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## FERI sends its regards: the complicated taxation of commuting to and from work with company cars

Dear Sir or Madam,

On 8 February 2014 Switzerland voted on the financing and expansion of the railway infrastructure (FERI). The referendum stirred the population, with 55% of registered voters going to the polling station. The initiative was endorsed emphatically almost everywhere in Switzerland (with only the canton of Schwyz stepping out of line). Consequently the Federal Council passed the relevant amended regulations in October 2015.

As part of FERI it was determined in the Federal Act on Direct Federal Taxation that as of 1 January 2016, deductions for professional expenses for journeys between workplace and residence were limited to a maximum amount of CHF 3'000. The cantons are entitled to vary the maximum, and in the meantime most of the cantons have responded by setting a limit for the deduction of travel expenses – showing cantonal provincialism in full bloom.

It is the opinion of the Federal Tax Administration that, based on the limitation of professional expenses, this also applies to company cars, i.e. the benefit of a free journey to and from work with a company car has also to be restricted to CHF 3'000, and consequently all benefits exceeding that amount are subject to income tax. For this purpose, a rather complicated set of regulations has been set up in order to make days without commuting (e.g. field service with direct journeys to the client) exempt from taxation.

In July 2016, the Federal Tax Administration published a statement regarding "New Aspects of Drafting the Salary Statement as of 1 January 2016: Declaration of the Share of Field Service for Employees using a Company Car", including an appendix listing different sets of allowances according to specific professions. In this statement it says that "fundamentally the percentage of the field service executed by employees in possession of a company car has to effectively be declared on the salary statement [...]." In addition to the wording of this statement by the Federal Tax Administration, the following can be taken from the instructions for the completion of the salary statement, RZ 70: "If an employee is in possession of a company car and is either fully or partially doing field service [...] then the employer is obliged to declare, under section 15, the percentage share of field service." The question arises as to whether it is possible to forego such a declaration on the grounds that an employee undertakes no field service? Theoretically such a foregoing could be justifiable.

## **What influence does this comment have for the recipient of a salary statement?**

At first glance such a declaration is favourable for the employee. To determine the commuting to and from work, the days of field service potentially have a major influence. Those days are considered days of field service on which the employee who is keeping an appointment with a client is travelling directly from home to a client or returning home from a customer. It is a matter of relevance when the employee does not drive to the usual work place, and thus does not commute to or from work. As a consequence days of working from home, overseas stays or unpaid holidays must be declared as days of field service. As there is no commuting to or from work when doing field service there are less kilometres to and from work declared for the employee. All employees with a journey to or from work of more than 9.74km (one way) are in a position to benefit from confirmed field service days because with this confirmation these employees have already reached the maximum allowance for professional expenses of CHF 3'000 for federal taxation (9.75 km x 2 for both ways x 220 working days x CHF 0.70 per km = CHF 3'003). Based on this aspect and also on the fact that employees are very sensitive when it comes to salary or taxes, they will insist upon the confirmation of the percentage of field service because, in their private tax declaration, the commute to and from work can lead to additional taxable income.

## **How do I proceed if I am unable to fully determine the days of field service, or if establishing them is deemed too laborious an effort?**

As already mentioned the Federal Tax Administration has published an appendix with "Fixed Rates for the declaration of Percentage of Field Service under Section 15 of the Salary Statement" with a note that an effective declaration is desired. However, should an exact determination lead to an excessive burden for the employee, then the field service can be declared with fixed rates according to function or specific professions.

### *Example service industry:*

5% Directors, executive board

15% Department heads, section manager, manager (with leadership function)

25% General executive manager plus middle and lower management with field service functions (corporate consulting, management consulting, fiduciary, auditing)

100% All field service employees with contractually defined field service duties (insurance, organisational management, coaching, security)

## **What are the possible consequences if, for example, the 5% fixed rate is applied for a member of the executive board?**

Based on the personal calendar or the time recording it is possible to more or less reconstruct the days of field service and thus determine the actual value. Is it actually worth using the low fixed rate when it is far better applying the effective albeit time-consuming option? Or is anybody aware that the company car that has been put at one's disposal should strictly speaking not be described as such because it is mostly used for private purposes or even kept as a status symbol? According to VAT info 08, Private Share, the 9.6% fixed rate can only be applied if the vehicle is predominantly used for business purposes. If this is not so then the input tax on acquisition and maintenance must be amended by the amount of the private share. In this situation it is necessary to keep a driver's logbook which allows an effective determination. This

may not be a new idea; however, the salary statements could motivate tax officials to have a closer look during tax audits.

### **Why do I have to, apart from a private share of 9.6 %, pay more tax?**

According to the Federal Tax Administration the private share only covers leisure journeys, excluding journey to and from work. Based on FERI, journeys to and from work will on the one hand be totted up, while on the other hand a deduction for travel costs is granted, thus a zero-sum game – if there were not a limitation ...

### **What options do exist to avoid potential problems?**

- The employee puts his private car at the company's disposal and adds up the costs incurred on behalf of the company with CHF 0.70/km.
- When using allocated vehicles, a logbook could be kept so it can be proven at all times for which purpose the vehicle had been used (business purpose/journey to or from work/private use).
- Using pool cars: in this instance it is important to note that such vehicles can only be taken home in exceptional circumstances. Basically these vehicles belong on the company's premises.

### **Outlook**

The matter is not finished yet. On 3 March 2016, a motion was tabled by Erich Ettlin: "FERI: excessive administrative burden for owners of company cars". On 27 September 2016 the majority of the Council of States proposed to reject this motion whereas on 27 February 2017 a majority of the National Council approved the motion, albeit in a modified version ("The Federal Council will be commissioned with the proposal of the necessary legal amendments so that on an administrative level an income share for the use of a business vehicle for the journey to and from work is included in the 9.6% of the purchase price for the private use of the company vehicle"). Apart from the voices who advocate that the previous private share of 9.6% also covers the journey to and from work, there are others who see an increase of the private share from 9.6% to about 10% as a solution. It is certain that there will be further proposals in the course of time.

### **Conclusion**

With the vote for the financing and expansion of the railway infrastructure, the appeal of using company vehicles has gone down drastically in most instances. Behind the offset or the reduced possibility for deductions respectively, a little administrative-burden monster is lurking, as an effective determination requires exact recording which usually goes hand in hand with additional effort and will cause strain particularly in an SME environment. Should an entry system be introduced in order to avoid incorrect documents getting into circulation and salary statements being issued which are either incorrect or with particulars that cannot be substantiated? We shall keep an eye on the issue. Should you have any questions or like to know whether you have done everything by the book according to current law, then please do not hesitate to get in touch with artax Fide Consult AG.

Kind regards

**artax** Fide Consult AG

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