

It is becoming increasingly difficult to deduct all VAT on cars and fuel

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The deduction of full VAT on a company car and fuel requires proof that the vehicle was used for official purposes only. However, proving this fact is not easy. For the treasury, even the potential possibility of using the car for private purposes excludes the deduction of the entire tribute.

A full 100% deduction of VAT on company cars and related expenses requires submission of a VAT-26 print to the tax office. This is a notification that the car is used solely for business purposes. They are submitted within seven days of the day on which the first expenditure related to the motor vehicle was incurred. Without such an application, only 50 percent can be deducted. VAT.

Tax settlements have recently become particularly problematic if taxpayers use company cars and park them near their place of residence.

See also: A car under the employee's home wi

The problem is confirmed by the recent interpretation of the Tax Authority (No. KDIP4.4012.743.2019.2.RMA). The **could deduct 100 percent. the amount of input VAT related to a passenger car in a situation where the car is used for conducting business activity**. He confirmed that

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the adopted rules of using this vehicle must exclude using it for private purposes, and secondly – the taxpayer must keep records of the vehicle which confirms that the car is used only for business purposes.

Read in LEX: Private use of the car and the right to deduct>

Tax authorities do not allow full tax deduction

As emphasized by Kinga Baran, a tax advisor, a partner at Mazars, tax authorities are reluctant to agree to deduct VAT on cars in full. The expert points out that, as always in such cases, it is problematic to prove that, for example, an employee, when driving home, actually does it to improve their efficiency in the workplace, as is the case with sales representatives. – In addition, it is often the case that company cars have to be parked in front of employees' homes, as the employer does not have enough parking spaces. Therefore, if the additional evidence and procedures existing in the company (GPS, vehicle mileage records) show that despite parking the car under the employee's home, the car is not used for other purposes than business purposes, **then the taxpayer should be entitled to 100% deducting VAT on this account**. The thesis – despite resistance from tax authorities – has recently been increasingly accepted in administrative court rulings – emphasizes the expert.

See the procedure in LEX: Expenses related to the car and VAT>

Disputes relate to, among others parking space

According to Andrzej Nikończyk, a tax advisor, a partner at KNDP, according to the decisions of administrative courts, parking under the house is not a condition that automatically excludes full VAT deduction from the car. The right to deduct depends on whether parking the car in front of the employee's home is justified by official duties and whether it serves a business. **If so, this is the case with, for example, a sales representative who starts work immediately by getting in the car and does not use the vehicle for private purposes (e.g. taking children to school – which can be confirmed e.g. by GPS route records)), you have the full right to deduct.** In turn, in the case of private use, the right to deduct VAT is limited to 50%, regardless of where the car is parked. The expert adds that parking in the workplace is simply a way to exclude private use.

See procedure in LEX: Obligation to keep vehicle mileage records>

Fiscal approach of tax authorities, but

– Meanwhile, the treasury is in a restrictive position. **percent. the amount of input tax on invoices related to taxpayers who will be able to exclude even purposes not related to the taxpayer's business**

KPMG in Poland, Office in Krakow.



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The expert also notes that at the end of January, the Supreme Administrative Court issued a judgment (file reference number I SA / Gd 97/17) revoking the position of the director of KIS, which showed that the taxpayer would not be entitled to a full deduction of input tax related to incurring operating expenses and the purchase of fuel for the car because it cannot be objectively excluded that the car may be used for private purposes, e.g. when traveling.

Read in LEX: The scope of VAT deduction from the purchase of cars and fuel for them - discussion of case law>

- The Supreme Administrative Court emphasized that the VAT Act requires the introduction of such rules for the use of vehicles that will ensure their use in the taxpayer's business as much as possible, while the possibility of 100% VAT deduction cannot depend only on the "potential" possibility of using the car for purposes unrelated to the taxpayer's business, because the adoption of such an argument would make the regulations of the VAT Act in this respect dead, explains Karolina Rutkowska. It also recalls that case-law has already emphasized that when a car is entrusted to an employee, **there is almost always a hypothetical possibility of using it for private purposes**. The thing is, however, that the risk is minimized as much as possible and the rules for using the vehicle are introduced, as well as safeguards to ensure compliance (see NSA judgment of 5 November 2019, reference number I FSK 1139/17).

Read in LEX: VAT correction rules for passenger cars>

However, it cannot be overlooked that tax authorities often contradict themselves. They indicate that the taxpayer should create appropriate rules for the use of company cars by employees, but at the same time they add that any actions of the company will not preclude the use of these cars by employees for their private purposes (cf. judgment of the Provincial Administrative Court in Opole of 13 December 2019, file reference number I SA / Op 416/19).



The image is a promotional banner for a VAT 2020 guide. It features the text "VAT 2020" in large blue letters, with the "VAT" part stylized to include images of Polish banknotes. Below this, the text "Przewodnik po zmianach!" is written in blue. At the bottom, there is a green button with the text "Pobierz bezpłatnie" and a downward arrow icon.