

Rent of an immovable property for professional use: six fiscal points of interest

If you rent an immovable property to perform your professional activity, you can deduct these costs. This is the case for the rent itself, as for other costs relating to the rent which you should pay. We like to draw your attention to some fiscal points of interest.

General rule: rent and additional costs are deductible

The costs you make for the rent of an immovable property which you (partly) use for your professional activity is deductible as professional expenditure. These costs imply both the rent and the additional rental charges.

The rent is the amount which is effectively paid to the landlord in execution of the rental agreement. It doesn't matter whether it is an oral or written rental agreement. The rental charges are all other fixed or variable costs which are in principle for the landlord, but which are charged to the tenant, e.g. immovable withholding tax, repair costs.

Note: also other costs relating to professional space such as heating, lighting, maintenance, repairs are deductible.

Point of interest 1: only a part of the immovable property is used for the professional activity, so costs are only partially deductible

It is possible that you rent a big property, that is used partly for your professional activity, and partly for private purposes. It goes without saying that the rent for the private part is not deductible. These are merely private costs, they do not have any professional character.

In order to know which costs are deductible, it should be established which part is used professionally. The split private/professional in the rent agreement is as such not sufficient. The tax authorities will take all actual circumstances into consideration. The professional part is not only e.g. the office and the waiting room, but also the stairwell and hall which clients should use in order to have access to the professional parts.

Point of interest 2: formalities

If you want to deduct rental expenditure, you should add an enclosure to your personal tax return. The following information should be communicated to the tax authorities:

- the location of the immovable property;
- its nature (factory, office, ..);
- name and full address of the owner;
- the total amount of the rent and rental charges paid during the tax year;
- if it is used both professionally and private: a split of the costs in a professional part and a private part.

Point of interest 3: renting immovable property from the director or manager

If you have a company, you can as manager or director rent immovable property which you own to the company. That is perfectly legal. You should however not ask a too high rent price. If you exceed the threshold of the normal rent, a part of the rent will be re-qualified and taxed as director's or manager's income.

The legislator has drafted a formula in order to calculate whether the rent is acceptable: $5/3$ of revaluated cadastral income. The part of the rent exceeding this threshold is taxed as salary.

Point of interest 4: rent paid to a spouse

You can also rent immovable property from your spouse. Also in this case you can deduct the rent as expenditure. The tax authorities however require that the following conditions are met:

- the payment of the rent should be legally justified;
- the rent should effectively be paid;
- the landlord-spouse cannot be co-operator of the business;
- the landlord-spouse should be the owner of the immovable property.

Point of interest 5: choosing between rent or purchase of the immovable property

You can also choose to buy an immovable property instead of renting it. Also then you can deduct the costs. Naturally, this cannot be done at once, nor can you deduct the cadastral income of rental value. But you can depreciate the immovable property during the normal usage period (and consequently deduct a part every year): the depreciation period for immovable property is in principle 33 years (3%), but professional buildings can be depreciated over a 20 years period (5%). Land cannot be depreciated.

Point of interest 6: higher taxation for the landlord

You should make sure that the rental agreement allows professional use of the rented property. The landlord will after all be taxed higher when the tenant uses the property professionally, than when a private tenant is concerned.

When renting to a private tenant the taxable income is the cadastral income, increased with 40%. When the immovable property is rented for professional purposes of the tenant, the taxable income is the total amount of the rent and rental charges, minus a lump sum deduction of 40%.