

## Company car: What are the major issues for the employer?

Placing a company car at an employee's disposal is a frequently encountered benefit in Luxembourg. Against the background of a dynamic employment market, this gratuity can enable employers to attract new talents. This allocation may also act as a lever for motivation or as an alternative to a salary increase. The company car has thus become a full-fledged element of the pay package. The legislation and tax framework moreover encourage this practice, but are you sure you are aware of all the issues relating to this benefit in kind? And what about the new "WLTP" standard concerning the CO2 emission rate?

### I. Budget

The allocation of a company car as well as the related budget are determined freely by the employer.

Whereas some companies offer this benefit to all their employees, others do so only to employees with an executive, managerial or marketing position.

In companies with a more substantial vehicle fleet, an allocation grid may be put in place to determine the type of vehicle for which an employee might be eligible. Several criteria can then prove decisive: the employee's position, his or her seniority in the company, the confirmation of his or her trial period or his or her rank in the line management...

Most often, the employee has a leasing/mobility budget (or car allowance) which should in theory correspond to the amount of the instalment billed by the leasing company.

### II. Types of leasing

**Operational leasing** is an "all-in" package: the lessee includes the leasing fee therein, but also insurance, maintenance, road tax, tyres, repairs (and replacement vehicle) and, as an option, fuel. The driver has to meet certain conditions: make sure not to exceed the mileage of his or her offer,



and return the vehicle in good condition without damages at the end of the contract (on pain of break fees).

**Financial leasing** comprises only the leasing fee for the vehicle, with the road tax as an option, but with no other services. The mileage is not limited. This leasing is concluded with a purchase option, i.e. the possibility of acquiring the vehicle at the end of the contract at a price agreed in advance (on average 10% of the initial value).

### III. Tax treatment

Placing a company car at an employee's disposal for private and professional use constitutes a taxable **benefit in kind**. Consequently, once the employee can dispose freely of the vehicle and use it for personal purposes, this benefit has to be taxed as a benefit in kind indicated on the pay slip. The same applies to the issuance of a fuel card.

Conversely, if the company car is used solely for the exclusive needs of the employee's professional activity and remains parked in the employer's parking facility outside working hours, no benefit is at issue.

It is worth noting that the **home-to-work commute is considered as private use** entailing the taxation of a benefit in kind if it is carried out using the vehicle made available by the employer. Thus, if the employee cannot use the vehicle in a private capacity but is authorized to use the vehicle to go back home, s/he will be taxed on the vehicle nonetheless, because in such a case, it is considered a "company car." This situation is encountered frequently in the construction sector.

#### The Luxembourg Inland Revenue (Administration des contributions directes – ACD) has two methods for assessing the benefit in kind

- **Assessment based on the cost price per kilometre (actual costs)**

This is known as the "logbook" method. The employee keeps a logbook in which s/he enters all private travel, including the home-to-work commute. The employer in turn determines a cost price per kilometre depending on the type of the vehicle. The amount of the benefit in kind corresponds to the kilometres driven in a private capacity multiplied by the cost per kilometre fixed by the employer on the basis of the monthly number of kilometres driven by the employee.

- This method is used very little, because it is highly restrictive in administrative terms. But it can prove interesting when the percentage of private use of the vehicle is very low.

- **Flat rate assessment of the benefit**

Presented as the exception at the outset, this method has nonetheless become the norm because of how simple it is.

The amount of the benefit in kind is calculated on the basis of the value of the **new car** (inclusive of options and VAT, minus discounts) multiplied by a percentage which varies between 0.5 and 1.8%.



This percentage is determined on the basis of the CO<sub>2</sub> emission and engine capacity rates (see table below).

The calculation must always be based on the price of the new car. **No rebate is provided by law** when taking over a leasing scheme that already exists.

CO <sub>2</sub> emission category	Petrol (only or hybrid) or natural gas or compressed natural gas (CNG)	Diesel (only or hybrid)	100% electric or hydrogen-powered
0 g/km	-	-	0.50%
> 0-50 g/km	0.80%	1%	-
> 50-110g/km	1%	1.20%	-
> 110-150 g/km	1.30%	1.50%	-
> 150 g/km	1.70%	1.80%	-

*Note: for cars under a leasing contract that had not expired on 1 January 2017, the benefit in kind is calculated until the normal expiry of the contract at the invariable rate of 1.5%.*

### 2020 – Change of CO<sub>2</sub> rate:





As you are undoubtedly aware, the Ministry of Mobility and Public Works has confirmed that new Worldwide Harmonized Light Vehicle Test Procedure (WLTP) standards have been introduced concerning the taxation of company cars. This new standard replaces the standard currently in force called the “New European Driving Cycle” (NEDC). These new standards will have a direct impact on the **road tax** and on the **calculation of the benefit in kind**. How will this affect your next leasing vehicle?

These different standards for the approval of vehicles are used to measure the fuel consumption, electric range as well as CO<sub>2</sub> emissions and other pollutants. Designed in the 1980s, the NEDC standard has become obsolete in view of developments in technology and driving conditions. That is why the European Union developed the new WLTP standard. More specifically, driving tests have to be carried out in order to determine the CO<sub>2</sub> emission rates. Whereas the former NEDC determined test values based on a theoretical driving profile, the WLTP standard has been developed on the basis of real driving data collected from around the world.

2020 should therefore serve as a pivotal year in order to implement change and prepare optimally for the gradual placement of new models on the market, while anticipating the massive arrival of alternative vehicle engines in 2021.

Whereas the benefit in kind for company cars will continue to be determined by reference to the vehicle engine and the rate of CO<sub>2</sub> emissions, the same vehicle will be subject to a different tax treatment **depending on its registration date!** It is therefore vital to distinguish between the following different cases:

- Contracts that already **exist or were signed up to 31 December 2019** with placement of the vehicle in circulation in 2020 will continue to be taxed on the basis of NEDC values for the entire term of the lease agreement.
- For vehicles ordered and registered in 2020, **the benefit in kind will be calculated with NEDC values in 2020 and with WLTP values as of 2021.**
  - ⇒ This will therefore have an impact on the payslips of your employees as the benefit in kind will change in 2021 for one and the same vehicle. Garages and leasing companies will apprise you of the CO<sub>2</sub> rates according to both standards. So bear this duly in mind!
- The benefit in kind will be calculated on the basis of WLTP values for all vehicles registered as 1 January 2021.

2019	2020	2021	2022
			
BIK calculated according to <b>NEDC values</b> for contracts signed in 2019 and a vehicle registration in 2020. The <b>NEDC</b> values will continue to be applied for the calculation of the BIK until the end of the leasing contract.			
			
	BIK calculated for 2020 according to <b>NEDC</b>	BIK calculated as from 2021 according to <b>WLTP values</b>	
			
		BIK calculated according to <b>WLTP values</b> for vehicles leasing registered as from 2021	



= date of the first registration



= signature of the leasing contract

#### IV. Employee's contribution

If the employee wishes to choose a car for a budget that exceeds that granted by the employer, the latter may authorize him or her to order the vehicle of his or her choice subject to a contribution towards the cost for the difference. Two types of contribution from the employee can be distinguished.

- **"Single" contribution by the employee**

The single contribution by the employee when ordering the vehicle will not affect **the assessment of the benefit in kind in and of itself**. Conversely, this contribution has repercussions **in terms of the depreciation**.

**Example:**

- Employee's contribution: € 3,480
- Monthly benefit in kind: €435
- Depreciation of the employee's contribution spread over 8 months ( $€3,480 / €435 = 8$ )
- During the first 8 months of use of the vehicle (January to August 2020), no benefit in kind is considered on the pay slip.
- As of September 2020, the benefit in kind of €435 shall be subject to a tax withholding on the salaries.

This depreciation is **limited to 20%** of the cost actually incurred by the employer. The Luxembourg Inland Revenue (Administration des Contributions directes – ACD) actually considers that a contribution exceeding 20% is motivated by personal considerations (for example, wishing to have a higher class vehicle) and is consequently not deductible.

- **Flat-rate monthly contribution by the employee**

The employee may also contribute monthly towards the cost of his or her leasing. The amount of the contribution is then deducted from his or her net pay every month.

This personal contribution will have an impact on the benefit in kind. More specifically, the amount of the contribution will reduce the value of the benefit in kind. As in the previous case, this reduction is limited to 20% maximum of the cost borne by the employer.

**Example:**

- Purchase price of a diesel vehicle (135g/km CO<sub>2</sub>) when new: €41,000
- Cost of monthly leasing: €650
- Monthly budget allocated to the employee: €500



#### Calculation of the benefit in kind:

- Theoretical benefit in kind => €41,000 x 1.5% = €615
- Monthly contribution by the employee => €650 - €500 -> €150
- Contribution to be deducted from the monthly amount of the contribution in kind (up to 20% of the cost to the employer): => €500 x 20% = €100
- Benefit in kind to be considered => €615 - €100 = €515

#### V. Acquisition of company car

The company car may be acquired at a value specified when signing the contract. Practice has shown that this residual value as it is known is often fixed at 10% (or 20%) of the purchase price of the new vehicle, which is most often lower than the market value of the vehicle at the end of the leasing contract.

**As the employee acquires the company car at a lower price than the market price, this constitutes a benefit in kind which is taxable for the employee.**

This benefit corresponds to the **difference between the market value of the vehicle and the price paid by the employee to acquire the vehicle**. This benefit will have to be taxed at the time the vehicle is acquired by way of non-periodic remuneration on the pay slip.

To determine the taxable base of the benefit linked to the acquisition of the vehicle, a circular from the tax authority has set out the average market values based on the age of the vehicle, as well as an altogether specific calculation method.

#### VI. Car Policy and impact of the company car on the employment contract

As you have gathered, the company car is henceforth a full-fledged element of the employee's pay. It is therefore vital to set out the allocation of this benefit in clear terms in the employment contract.

It is also important to note that in the event of breach of contract, and even when excused from work, the employee should have use of his or her company car until the end of his or her notice period, because the vehicle constitutes an integral part of his or her pay package. If such use cannot be guaranteed, the employee should be paid monetary compensation. Similarly, making a company car available should be taken into account in calculating the severance pay if the employee is dismissed.

Beyond the employment contract, it is indispensable to implement a **Car Policy** in your company. Such a policy will make it possible to govern the vehicle allocation and use procedures. It is worth stipulating in particular what will become of the vehicle in the event of resignation or dismissal – an aspect that is often overlooked. Consideration should also be given to defining who assumes the deductibles, violations and mileage overruns, for instance. Securex can help you draw up your Car policy, bring it in line with the relevant legislation or make it attractive for your employees.



**Conclusion:**

The company car and the related issues require real management on the part of the employer nowadays. Accordingly, managing a vehicle fleet, especially when you use the services of different leasing companies, may become time consuming and lead to more red tape. In fact, a flow of financial information in particular will be brought to your attention and require daily monitoring on your part. If the entire process is not brought under control, from the allocation to the return of the vehicles, the costs are likely to soar. It is nonetheless possible nowadays to **outsource the management of your fleet** to Securex who will deal with the administrative and financial management, or even assume fully the role of **Fleet Manager**. You will thus free up your time to concentrate on your activities and optimize the pleasure of your employees to make the most of their company car. Do not hesitate to contact us so that we can see together how we can help you.

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