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GREEN(ER) TAX LEGISLATION: WHEELS IN MOTION

The law of 25 November 2021 regarding the tax and social greenification of mobility leaves little to the imagination. Carbon emission company cars will be fiscally discouraged and will in all likelihood gradually disappear from the street scene. As of assessment year 2027, the deduction of professional costs related to the use of emission vehicles will be completely abolished, as a result of which the tax advantage of these vehicles will disappear. The end goal of electrifying the Belgian company car fleet which the government ultimately envisages, ought to be a more clear and simple system. In the transition period, however, an excessively complex system has been put into place. In the run-up to the RSM Webinar on the new tax treatment of car expenses, we outline below the main principles of the upcoming reform of the tax treatment of company cars.

TAX DEDUCTIBILITY PERCENTAGE COMPANY CARS

Fiscal year 2021

Since assessment year 2021 the tax deductibility of car costs is calculated based on the formula 120% – x fuel coefficient x number of grams of CO_2 per kilometer. The deductibility percentage as a result of this formula can, however, never exceed 100% and never be below 50%, except for vehicles with CO_2 emissions of at least 200 grams per kilometer. Regarding these last-mentioned vehicles, the bottom limit is reduced to 40%.

The law of 25 November 2021 on the tax and social greening of mobility implements a drastic reform of the above-mentioned principle in several steps over the span of multiple years. In this month's Tax Insight, we will go further into depth into the various changes and tax incentives of the upcoming tax reform.

Assessment year 2024: rechargeable hybrid cars – diesel and gasoline costs

As of assessment year 2024, the formula for determining the tax deductibility of professional expenses for diesel and gasoline costs will include a deviation for rechargeable hybrid vehicles purchased, leased or rented as of January 1st, 2023. From hence on, the upper limit of the tax deductibility of these hybrid cars' gasoline and diesel costs will be capped at a maximum of 50%. The electricity costs of these vehicles will not be limited, as the legislator's main intention is to encourage by all means the use of the electric motor.

Assessment year 2026: start 'phasing out' scenario

In order to prevent taxpayers from being enticed to invest massively in fossil fuel cars before January 1st, 2026, the legislator deemed it necessary to implement a transitioning scenario ('phasing out principle') for cars purchased, leased or rented from 1 July 2023 to 31 December 2025.

The current deduction limitation as in effect from assessment year 2021 will be maintained during the transitional phase albeit with some slight modifications:

- The lower limits of 40% (vehicles with CO_2 emissions of at least 200 grams per kilometer) and 50% deductibility will disappear. The deduction formula will thus be applied without any guaranteed minimum deduction
- The upper deduction rate is capped at a maximum of 75%, even if the formula would amount in a higher deduction rate, unless the company car is zero-emitting (in which case the deduction rate is 100%)
- Regarding vehicles for which no data on CO_2-emission levels are available from the Vehicle Registration Office, the rate of deduction will be set at 0%

Assessment year 2027: fossil fuel cars – car costs no longer deductible

The drastic impact of the reform will leave its footprint as from 2026. As from assessment year 2027 (linked to financial years starting on or after 1 January 2026), the deduction of professional expenses related to the use of emission vehicles (i.e. cars that emit CO_2, including rechargeable hybrid vehicles) will be abolished outright. The deduction limitation as we know it today will therefore be converted into a deduction prohibition for company cars purchased, leased or rented as from 1 January 2026.

In order to give companies some breathing space to prepare for this drastic change, the legislator provided for two transitional measures, these being a *grandfathering*-rule aimed at company cars purchased, leased or rented before 1 July 2023 and a phasing-out scenario (supra) for vehicles purchased, leased or rented in the period between 1 July 2023 and 31 December 2025.

Pursuant to the *grandfathering* rule, the current deduction limitation as in force since assessment year 2021 will be maintained for company cars purchased, leased or rented prior to 1 July 2023. As a result, the existing deduction rule of today remains fully applicable during the entire economic lifespan, or the entire lease or rental period, of these vehicles.

The aforementioned *phasing-out* scenario applies to company cars purchased, leased or rented from 1 July 2023 to 31 December 2025. For these cars the existing deduction limitation principle remains 'temporarily' applicable, given that the maximum deduction percentage of 75% is reduced to 50% as from assessment year 2027 (linked to a taxable period starting at the earliest on 1 January 2026) and 25% as from assessment year 2028 (linked to a taxable period starting at the earliest on 1 January 2027), to finally arrive at 0% as from assessment year 2029 (linked to a taxable period starting at the earliest on 1 January 2028).

Assessment year 2028: deduction limitation for emission-free company cars

The tax deductibility of 100% of emission-free vehicles according to the current deduction formula remains unchanged for company cars purchased, leased or rented before 1 January 2027. However, for zero-emission vehicles purchased, leased or rented after the aforementioned date, the rate will gradually decrease to 67.50%.

In order to determine the applicable deduction percentage, it is essential to know from when exactly a vehicle can be considered as being 'purchased', 'leased' or 'rented'. In this respect, we note that, more recently, the Belgian Council of State specified that the date of purchase does not necessarily have to coincide with the moment on which the taxpayer becomes the economic owner of the car, but that company cars that have already been ordered but not yet delivered are also to be considered as purchased. In particular, for company cars that are leased or rented and for which the economic ownership is not yet transferred, the date on which the lease or rental contract is concluded should be taken into account.

CHARGING STATIONS FOR ELECTRIC CARS

Increased cost deduction for companies

Charging stations for electric cars installed by companies in the period between 1 September 2021 and 31 August 2024 will benefit from an increased depreciation rate. With an increased cost deduction for charging stations, the legislator has set itself the goal of encouraging companies to install charging stations that are accessible to the general public. This includes freely accessible car parks of shopping centers, supermarkets, convenience stores and offices where anyone can charge their electric or hybrid car.

The increased cost deduction applies to newly acquired or constructed charging stations which are accessible to the grand public and translates in concrete terms into (1) an increased rate of 200% for investments made between September 1st, 2021, and December 31, 2022; and (2) a 150% tax deductibility for investments made between January 1st, 2023 and August 31, 2024. The deductible amount per taxable period is calculated by increasing the normal amount of depreciation during that period by 100% and 50% respectively. It should be noted, however, that the above-mentioned depreciation rates cannot be combined with the increased investment deduction for the installation of electrical installation infrastructure for carbon-emission-free 'green' trucks.

The additional costs that are depreciated at the same time as the charging station (e.g. costs for cabling or an electricity box) are also part of the purchase value and are therefore also eligible for the increased cost deduction. The increased depreciation rate applies not only to charging stations that are fully used as business assets, but also to charging stations that are partly used for business purposes.

The application of the increased cost deduction is subject to various conditions, the most important of which is that the charging station must be depreciated linearly over at least five taxable periods. If the estimated economic lifetime of the charging station is more than five years, logically, the depreciation will also have to span over a longer period. Furthermore, the increased deduction requires that the charging station must be new, 'intelligent' and publicly accessible whether or not free of charge.

Note that the increased cost deduction is only granted as of the assessment year linked to the taxable period in which the charging station is actually operational and publicly accessible. However, in the event that depreciation already takes place in the course of the acquisition or realization, the normal rate of deduction will apply and remain applicable until all conditions are fulfilled.

Temporary exclusion from the deduction limitation

Regardless of the tax deduction percentage that vehicles using a charging station are subject to, as of tax assessment year 2022 (linked to financial years starting on or after 1 January 2021) the deduction of the costs related to charging stations will no longer be fiscally restricted. However, for charging stations purchased, leased or rented from 1 January 2030 onwards, the costs of such charging stations will only be deductible to the extent of 75%.

INCREASED INVESTMENT DEDUCTION FOR E.G. EMISSION-FREE TRUCKS

Provided that certain requirements are met, companies can benefit from an increased investment deduction for investments in zero carbon emission trucks, in "refuelling infrastructure for blue, green or turquoise hydrogen"" and electric charging infrastructure related to said carbon emission-free trucks.

The investment deduction amounts to 35% (i.e. increased basic percentage of 13.50% and additional increase of 21.50%) for the fixed assets acquired or created in the course of 2023. This percentage will gradually decrease over time to 29.50% (investments in 2024), 24% (investments in 2025) and 18.50% (investments in 2026). For 2027 and the following years, the investment deduction will be equal to 13.50%.

The new increased investment deduction can be granted if all the following conditions are met:

- The taxpayer has no outstanding debts with the National Social Security Office. Recently, the Minister confirmed in a parliamentary question and answer that this condition has to be fulfilled at the time when the tax return in which this increased investment deduction is claimed, is filed
- The taxpayer may not be considered as a company in difficulty according to insolvency law
- The taxpayer has not been subject to a recovery order following a European Commission declaring aid granted by Belgium illegal and incompatible with the internet market; and

- No regional aid was requested for the same investment, unless the regional aid's scheme ensures that the combination of federal and regional aids does not result in the maximum aid intensity (as referred to in EU law) being exceeded

If you have any questions regarding this topic, don't hesitate to contact our RSM Belgium | Tax team (tax@rsmbelgium.be).

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