based on its age at the time of the purchase. Interestingly, where the flat-rate value of the vehicle is disputed, the Circular also provides that the employer can request a certified valuation by an industry professional.

Example

A company car is provided to an employee by means of a leasing contract concluded for a duration of 4 or 5 years. The vehicle's purchase price (new, including VAT and excluding rebates) is EUR 40,000. The taxable monthly benefit in kind amounts to EUR 600 (1.5% x EUR 40,000).

The repurchase option at the end of the lease is valued at 10% of the purchase value of the vehicle (i.e. EUR 4,000). Based on the flat-rate scale provided in the Circular, the car's value amounts to 35% of its purchase value after 4 years, and to 25% of its purchase value after 5 years.

The employee does not contribute to the leasing costs.

Assessment of the taxable benefit in kind in the hands of the employee derived from the purchase of the company car

	For a lease duration of 4 years	For a lease duration of 5 years
Taxable benefit in kind (Circular)	€10,000	€6,000
Taxable benefit in kind (100% cap)	€7,200	€0
The taxable benefit in kind is reduced by	€2,800	€6,000

Conclusion

This Circular specifies the terms under which the taxable benefit in kind is assessed under the 100% cap method (deduction of the purchase price paid by the employee). This means that, in the case of long-term leases, the purchase of a company car (not exceeding a certain value) can be attractive for the employee from a tax perspective.

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