

Recommendation concerning the appliance of the changes to the Fiscal Code throughout the “**Emergency ordinance**” no. 34/2009 related to the budget correction for 2009 and the regulation of some financial and fiscal measures

*Dear user of a leasing contract,*

*Our interpretation concerning the above mentioned “Emergency Ordinance no. 34/2009” (Ordinance) is aiming to meet your needs related to the correct appliance of this Ordinance.*

*We have to mention that the present interpretation is based both on the detailed study of the Ordinance and on the participation at the discussions held at the Ministry of Finances where we understood the essence of this Ordinance. We have also to underline the fact that even if in applying the legislation the two users of this legislation (the authority and the contributor) have to take into consideration both the spirit and the letter of the law, in many cases only the letter of the law is considered and it is often vague, unclear, and incomplete and so on.*

*ALB does not assume any liability related to the above mentioned interpretation in case the fiscal inspectors will have a different understanding and application of the Ordinance during the verifications they will make. Our purpose is to share with you our opinion, but if you want a clarification we recommend you to have it throughout the Ministry of Finances.*

The provisions of this Ordinance will be applied for the period of May 1-st, 2009 to December 31-st 2010.

**I. Tax on profit – Fuel expenses**

Ordinance :

**3.** Under article 21 item (4), after the letter §) is introduced the letter t) having the following content: Starting from May 1-st 2009 to December 31-st 2010 the deductibility of the expenses related to the fuel for the motor road vehicles is eliminated (vehicles dedicated only to the people’s transport, having a maximum authorised weight not exceeding 3,500 kg and with no more than 9 passenger seats, including the driver’ seat), under the property or the utilisation (leasing or rent), excepting the vehicles found in one of the following cases:

1. vehicles exclusively utilised for: intervention, repairing, security and protection, courier, staff transport to and from the place of activity, as well as vehicles especially adapted to be utilised as TV report cars, vehicles used by the selling agents and by the labour recruitment agents;
2. vehicles used for the staff paid transport, including the taxi activity;
3. rented vehicles used by other people, including for training activity within the driving schools.”
- 4.

Interpretation :

For an easier understanding we shall define the “road motor vehicles exclusively dedicated to the staff road transport, having a maximum authorised weight not exceeding 3,500 kg and with no more than 9 passenger seats” as **small vehicles/cars**. Usually, these small vehicles/cars have a weight under 3,500 kg, 5 passenger seats and they are not used to transport a merchandise, but to transport people. The expenses related to the fuel of the company cars granted to managers, employees etc are mainly restricted. The deductibility of the fuel used by the cars transporting the merchandise, by the intervention, repairing, security, courier vehicles etc is allowed, but it is not permitted for the companies with such activities that are using these vehicles for other purposes than the basic activity.

We do consider that the most efficient way to establish the deductibility of the fuel is "the elimination method". Thus, we have to ask: *Is there one of the company cars exclusively used in one the above mentioned purposes (intervention, security, courier, taxi, driving licence schools etc). If YES, then the expense related to the fuel is deductible.*

In case we can easily classify a car in one of the above mentioned categories, then the fuel is deductible at the calculation of the tax on the profit, otherwise it is not deductible.

The word EXCLUSIVELY: the fuel is not deductible if a car is used both for the above mentioned purposes (*intervention, security, courier, taxi, driving licence school etc*) and also for other purposes (staff transport → it is a car used by the employee in a personal purpose or as a service, for going to a bank, to suppliers, to clients etc).

## **II. VAT – Deductibility of the VAT at the acquisition of a car; VAT deductibility for the fuel**

### Ordinance:

10. A new article is introduced after the article 145, namely 145<sup>1</sup> "Special limitations of the deduction right", with the following content

"Special limitations of the deduction right":

In case of motor road vehicles especially dedicated to the staff transport on roads, having a maximum authorised weight not exceeding 3,500 kg and no more than 9 passenger seats, including the driver' seat, the VAT related to the acquisition of such vehicles and the tax related to the acquisition of fuel to be utilised by these vehicles having the same characteristics are not deducted for the people paying a tax, owning or using these vehicles, excepting the vehicles under one of the following categories:

- a) vehicles exclusively used for: interventions, repairing, security and protection, courier, staff transport to and from the place of activity, as well as for vehicles especially adapted in order to be used as TV report cars, the vehicles used by the selling agents and by labour recruitment agents;
- b) vehicles used for the paid transport of the staff, including fro the taxi activity;
- c) vehicles used for paid services, including rent to other people, training in the obtaining of the driving licences in the driving schools, transmitting the utilisation right within a financial or an operational leasing contract;
- d) vehicles used in a commercial purpose, respectively to be resold.

(2) By vehicle acquisition according to paragraph (1) we understand the acquisition of a vehicle in Romania, the import or the intra-community acquisition of the vehicle.

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### Interpretation:

Similarly to the above mentioned cases (in section I. Tax on profit – Expense related to the fuel) where the expense related to the fuel can be or not deducted, the VAT related to the acquisition of a new vehicle or to the acquisition of fuel can or not be deducted.

In addition, the VAT related both to the acquisition of vehicles and to the acquisition of fuel can be also deducted in case of the vehicles used for paid services.

What are the paid services? The Ordinance text offers us some examples of such services: rent, driving licence schools, putting in leasing. Performing paid services is provided under the Fiscal Code and its Norms of Application – see Article 126 paragraph (1), article 129. The condition referring to "payment" involves the existence of a direct relationship between the operation and the obtained counterparty.

We could therefore say that the VAT related to the acquisition of vehicles or to the fuel for the vehicles used for services that are directly generating incomes can also be deducted. Other examples could refer to the traction vehicles, the emergency vehicles, the rally vehicles and the vehicles exclusively used for advertising purposes (participating in exhibitions, parades).

**Attention!!!**

In case of the conclusion of leasing contracts there is no limitation concerning the VAT deduction. Thus, the VAT mentioned in the invoices concerning the leasing instalments can be deducted by the companies using goods for which they concluded leasing contracts. The leasing represents a supplying of service (according to Article 129, paragraph (3) letter a) from the Fiscal Code, whereas the limitation of the VAT deduction right can be applied only in case of acquisition of a vehicle from Romania, in case of imports or intra-community acquisitions (according to Article 32, item 10 from the Ordinance 34).

However, considering the fact that in case of leasing it is considered that the transfer of the ownership right is made at the last instalment (that is usually the residual value), the VAT of the last instalment cannot be deducted by the users.

**Revision**

	Category	For any leasing contracts in force and for new leasing contracts
<b>Tax on profit</b>	Expenses related to operation, maintenance and repairing (spare parts, consumables, tires, revisions, repairs etc)	They are deductible, as before. No matter what function has the driver, if there are not several vehicles assigned for the direction staff, the expense is deductible (as per Art. 32, item 2 from Ordinance no. 34).
	Fiscal tax depreciation	It is deductible, as before. No matter what function has the driver, if there are not several vehicles assigned for the direction staff, the expense is deductible (as per Art. 32, item 2 from Ordinance no. 34).
	Expenses related to the interest paid within the leasing contracts.	It is deductible, as before. No special limitations. Provisions of Art. 23 from the Fiscal Code are still valid.
	Fuel	It is deductible for the vehicles having a weight of up 3,500 kg or having no more than 9 seats. It is deductible for the vehicles used for the purposes defined by the Ordinance (intervention, repairs, security and protection, courier, transport of people to and from the place of activity, paid transport of people, taxi activity and training in the driving schools). It is not deductible for the vehicles that are not to be found in the above mentioned classification. Examples: vehicle exceeding 3,500 kg, with more than 9 seats, used by the administrator of the company, by a department manager, by an employee in order to go to a bank, to suppliers or to shopping.
<b>VAT</b>	Acquisition of vehicles – cash or by a credit	It is deductible for the vehicles having a weight of up 3,500 kg or having no more than 9 seats.
		it is deductible for the vehicles used for purposes defined in the Ordinance (intervention, repairs, security and protection, courier, transport of people to and from the place of activity, vehicles especially adapted to be used as TV report vehicles, vehicles used by selling agents and by labour recruitment agents, vehicles used for paid transport of people, for taxi activity, rent by other people, training in the driving schools, used for supplying paid services, to be rented or to be handed over in financial or operational leasing).

		<p>It is not deductible for the equipments that are not to be found in the above mentioned classification. Example: vehicle exceeding 3,500 kg with more than 9 seats, used by the administrator of the company, by a department manager or by a company employee in order to go to a bank, to suppliers or to shopping.</p>
	<p style="text-align: center;"><b>Leasing</b></p>	<p><b>It is deductible to the acquisition of any type of vehicle, used for any purpose (to be found within the scope of activity of the company). The deductibility is granted only for the VAT indicated in the invoices of instalments, it is not granted for the VAT mentioned in the last instalment when the transfer of the ownership right is made.</b></p>
	<p style="text-align: center;">Fuel</p>	<p>It is deductible for the vehicles not exceeding 3,500 kg or having 9 seats.</p> <p>It is deductible for the vehicles used for the purposes defined in the Ordinance (intervention, repairs, security and protection, courier, transport of the staff to and from the place of activity, vehicles especially adapted to be uses as TV report cars, vehicles used by the selling agents and by the labour recruitment agents, for the paid transport of people, for taxi activity, to be rented by other people, for training in the driving schools, for supplying paid services, for rent, to be handed over in a financial or operational leasing).</p> <p>it is not deductible for the vehicles that are not to be found here above. Example: vehicle exceeding 3,500 kg with more than 9 seats, used by the administrator of the company, by a department manager or by a company employee in order to go to a bank, to suppliers or to shopping.</p>