

## The remuneration theory analysed: what if a director can live for free?

Directors are often (partially) remunerated by providing them a house for free. There have been a number of discussions on the deductibility of these costs. Currently there is no discussion anymore: these costs are deductible. However, according to the Court of Cassation, this is not automatically so. The company should explain the reason for providing the house and document its remuneration policy.

### Salary costs are deductible

Salary costs are considered to be deductible professional expenditure. They meet the condition for deductibility: these are costs made to obtain taxable income. No discussion on this point.

In this case it is not relevant that part of the remuneration is paid in kind, e.g. by providing a house for free living.

### Free disposition of a house as a part of the remuneration: deduction in the hands of the company

Also the costs of a house (provided as a part of the director's remuneration) are deductible in the hands of the company. Even when the director does not use the house for professional purposes, but only as private dwelling. This has been confirmed by Belgium's highest court, the Court of Cassation.

### But: no automatic deduction

This does not mean that a company has an automatic right to deduct these costs. It is not sufficient that the director is being taxed on a benefit in kind and/or that the costs are mentioned on a pay slip. No, the company should provide sufficient proof that the director has actually performed services. Moreover, there should be a link between these services and the remuneration. This makes the deductibility of costs a lot more difficult.

### So: company should document its remuneration policy

The company should therefore draft a clear remuneration policy. And document this remuneration policy very well. It can be accounted for that certain services are being provided and why these are remunerated (by providing the use of a house for free).

This has recently be confirmed by several Belgian (High) courts.

How and what the company should document does however not show from the judgments. This will have to show later: is a formal statement in a management contract sufficient or is more required? As long as we are not sure, the best thing to do will be to document extensively.

In a judgment of the Antwerp court of first instance we find a small example: a company paid its director 36.000€ and provided a house for free living (annual cost for the company amounts to 21.000€). The company explains this by stating that in the past the director received a higher remuneration (65.000€), but currently receive a lower salary together with the free use of the house. The court accepted this explanation.