

Parking a company car at home does not rule out a full VAT deduction

I. The VAT Act does not always permit a full VAT deduction on passenger cars

The VAT Act provides that where a vehicle qualifies as a passenger car, if it is used for taxable activities, an active VAT taxable person can deduct 50% or 100% of VAT on expenses associated with its use. A full VAT deduction on expenses associated with the regular use of a passenger car (including its acquisition) is possible when all of the following conditions are met: a record of the vehicle's mileage is kept (record of distances traveled, odometer readings); regulations have been established for the use of vehicles at the company, e.g. who can use company cars or to what extent are company cars used at the company; the car has been reported to the tax office on form VAT-26 by the 25th day of the month following the month in which the first expense associated with the car was incurred, no later however than on the SAF_V7 filing date; the car is only used for business purposes (private use excluded).

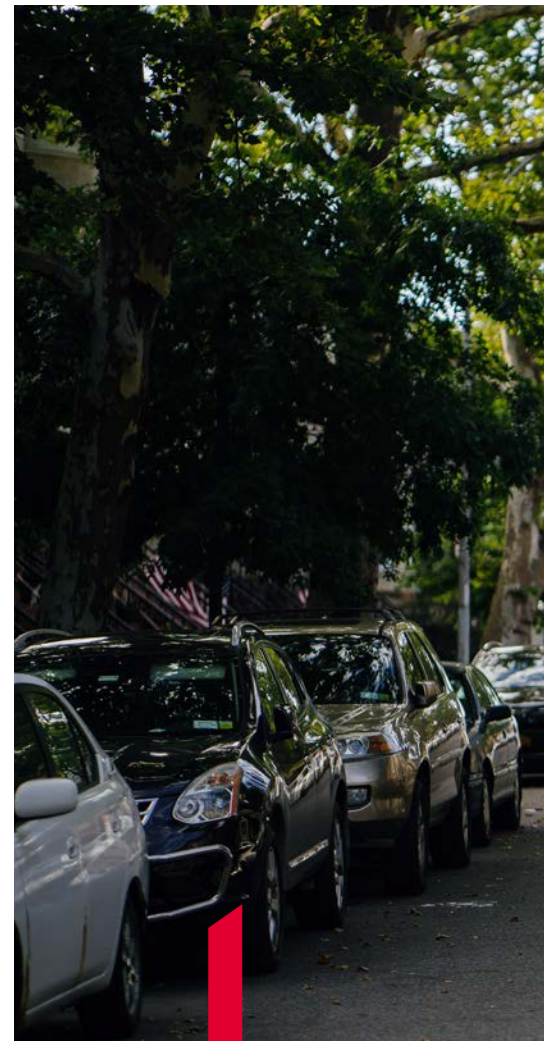
II. Only 50% deductible with mixed use

In accordance with the VAT Act, 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". According to the tax authorities, 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. According to the tax authorities, it is enough for the potential to exist for the car to be used for private purposes even once for it to be considered used for "mixed" purposes.

III. Tax authorities want to take away full deduction for even the potential for private use

The regulations that are in effect today do not specify how a taxable person is to ensure eliminating private use of a car to get a full input tax deduction. Nonetheless, the tax authorities believe that such actions must be adapted to the nature of operations and the manner in which the vehicle is used for the purposes of those operations. The rules of vehicle use established by the taxable person must objectively confirm that the vehicle is used solely for business purposes and that it is not possible to use it for private purposes. Importantly, private use must be seen as a potential for, rather than an actual ability to use the vehicle for private purposes. A vehicle will not be considered used solely for business purposes when, for example, there are rules for the use of vehicles, but there are no controls that guarantee compliance with those rules.

It cannot be assumed from the start that there is a risk that a car will be used for purposes other than business activities when it is parked at the taxable person's residence – the Voivodship Administrative Court in Rzeszów has found.



IV. Even a guarantee of proper procedures does not guarantee a deduction

Based on binding regulations the tax authorities assert that private use is to be seen as a potential for, rather than an actual ability to use the vehicle for private purposes. In consequence, even the controls put in place by the taxable person are not enough to assume that the car is only used for business purposes. According to the tax authorities, although such procedures may discourage from using a company car for private purposes, they will not in reality eliminate private use, especially if the car is available at the employee's place of residence. In the case at hand, during work hours the car is parked in front of the investment project building, the buildings where the taxable person provides services, as well as at the company's registered office (the company's registered office is the trader's place of residence). After hours it is parked in front of the company's registered office, i.e. place of residence.

V. Parking at home does not in itself signify private use

In its ruling of 28 July 2022 (case file I SA/Rz 272/22), the Voivodship Administrative Court (WSA) in Rzeszów disagreed with the interpretation of VAT deduction regulations presented by the tax authorities. The Court found that the regulation contained in the VAT Act cannot be interpreted to mean that the mere circumstance where the taxable person parks a company car at his place of residence (in his garage) prevents a full deduction of input tax, especially when this is also the registered office of the company and the need to have access to the car at 'any time' is dictated by the nature of the business operations. It cannot be from the start assumed that there is a risk that the car will be used for purposes other than business operations when the car is parked at the taxable person's home.

VI. Even the best procedures cannot prevent improper behavior

The Court found that the eligibility to apply Article 86a of the VAT Act that provides for a full deduction of input tax on expenses associated with the use of a vehicle cannot be conditioned on the existence or nonexistence of as much as a potential for the use of the vehicle for purposes not associated with the taxable person's business operations. The laws of logic and life experience dictate that even the best-designed rules for the use of a taxable person's car, meant to preclude its use for non-business purposes, cannot prevent such use, as the so-called human factor comes into play.



VII. Tax authorities too strict in enforcing the regulations

The Court stressed that if it had been the lawmakers' intention to completely eliminate even the potential for the use of company vehicles for private purposes, than that potential is even present in the use of vehicles specified in Article 86a par. 9 of the VAT Act, i.e. those designed in a way that eliminates their use for purposes unrelated to business operations, but even then it was decided that their use for non-business purposes that is immaterial in nature does not take away the taxable person's eligibility for a full deduction of VAT associated with those vehicles (Article 86a par. 3 point 1 letter b and Article 86a par. 4 point 2 of the VAT Act). According to the WSA in Rzeszów, the strict approach presented by the tax authorities would in principle deprive taxable persons of the ability to use the said institution, and the related legal regulations would themselves become a dead letter.

VIII. Private use cannot be assumed without evidence

In its ruling the Court in Rzeszów found that a vehicle is used solely for the purposes of the taxable person's business operations when the taxable person has established the rules for its use and keeps the vehicle's mileage record, which together, subject to the specific nature of the taxable person's operations, by definition exclude the vehicle's use for purposes not associated with business operations. If therefore the procedures adopted by the taxable person do not permit using the vehicle for private purposes, then the tax authorities, having no evidence, cannot find that the actual state of affairs with regard to the use of the car differs from that presented by the complainant. This is in particular unacceptable in an interpretation proceeding.



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