

No full VAT deduction when car parked at home

I. The tax authorities have issued another interpretation significant for full VAT deductions

Deductions of VAT on company cars have recently been the subject of tax interpretations issued by the tax authorities. Another interesting interpretation was issued on 15 July 2021 (number 0112-KDIL3.4012.141.2021.1.AW), in which a National Tax Administration director found that the inability to use a car for private purposes may objectively be confirmed by, for example, the following circumstances: the requirement to after work leave the car in the company's parking lot, without the ability to collect it outside of work hours, including on weekends, for purposes other than company business. This means that when an employee does not leave the car in the company's parking lot, but rather parks it in front of his house, the employer (owner of the car) will lose the eligibility for a full VAT deduction on the costs of using the car. In accordance with general regulations, the employer will only be able to deduct half of the input VAT.

II. There must be a clear correlation between the expense and taxable activity

As stressed in the interpretation, the VAT Act (Article 85) provides that insofar as goods and services are used for the performance of taxable activities, the taxable person is as a rule eligible for a reduction of the amount of output VAT by the amount of input VAT. The amount of input VAT is the sum of the amounts of VAT arising out of the invoices received by the taxable person for the acquisition of goods and services. A taxable person is eligible for a reduction of the amount of output VAT by the amount of input VAT when specified conditions are met, i.e. the deduction is being made by a VAT taxable person and the goods and services on the acquisition of which the tax was accrued are used for taxable activities. A taxable person can deduct input VAT on the condition that there is a clear and undisputed correlation of the purchases with the performance of taxable activities, i.e. activities that result in output VAT (formation of a VAT liability).

The newest tax interpretation confirms that employers can make a full deduction of VAT on company cars and fuel only when the employees parked the cars in company parking lots. This is because parking in front of an employee's house means that the employee can use the car for private purposes, which precludes a full VAT deduction.



III. Only half of VAT deductible when car used for private and company purposes

For expenses relating to motor vehicles, the amount of input VAT consists of 50% of the VAT arising out of the invoice received by the taxable person. Motor vehicles are defined in accordance with road traffic regulations and cannot exceed 3,5 tons in total weight. Thus in accordance with the above regulations, a taxable person is eligible to deduct up to 50% of VAT on all of the expenses incurred in connection with motor vehicles used for “mixed” purposes (both company and private). Expenses related to motor vehicles include expenses incurred for: the acquisition, import or production of such vehicles and the acquisition or import of their components; the use of such vehicles based on a rental, tenancy, lease or similar agreement; the acquisition or import of engine fuels, diesel fuel and gas; maintenance and repair of such vehicles, as well as other goods and services associated with the operation and use of such vehicles.

IV. Potential availability for private use is sufficient

For the purposes of applying the limitation in the deduction of VAT on car-related expenses, “mixed” use means that a vehicle used for business purposes may also be used for other unrelated purposes, e.g. for private purposes. Importantly, it is enough for the possibility to exist for the car to be used for private purposes even once for it to be considered used for “mixed” purposes, and it is not relevant when such use takes place during the entire period of the car’s use by the taxable person. It is assumed that each motor vehicle with a maximum weight of up to 3,5 tons – due to its design features – is as a rule designated for “mixed” use, and thus all the expenses related to the vehicle are subject to the 50% deduction limit.



V. Full deduction only for cars used for company purposes

There are, however, some exceptions to the rule that limits the amount of the deduction. A full VAT deduction may be applied when the vehicles are: used solely for the taxable person’s business purposes or designed to transport at least 10 people including the driver, if one of the documents issued based on road traffic regulations indicates such designation. A full deduction is also applied to goods installed in vehicles and to the related installation, repair and maintenance services, if the designation of those goods objectively indicates that they can only be used for the taxable person’s business purposes. Motor vehicles are considered used only for the taxable person’s business purposes if: the manner in which these vehicles are used by the taxable person, especially if described in the relevant rules laid down by the taxable person, additionally confirmed in the vehicle mileage record kept by the taxable person, excludes their use for purposes unrelated to business operations, or the design of the vehicles excludes their use for purposes unrelated to business operations or makes their use for purposes unrelated to business operations immaterial.

VI. Full deduction only if a full mileage record is kept for the vehicle

An additional condition for a full VAT deduction is the requirement to keep the vehicle's mileage record (with few exceptions). A mileage record should be kept starting from the date on which the vehicle starts being used solely for the taxable person's business purposes up until the date on which such use of the vehicle ends. Taxable persons who use motor vehicles solely for business purposes and are required to keep mileage records for those vehicles, must submit information about those vehicles (VAT-26) to the head of the tax office within 7 days of incurring the first expense in connection with such vehicles. To "incur an expense" means to pay an advance towards the purchase of a good or service, or the acquisition of a good or service, whichever comes first. If no information is submitted by the deadline, it is assumed that the motor vehicle is used solely for the purposes of the taxable person's business operations only as of the date on which the information is submitted.

VII. Parking in front of employee's home prevents full deduction

As explained by the tax authorities in the interpretation, the following circumstances may objectively confirm the inability to use a vehicle for private purposes: the requirement to after working hours leave the company vehicles used by employees in the company's parking lots, without the ability to collect them outside of those hours, including on weekends, for purposes other than solely business operations; supervision over the use of vehicles while performing work duties with the help of, for example, GPS; where vehicles are acquired by a taxable person whose area of activities is the resale of those vehicles – the lack of registration of the vehicles, which prevents them from being driven on public roads, and if registered – inability to use them for private purposes; these cannot, therefore, be demo cars used by a dealership employee to commute to work; where vehicles are acquired by a taxable person whose area of activities is the rental of those vehicles – the setting of rules that exclude private use, use (in the case of so-called airport vehicles) by airport services to move around the tarmac, without the ability for these vehicles to leave airport grounds.

VIII. It is not enough to limit private use in car use regulations

Currently binding regulations do not specify how a taxable person is to ensure the preclusion of a vehicle's private use for the purposes of a full VAT deduction. Such actions must be adapted to the specific nature of operations and the manner in which the vehicles are used. The taxable person's vehicle use regulations must objectively confirm that the vehicle is used solely for business purposes and it is not possible to use it for private purposes. Importantly, private use must be seen as a potential, rather than actual ability to use the vehicle for private purposes. Thus a vehicle will not be considered used for solely business purposes when, for example, there are rules for the use of vehicles, but there are no controls that guarantee compliance with those rules; for example, there is a ban on using vehicles for private purposes, but nobody checks if the ban is respected.



MAREK SPORNY
Senior Tax Manager
of Tax Department BDO,
office Poznań
+ 48 61 622 57 00
Marek.Sporny@bdo.pl

IX. Car use must be properly supervised

In the described interpretation, the National Tax Administration director found that the taxable person was eligible for a full VAT deduction because, firstly, company vehicles are parked only on company premises. Secondly, each vehicle has a road card that contains a description of the route and purpose of trip, the number of kilometers travelled, the date of the trip, the first and last name of the driver and the reading of the odometer at departure and upon return. In addition, each vehicle is equipped with a GPS device in order to monitor its use, i.e. locate the vehicle at a given point in time and verify the entire route it has traveled. Thirdly, the performance of work is supervised by foremen and department directors who oversee the vehicles. Fourthly, the quantity of fuel used. And in addition, with the help of the fuel supplier, because the taxable person uses fuel cards, so no car can be filled up without providing its odometer reading and the card's PIN, which in the end makes it possible to verify fuel use and vehicle mileage.



The information presented herein does not constitute comprehensive information or opinion. Consult your adviser before making any decisions.

BDO is an international network of independent audit and advisory firms. Service provision within the BDO network is coordinated from the Brussels global office. BDO's beginnings go back to 1963. We have been present in Poland since 1991. We have 5 offices in: Warsaw, Kraków, Poznań, Wrocław and Katowice.

BDO has for years been recognized in prestigious rankings of the activities performed by its Audit and Tax Advisory Departments, including most recently:

The last distinctions for the company are related to the Rankings:

Companies and Tax Advisors of Dziennik Gazeta Prawna for 2020:

■ 1st place The Best Tax Advisor in the category of medium-sized companies

The 2020 rankings prepared by the Rzeczpospolita and Parkiet dailies:

■ 1st Most Active Firm on the Stock Exchange

■ 3rd Best Auditor of Listed Companies

■ 5th Best Audit Firm

BDO spółka z ograniczoną odpowiedzialnością sp.k., ul. Postępu 12, 02-676 Warszawa;
tel.: +48 22 543 1600, fax: +48 22 543 1601, e-mail: office@bdo.pl