



Executive security - from business necessity to IRS regulations

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Executive security in the corporate world

The corporate world has its innate ways of **reacting to change**, be it quick or slow, planned or accidental. A thick web of interdependent relationships is governing the global business world in such a way that no decision, event or strategy remains neutral to the ecosystem.

Leading business and sociology scholars even argue **corporations are developing much like living organisms**¹, with their own will and **self-preservation instinct**, based on securing market share, increasing value and productivity, achieving stability and protecting from competition attacks. The living organism metaphor serves well to emphasize the **importance of executive protection** from a business-oriented perspective. Most corporations are based on someone's vision, a vision taken to the point that it becomes an entire culture, the spirit of the company. At that point, the individual becomes the heart – harm it in any way and the company would be in severe distress.

Out of the metaphors and back to business talk, most global enterprises are taking executive protection seriously, and for good reasons. The interests of the company and its shareholders are directly tied to the well-being and security of top-level executives.

High-profile cases

High-profile cases of CEO protection programs are making headlines ever more often. Recent reports² show that **Facebook** paid nearly **\$4.3 million in 2015** for direct security services aimed at protecting its co-founder and CEO Mark Zuckerberg, including on-site security measures for his residence, a security detail, and the use of a private aircraft for both business-oriented and personal travel. Multimillion-dollar protection programs for Mr. Zuckerberg have been in place for at least 3 years, costing \$5.6 million in 2014 and \$2.6 million in 2013. Facebook is also spending millions protecting some of its other top-level executives in a 'vital organ position', with COO Sheryl Sandberg receiving **nearly \$1.3 million in security services** last year.

¹ Source: http://rci.rutgers.edu/~tripmcc/phil/machen_v_dewey-corporate_personhood.pdf

² Source: <http://fortune.com/2016/04/28/protect-mark-zuckerberg/>

Amazon also paid **\$1.6 million** in 2013 for security services for founder and CEO Jeff Bezos³, while **Oracle** spent **\$1.5 million** to keep former CEO, current Executive Chairman and CTO Larry Ellison safe⁴, as stated by each company's 2014 SEC filing.

Motivation

Protecting high-level executives is a key concern for major corporations, and seen as **not only valid, but as a necessary business expense**.

*"Because of the high visibility of our company, our compensation & governance committee has authorized an 'overall security program' for Mr. Zuckerberg to address safety concerns due to **specific threats to his safety arising directly as a result of his position** as our founder, chairman, and CEO. We require these security measures for the company's benefit because of the importance of Mr. Zuckerberg to Facebook, and we believe that the costs of this overall security program are appropriate and necessary,"* Facebook says⁵.

Amazon also acknowledges: *"We provide security for Mr. Bezos, including security in addition to that provided at business facilities and during business-related travel. We believe that all **Company-incurred security costs are reasonable and necessary** and for the Company's benefit. The Leadership Development and Compensation Committee periodically reviews the amount and nature of Mr. Bezos' security expenses."*⁶

Oracle's motivation for their Chairman's security program is virtually the same: *"Our Board of Directors has established a residential security program for the protection of Mr. Ellison requiring him to have a home security system at his primary residence, including security personnel. We require these security measures for Oracle's benefit because of Mr. Ellison's importance to Oracle, and we believe these **security costs are appropriate and necessary business expenses**. Mr. Ellison paid for the initial procurement, installation and maintenance of the equipment for this system, and we pay for the annual costs of security personnel. The*

³ Source: <https://www.sec.gov/Archives/edgar/data/1018724/000119312514137728/d658395ddef14a.htm>

⁴ Source: <https://www.sec.gov/Archives/edgar/data/1341439/000119312514350236/d778087ddef14a.htm>

⁵ Source: <http://fortune.com/2016/04/28/protect-mark-zuckerberg/>

⁶ Source: <https://www.sec.gov/Archives/edgar/data/1018724/000119312514137728/d658395ddef14a.htm>

Independence Committee reviews and approves the security personnel budget of this residential security program each year.”⁷

Companies motivate their protection efforts by either acknowledging the specific threats to their executives that arise as a consequence of their positions, or by acknowledging the business-oriented benefit of keeping them safe.

The special case of transportation

A special focus in the executive security should be on transportation. One of the most comprehensive studies to date on security incidents⁸, collecting data on over 1000 incidents, shows that security **risks are most prevalent when the target is traveling**, with over 40% of the studied targeted attacks occurring while the target was riding a vehicle.

Security services industry experts agree that transportation is commonly one of the most vulnerable environments, for several reasons:

- **The patterns** - the patterns of transportation during a regular day have a high visibility and can be easily confirmed. The most common pattern in terms of time and route during daily travel is the commute between residence and workplace. An attacker would be able to easily identify opportunities to strike and prepare for the attack.
- **The exposure** - executives may need to travel for hours each day. During this time, they may be motionless in traffic hundreds of times. They are also exposed to various high-risk places that are beyond their control, such as bridges, tunnels, gates, etc. An attack could be easily staged on such infrastructure.
- **The environment** - ground transportation takes place in a very complex environment that is constantly changing. Even with a security detail in place, it is still very difficult to assess threats, with so many traffic participants.
- **The driving risks** - ground transportation poses serious risks of injury, regardless of the driver's status⁹, with traffic accidents being one of the leading causes of deaths in the U.S.¹⁰

⁷ Source: <https://www.sec.gov/Archives/edgar/data/1341439/000119312514350236/d778087ddef14a.htm>

⁸ Source: <https://www.amazon.com/Just-2-Seconds-Gavin-Becker/dp/0615214479>

⁹ Source: <http://www.distraction.gov/stats-research-laws/facts-and-statistics.html>

¹⁰ Source: http://www.cdc.gov/injury/images/lc-charts/leading_causes_of_injury_deaths_unintentional_injury_2014_1040w740h.gif

Executive security plans often afford high-level transportation services, including executive drivers trained in evasive driving, bulletproof glass, continuous location surveillance, security personnel skilled in first aid techniques, etc.

IRS regulations regarding security transportation

Whether or not a company considers executive protection programs to be appropriate and necessary business expenses may not be enough. According to the IRS, any property or service that an executive receives in addition to regular taxable wages, including security services, is a fringe benefit included in the gross income calculation and thus may be subject to taxation¹¹. However, employers may classify a taxable fringe benefit under expense accounts other than compensation, thus excluding the fringe benefit from the executive's gross income.

Such is the case of security-related transportation, which has its own statutory provisions as a working condition fringe and allows the employee to deduct security protocol costs.

IRS 1.132-5(m)¹² regulation regarding **employer-provided transportation for security concerns** states that if, "for bona fide business-oriented security concerns, an employee purchases transportation that provides him or her with additional security, **the employee may generally deduct the excess** of the amount actually paid for the transportation over the amount the employee would have paid for the same mode of transportation absent the bona fide business-oriented security concerns."

Further, **paragraph (2) describes the bona fide business-oriented security concern:** a bona fide business-oriented security concern exists only if the facts and circumstances establish a **specific basis for concern** regarding the safety of the employee, as opposed to a generalized concern for an employee's safety. Examples of factors indicating a specific basis for concern regarding the safety of an employee include a threat of death or kidnapping of, or serious bodily harm to, the employee or a similarly situated employee because of either employee's status as an employee of the employer or recent history of violent terrorist activity in the geographic area in which the transportation is provided.

¹¹ Source: <https://www.irs.gov/businesses/corporations/executive-compensation-fringe-benefits-audit-techniques-guide-02-2005>

¹² Source: <https://www.law.cornell.edu/cfr/text/26/1.132-5>

Moreover, a **second basic criterion** in establishing a bona fide business-oriented security concern is that the employee's **employer establishes an overall security program** with respect to the employee involved.

However, an overall security program is deemed to exist **only if a security study is performed with respect to the employer and the employee by an independent security consultant.**

The security study can determine whether the specific circumstances require either:

- **an overall security program** provided to **protect the employee on a 24-hour basis**, while at the employee's residence, while commuting, while at the employee's workplace and while traveling, whether for business or personal purposes, including a bodyguard/chauffeur who is trained in evasive driving techniques, an automobile specially equipped for security, access control to the employee's workplace and residence and flights on the employer's aircraft.
- **an overall security program**, other than one provided to protect the employee on a 24-hour basis, as described above, on the condition that the recommendation is reasonable under the circumstances and that the employer applies the specific security recommendations contained in the security study to the employee **on a consistent basis**. This could mean specific transportation security measures when travelling to certain destinations or parts of the world, or to certain kinds of events, but not others, on the condition that the special security measures are always applied when the specific circumstances arise.

Both scenarios are **eligible** for security services deductions. However, no exclusion from income applies to security provided by the employer that is not recommended in the security study.

Provisions of the IRS 1.132-5(m) regulation regarding employer-provided transportation for security concerns allow employees to deduct security programs costs over regular transportation costs, so long as there is a **clear demonstration** of a bona fide security concern, **through an independent security study provided by an independent security consultant.**

Security assessments

Security assessments are instrumental in establishing a comprehensive security program. Expert consultants are aware of the complex nature of securing a high-profile individual and will try to cover every aspect of the person's activity:

- **Routine:** the daily routine is the starting point of any security assessment, as it implies visible patterns that can be potential vulnerabilities.
- **Movement:** as stated earlier, ground transportation is a particularly vulnerable environment. Air transportation patterns are usually included in the security study at this stage.
- **Residence:** assessing the physical security, including the surrounding areas of an executive's residence.
- **Family:** in some cases, the employee's family may need to be included in the study, for bona fide security concerns. For instance, it may be justifiable that an employee's children be driven to and from school following identified business-related threats.
- **Events:** special events are also a particular area of concern. Exposure to large crowds and the context in which it occurs needs to be taken into account.

Many times, security consultants don't start with a clear threat, but look at the possible threats. The Critical Incident Response Group (FBI Academy) classifies threats in four categories¹³, which are all taken into account during a comprehensive security study:

- **direct threats**, defined by specificity - a specific act against a specific target and delivered in a clear and explicit manner
- **indirect threats**, defined by ambiguousness - where the plan, the intended victim, and the motivation are unclear
- **veiled threats**, that only imply violence and are causing concern by lacking specific meaning
- **conditional threats** - implying violence unless certain demands or terms are met

Moreover, skilled cyber-detectives may uncover threats that haven't even been delivered to a high-profile individual, their family or their company. An inquiry into social and digital media can reveal significant causes for concern¹⁴ in blog posts, social media comments, forums, and calls-for-action. If this is the case, security experts will most likely recommend an **online monitoring program**, to mitigate any risks before they turn physical.

¹³ Source: <https://www.fbi.gov/stats-services/publications/school-shooter>

¹⁴ Source: <http://www.securitymagazine.com/articles/86590-identifying-physical-threats-in-the-virtual-world>

Whatever the case, the objective assessment of all facts and circumstances by an independent consultant is the key criterion in developing an executive protection plan that allows the employee to deduct the costs of the security services provided by the employer.

Conclusion

High-level executive protection is a necessity in today's corporate environment. With protection programs costing hundreds of thousands of dollars, if not millions, in place, it is expected that both employers and employees would be concerned about what is considered a justified business expense and, consequently, what is tax-free and what is taxable.

Regarding special transportation security services, the IRS requirements are clearly explained: if a bona fide business-oriented security concern exists, the value of the security services can be deducted by the employee as a working condition fringe. The evaluation of the bona fide security concern is based entirely on independent security studies.

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