October 2021

From 2022 on, buyout of leased cars will no longer be profitable

As part of the Polish Deal, the government has proposed an amendment consisting in inclusion of revenue from paid disposal of movable goods in business activity revenue, even if prior to such disposal they were withdrawn from business activity and included in private property. In such case VAT will be due on their market value.

I. Polish Deal will change the treatment of sales of cars under leasing

The amendment to a number of tax regulations, prepared by the government as part of the so-called "Polish Deal", which has already been passed by the Sejm and is now waiting to be considered by the Senate, will change the regulations concerning leased cars and other movables sold after being used within the company, also in cases where the sale takes place after their withdrawal from company assets and inclusion in private property. In such a situation, the very withdrawal of a movable asset and its inclusion in private property will be treated as its sale and taxed with both income tax and VAT.

II. Currently, a movable good withdrawn from the company can be sold tax-free after just 6 months

Currently, under the income tax acts, revenue from the sale of a fixed or intangible asset after its withdrawal from business activity or after liquidation of the activity is treated as revenue from business activity if the sale takes place within 6 years of such withdrawal or liquidation. The situation is different in the case of movable goods used in business activity under so-called operating lease. Pursuant to the PIT Act, such assets are not treated as company assets and are not depreciated. However, lease instalments are included in tax costs. If the lessee buys out such an asset after its withdrawal from business activity, that is inclusion in private property, the revenue from its sale is not treated as revenue from business activity. If the movable good is sold after 6 months from the date of purchase, the revenue from such sale is not subject to taxation.

III. Sale of movable goods will be tax-free only after 6 years from their purchase

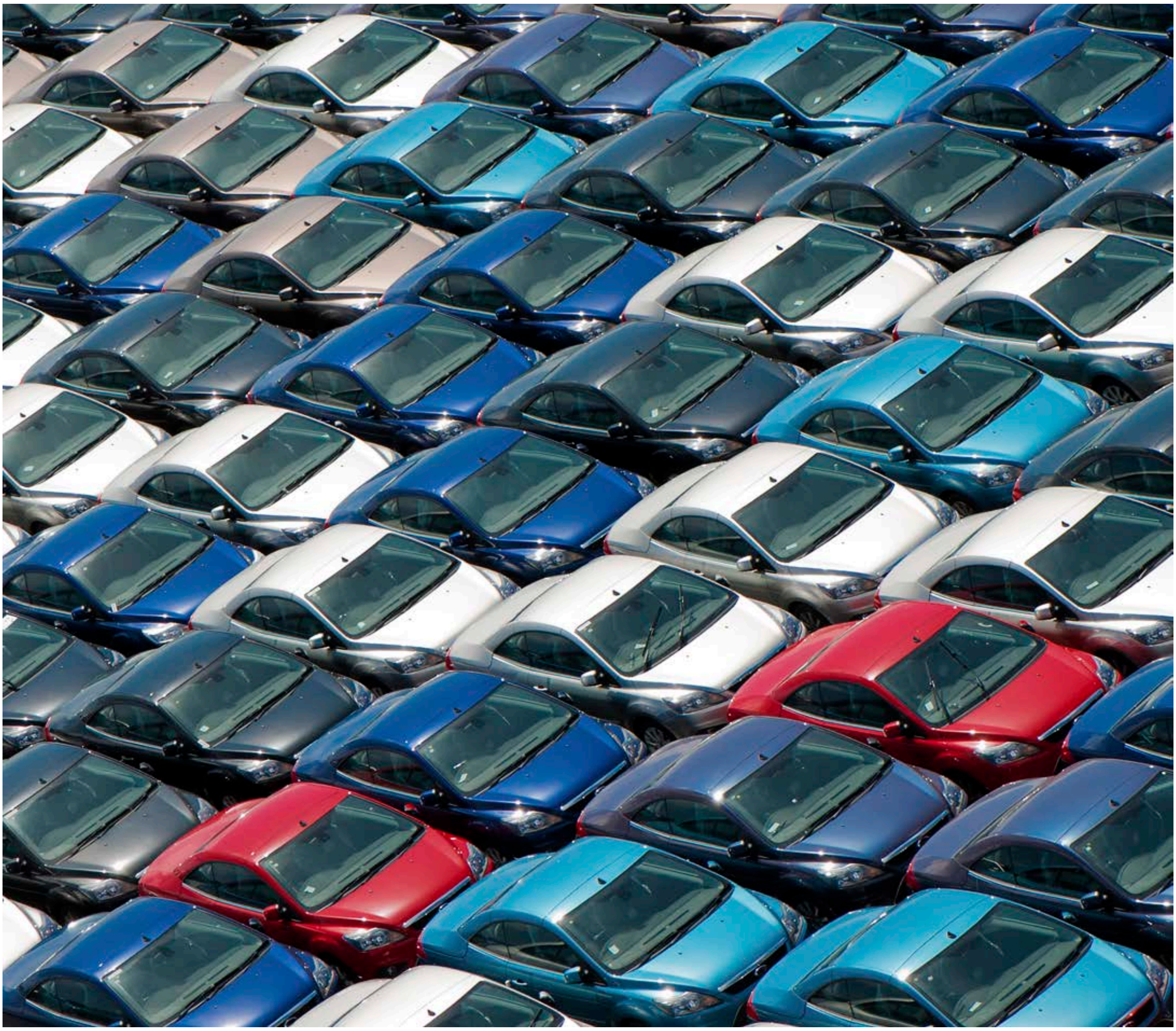
Within the framework of the Polish Deal, the government proposed an amendment where revenue from the sale of movable assets against consideration is included in revenue from business activity even if prior to their disposal they were withdrawn from business activity (and included in private property), and no more than 6 years have passed between the first day of the month following the withdrawal of such assets from business activity and the date of their disposal against consideration. From 2022 on, buying out a leased car and then transferring it to a private property will involve payment of not only income tax but also VAT. It is also worth noting that the movable goods covered by this provision include not only cars but also other assets, as e.g. computers.

IV. VAT will be due not on the buyout price but on the market value

The most important change is related to VAT regulations. First of all, according to the new regulations, which are to take effect from 2022 on, VAT will no longer be charged on the last loan instalment, i.e. the buyout instalment (1% in most cases). Instead, VAT will be charged on the actual (market) value of the vehicle. As a result, the tax due in connection with the buyout will be much higher than it is currently.
The new leasing rules will apply to goods purchased after 31 December 2021. This means that a business operator who buys out a leased car transferring it his/her private property by 31 December at the latest, and then sells it after six months, will not pay tax. However, if the lease agreement was signed e.g. in 2019 and the buyout takes place in January 2022, the new taxation rules will apply.

V. The new provisions will apply to operating leases

Please note that in the case of operating leases, the leased item is included in the lessor's assets. For the lessee, the monthly lease instalments and the so-called initial charge are deductible costs. The initial charge should be posted as a deductible expense once as at the date of its payment. The sum of payments agreed in the lease contract less VAT due must correspond to at least the initial value of the fixed assets. After the end of the contract term, the lessee is entitled but not obliged to buy the used object.
VAT is added to each lease instalment. In the case of financial leases, the leased item is included in the lessee's assets and it is the lessee who is obliged to make write-downs. In this case, the lessee may include only the interest part of the lease instalment in tax deductible expenses. VAT, on the other hand, must be paid upfront in full amount with the first instalment just after the the object is received. The lessee becomes the owner of the object of lease automatically after the last instalment is paid.

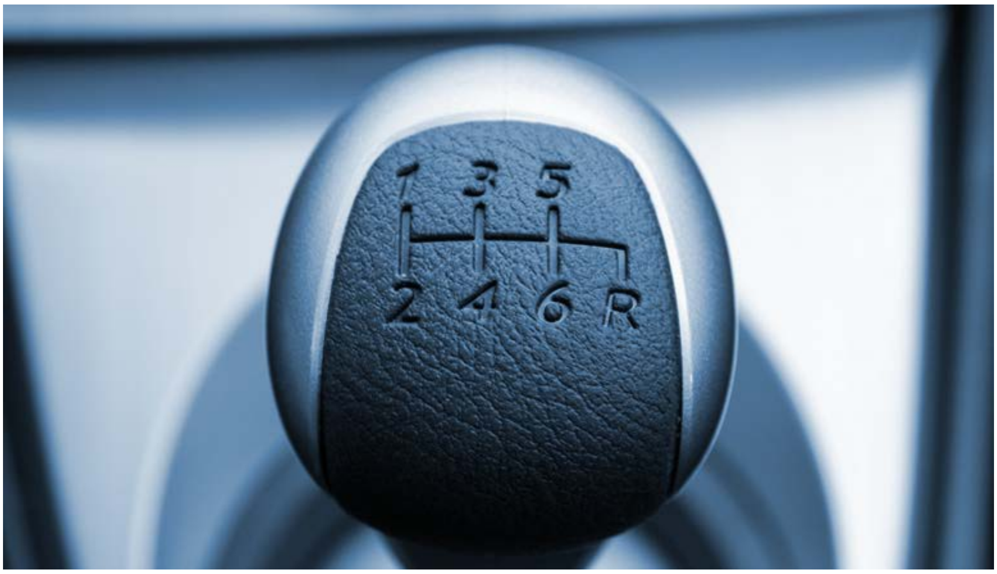


VI. Passenger car leasing is subject to cost limits

In the case of passenger car leasing, cost limits are currently applicable. In the case of operating lease of combustion and hybrid passenger cars worth less than PLN 150,000, and electric cars worth less than PLN 225,000, the entire lease instalment can be recognized as cost (the limits are gross amounts and include VAT). If the value is higher, only the part equal to the limit can be recognized as cost. The limitation only applies to the part of the instalment that relates to repayment of the initial value of the car together with non-deducted VAT. The interest part can be recognized as tax deductible expense in its full amount. Organically, it also applies to operating expenses (purchase of fuel, inspections, repairs). Recognized as costs can be 75% of such expenses (the limit also applies to non-deducted part of VAT).

VII. Today, no VAT is due on the sale of a buyout car transferred to private property

Under the current regulations, in the case of operating leases, deductions are made from each invoice (lease instalment) issued in subsequent months. Tax regulations treat operating lease as provision of services taxed at a fixed rate of 23%. The amount of deducted tax depends on the manner in which the car is used and may amount to 100% (when it is used solely for business purposes) or 50% (when it is used both for business and privately). In the latter case, the non-deducted 50% of the tax becomes a tax deductible expense, thereby reducing the tax base. A car leased by the company may be bought out privately by the business operator. In that case, the car does not become part of the company's assets, and the sale of such vehicle is not subject to VAT.



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