Tax administration clarifies position on decarbonizing your company car fleet.

The Minister of Finance has set high stakes to reduce the carbon emission levels of your (future) company car fleet. The transition to emission-free cars is inevitable, at least from a tax and parafiscal point of view. Newly purchased fossil fuel cars will as of 01/07/2023 inevitably lose their tax deductibility for the employer and result in a (gradually) higher CO2 solidarity contribution. As a result, the cost of your company car fleet will rise and a doubling of the current cost is on the medium to long turn unavoidable. This is at least the case if you continue to renew after 01/07/2023 your company car fleet with fossil fuel cars.

⇨ *As an HR-professional it is your duty to act with wisdom* ***when managing your current company car fleet,*** *as your are not left without tools to mitigate the upcoming tax increments.*

1 Pivotal moments

To understand the upcoming decarbonization initiative, two key moments must be recognized.

First of all, **31/12/2022** is significant for the tax deductibility of the fuel cost for plug-in hybrid cars. Indeed, for plug-in hybrid cars purchased as of 01/01/2023 and beyond, the tax deductibility of the fuel cost is limited to only 50% and hence separated from the tax deduction percentage that applies based on the car's CO2 emission. By doing so, the minister aims at encouraging plug-in hybrid car drivers to drive as much as possible emission-free (read electric).

The second pivotal moment is **01/07/2023**.

All fossil fuel cars purchased between now and 01/07/2023 will continue to enjoy the same tax deductibility rules as today (with the exception for fuel costs for plug-in hybrid cars if not purchased prior to 31/12/2022 (see above).

For fossil fuel (and therefore also plug-in hybrid) cars purchased between 01/07/2023 and 31/12/2025, the same tax deductibility rules will continue to apply but with a **ceiling of 75%** whereby this ceiling will gradually decrease to **50%** (for cars purchased from 01/01/2026), 25% (for cars purchased from 01/01/2027) and **0%** (for cars purchased from

01/01/2028). At the same time, the minimum deductibility of 50% and 40% for cars with CO2 emissions lower and higher than 200gr/km will also disappear.

In practice, few of these fossil fuel cars will reach the set ceiling. Consequently, tax deductibility will decline faster than the ceilings suggest and, correspondingly, the cost of your company car fleet will increase faster !

For fossil fuel (including plug-in hybrid) cars already in use, and continued to be used after 01/07/2023, nothing changes.

2 And there is also the CO2 solidarity contribution

For fossil fuel (including plug-in hybrid) cars purchased from 01/07/2023, the monthly CO2 solidarity contribution, calculated according to the type of fuel and CO2 emissions of the car, will **be increased by a factor x2.25** and this until 31/12/2024. That factor will gradually increase further to **x2.75** (01/01/2025 till and including 31/12/2025), **x4** (01/01/2026 till and including 31/12/2026) and **x5.5** (from 01/01/2027 onwards).

In many cases, *the CO2 solidarity contribution to be paid by the employer* ***will, over time, exceed the annual benefit in kind that is to be charged to the employee.***

The combination of the tax deduction limitation and the increased CO2 solidarity contribution will undoubtedly have a significant financial impact on the cost of your company car fleet. The fact that, as a social security contribution, this CO2 solidarity contribution remains a 100% tax-deductible cost for the employer (at least for the time being) cannot distract us from the observation that the purchase of a fossil fuel car will become very expensive in the (very) near future.

3 But when can exactly this "purchase" of a vehicle be recorded ?

The tax authorities have recently clarified that they understand the purchase of a car to take place at the moment in time, **on which the finalized purchase order is signed by both buyer and seller**.

For leasing agreements, **the date of signing the leasing agreement applies**. Ideally, to avoid any doubt about the "exact" order date, the leasing company should immediately after the car leasing agreement is signed, place an order with the dealer, i.e. also before 31/12/2022 or 01/07/2023.

At the same time, the tax authorities also warn against situations of simulation by postponing the delivery date (i.e. following the signing of an order or lease contract) as far into the future as possible in order to enjoy the existing tax rules for as long as possible. Since extreme delivery delays are no longer an exception today, it is recommended to be able to prove that the delay can be considered to be a genuine force majeure situation (for example by press releases regarding supply chain difficulties that negatively impacted and slowed down manufacturing output, and various reminders to the dealer asking about the delivery time).

When purchasing a used car, the tax rules applicable at the moment in time of that second-hand deal will apply. In other words, if you buy a used car in 2025, the tax rules applicable at that moment in time will apply.

For leasing agreements with a purchase option (which is already provided for in the leasing agreement at the time of conclusion of the leasing agreement (!)), the rule is that when the purchase option is lifted, the tax rules will continue to apply as they existed at the time of conclusion of the leasing agreement.

For its part, the NSSO (National Social Security Office) has not yet announced any further clarifications, **but it can be expected that this ad ministration will apply the same rules as the tax administration.**

4 What next?

It goes without saying that on short notice important decisions need to be taken.

In our opinion, the decision tree starts with the question of whether the company car still has a future in your company and, if so, to what extent the current company car fleet and company car policy should be reshaped to meet the future tax (and parafiscal) challenges.

This process cannot take place in a void without any consideration of the replacement dates of your current company cars.

For cars **purchased** on a date before 01/07/2023, there is no manifestly urgent problem as such.

You can **continue to make the car available under the same tax (and parafiscal) rules as long as the car continues to be used**. This obviously grants you extra time to take a future decision respecting a cost-saving strategy in anticipation of increased market supply and falling prices for carbon free cars.

As far as **leased** vehicles are concerned, a different picture is to be drawn.

First of all, leased cars are limited to a specific period. You can extend the lease period but such approach has limits.

For leases with a purchase option, **lifting the purchase option again** provides **additional time** to make a decision around the future of the company car fleet. By lifting the purchase option, the car becomes not only the property of the employer but also the same historical tax will be levied as was applicable at the time the leasing agreement was concluded (see above), even if the lifting of the purchase option is realized after 01/07/2023.

However, you can also decide **not to exercise the purchase option** on expiring leases **and switch to buying new cars**. If you were to order these new cars before 01/07/2023, you can still apply the current fiscal and parafiscal rules for quite some time. This also provides additional reflection time for you as an employer.

Finally, you can also decide **not to exercise** the **purchase option and lease again a car**. It is best to do this before 31/12/2022 for plug-in hybrid cars and in any case before 01/07/2023. After all, all expiring leases that are replaced after 01/07/2023 will irrevocably fall under the new fiscal and parafiscal rules. If you then want to return towards a 100% tax deductibility and no factor increases with respect to the CO2 emission solidarity contribution, you are actually obliged to switch to emission-free cars.

⇨ **Of course, each of these options must be financially tested.**

5 What is the alternative ?

As an employer, you can also decide to discontinue the provision of a company car and introduce an extinguishment scheme in that context (e.g. after expiry per lease agreement). This is a decision that also requires due consideration from an employment law perspective because you can as an employer not proceed with such decision without the employee's consent. Such move will necessitate a supportive effort within the undertaking. Unsurprisingly, we regularly see the theme regarding the abolition of company cars brought up by foreign parent companies.

But employers should not necessarily sit idly by. Solutions do exist.

For example, there is the **mobility budget** that can usher in a soft switch to a non-company-car policy where you would as an employer then eliminate the first pillar and offer your employees sustainable forms of mobility within the second pillar (in combination with the third pillar). On the other hand, there is also the hard approach where you replace the car with a personal **car allowance**. You can then determine this car allowance yourself, depending on all kinds of parameters that you set within the company strategy on mobility. With the car allowance, the employee can then switch to a personal lease, for example.

And of course, there is also the classic **cafeteria plan**.

***

Do not hesitate to contact us should you have any questions about company car taxation and social security. We will be happy to help.

Gunther Valkenborg (gunther.valkenborg@mvvp.be)