

What do we “EXPECT” from the Board?

What tax do directors pay from provision of company car?



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How would “financial damage” from director’s “non-financial benefits” (such as company car, key man insurance and credit life insurance) affect the company?

From the past to the present, the Revenue Office in each Area has a “specific” precedented practical “guidelines” regarding tax treatment for provision of car to the company’s directors or executives. These guidelines are varied by discretions and practices.

In many cases, the Revenue Officers found that a “company car” were privately used rather than for business purposes. Therefore, part of or all the “expenses related to the car” were considered as a “non-deductible expense” for corporate income tax purposes. The non-deductible expense then has to revert to “taxable income” and be subject to corporate income tax for the company.

From a financial accounting perspective, these costs related to company car are considered as expenses to be offset against profits derived in a year. However, from the perspective of tax accounting, these costs could be considered as disallowable. Given the difference between financial accounting and tax accounting treatment, how “concrete” is the company’s rationale to argue against the views of revenue officers when it comes to discretions?



Company car for directors

a) *Legal perspective*

Companies may “choose” from various “types of transaction” to provide a company car such as payment in full in cash, installment payment plan, hire purchase, financial lease or operating lease.

For **cash in full or under installment plan**, the company gain an instant ownership. While installment plan generates interest-bearing “liabilities”, it also saves “huge amount of cash” and preserve the company’s cashflow.

Under the **hire purchase** contract, car ownership will not be immediately transferred to the company on the purchased date. The company will have to make continuous installment payments. Upon the final installment, the ownership transfer will be made “instantly” by law (the company has no option whether to accept the ownership transfer or not). “Interest” will be incurred in each hire purchase installment in accordance with the repayment period.

Financial lease is one of the “financial credit” form. As there is no specific legislation for leasing transaction, financial lease falls under a typical rental contract. The lessee has an “option” to “buy” or “return” the leased assets upon the “contract completion”. If the lessor is a “subsidiary” of a bank or financial institution that is not an automotive operator, the lessor usually forces the lessee “indirectly” to “buy” the leased asset at pre-determined price. “Interest” will be incurred in the financial lease installment in accordance with the leasing period.

Operating Lease is a typical rental contract with no purchasing option at maturity. The car will have to be returned to the lessor at the end of the contract. “Interest” will not be collected.

b) *Corporate accounting perspective*

For cash payment in full, cash payment under installment plan, hire purchase, and financial lease, the accounting perspective has weighs on a view of “substance over form” which focuses on “asset ownership”, “authority over the asset”, and “certainty”. Therefore, car acquired under cash payment in full, cash payment under installment plan, hire purchase, and leasing contracts are booked as a “company assets”, which differ from the “legal perspective” that emphasize on the “legal form of contract”. However, given the differences between the “legal” and “accounting” aspects, if a dispute is ever brought to Court, the Court will use “legal principles” as a tool to consider the case while the “accounting principles” will only be used as “fact” to consider the circumstance in ruling of the case dispute.

In terms of accounting, cars acquired under the operating lease method will have to be returned at maturity. Therefore, “company cars” are not considered as the company assets. However, there is no such legal and accounting differences for “normal lease” or “operating lease” methods.

c) *Corporate income tax perspective*

Cash payment in full / cash payment under installment payment plan / hire purchase...In taxation perspective, cars are considered as a company’s “asset”. Money spent to acquire company cars is considered as a “capital expenditure” or CAPEX that is not fully deductible. The company has to book “depreciation” of

“passengercars” at up to 20% of passenger cars worth up to Baht 1 million. Anything beyond Baht 1 million is considered as a “non-deductible expense” that will turn into a “taxable income”. Therefore, if a company chooses to gain ownership of cars by purchasing, it can book up to Baht 200,000 of depreciation per year.

Moreover, company passenger cars can book up to 20% depreciation for 5 years. Eventually, the “book value” of the company cars will fall to Baht 1. However, it should be noted that if there are an actual sales of cars, they would have to be sold at the “market price”.

Tax issue remains on how to determine the market price of a “used car”?

In practice, companies usually use “comparable price” from the average price of similar car model present in the second-hand car websites. This method is acceptable for the Revenue Officers in several Areas.

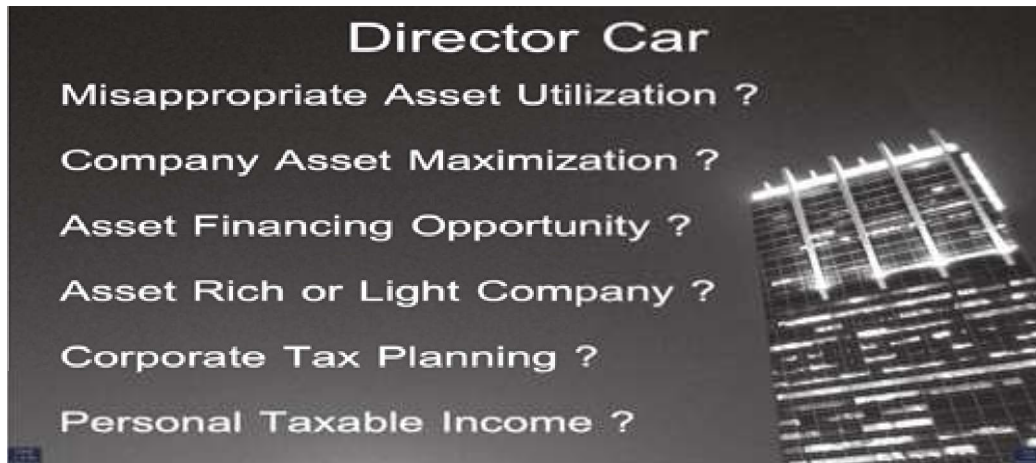
However, there is an alternative method to determine the market price of a used car by “creating a market” within the company through an in-house bidding that is legally compliant with the Thai Civil and Commercial Code. An “auction” is acceptable to the Revenue Department and is used by various companies that offer employees the right to “bid” for company cars before they are put on auctions to an “external party”.

Car Leasing..Under taxation perspective, leasing is not different from operating lease or usual leasing contracts, as rental fee is considered as a “operating expense”. Usually, auto leasing contracts last between 3 – 7 years. Regarding passenger cars, rental fee is deductible by up to Baht 1,200 per day, or Baht 36,000 per month, or Baht 432,000 per year. The excess of Baht 36,000 per month is a non-deductible expense of a company and is an excess income of the company liable to pay taxes. Therefore, company should make appropriate tax planning that are worth the value of money paid, in terms of both financial and tax accounting.

Regarding car leasing method of Baht 432,000 account and up to Baht 200,000 annual depreciation, there is Baht 232,000 annual difference in bottom line. Given the seven-year maximum deduction of auto leasing contract and five-year maximum auto depreciation, the two-year time lag will benefit companies both in terms of net profit and cashflows.

For high-quality and valuable company cars, the company has an option to buy at maturity as the leasing contract reaches 7 years. The company car could be depreciated for the second time as the company owns the asset. The “second round” depreciation will be lower along with the age of the assets. In conclusion, the first round of expenses were booked as rental (leasing) while the second round as depreciation. Therefore, managing this auto assets provide double taxation benefit that are in accordance with the Civil and Commercial Code and the Revenue Code.

Another key issue concerning “company car” is “value added tax” (VAT) concerning “passenger cars” with non-creditable input VAT. Fuel cost, maintenance fee, and service expenses are “auto tax” that turned into “expense” or “cost” are not eligible for “tax credit” or “tax refund” under the value added tax system. In certain cases, taxes on certain auto transactions are considered non-deductible.



d) Personal income tax perspective

In the past, company car has been an issue for personal income tax along with the corporate income tax.

The provision of company car was considered as a fringe benefit for directors and management. Should it be treated as “compensation” subject to personal income tax?

In 2011, the “Supreme Court” has made a court decision that can be used as a “definite guideline”. The Supreme Court stated that “a car provided to a public prosecutor” can be regarded the same as “office supply” or “air-condition” provided by the office (or employer) to accommodate performance of his/her duties. When the person is no longer in his/her position, the person is no longer eligible for the usage of the car. The right to use the car provided for specific position “is not personal benefit” that counted as taxable income. Therefore, the car is not considered “additional benefit from employment” and not “part of compensation” to be counted for personal income tax calculation.

The Supreme Court also ruled that ...the payment of monthly “compensation” in a substitution for a “company car” is significantly different. It is ruled that the “lump sum payment” is considered as an “additional benefit” that is subject to personal income tax calculation.

The case of “car for public prosecutor” (government officer) can be used with “private” employment in terms of personal income tax calculation. The Revenue Department has stipulated a clear guideline since 1990 that the “additional benefit” such as house accommodation for employee is calculated as “taxable income” for revenues of employees equal to 20% annual income (excluding bonus). Besides the guideline used by the Revenue Department for more than 30 years, there has not been tax dispute brought to the court to be used as precedent case.

In the next issue, we will talk about the “financial damage” from “director compensation” in the case of Key Man Insurance and Credit Life Insurance.