

Tax Newsletter

Issue 29 - September 2012



Dear Sirs,

After holiday season we are coming back with the most important tax information. In the light of the changes in tax legislation, planned to be introduced from 1 January 2013 we point your attention especially to change in the taxation of joint-stock partnerships; in practice the proposed changes will eliminate the tax optimisation. We inform also about changes regarding settlements of travel expenses.

In the next days we will distribute executive summary on major changes in VAT legislation.

Using the opportunity I would like also to announce the VAT Seminar organized by Mazars Tax Advisory Department. The conference will take place on 11 October 2012 in our office in Warsaw. The detailed programme will be sent in a separate e-mail correspondence. I kindly invite you to participate.

Yours sincerely,

Krystyna Szydłowska

SUMMARY

- 1. Business activity in Special Economic Zones.**
- 2. Important judgments and ruling concerning insurance activity.**
- 3. CIT: Joint correcting invoice should indicate primary revenue.**
- 4. CIT: End of tax optimization for joint-stock partnerships.**
- 5. PIT: New version of the draft of regulation on travel expenses.**





1. Business activity in Special Economic Zones

Number of rulings regarding activity within Special Economic Zones (SEZ) was issued recently. Please read further for most important details regarding this subject.

Entrepreneurs applying SEZ exemption may participate in Tax Capital Group.

According to the Supreme Administrative Court's judgment of 2nd August 2012, ref. II FSK 1614/11, entities applying SEZ exemption may be part of Tax Capital Group. Discussed judgment confirms the prior approach of the Voivodship Administration Court in Gdańsk of 22nd March 2011, ref. I SA/Gd 1311/10, according to which members of Tax Capital Groups may also profit from the exemption resulting from the CIT Act with regard to the income gained from SEZ activity. Moreover, according to the CIT Act, SEZ companies forming a Tax Capital Group may aggregate their tax results from the SEZ activity as well as combine non-SEZ tax result within the Tax Capital Group.

Costs incurred outside SEZ may be treated as qualified (in the terms of public aid), if directly related to the SEZ investment.

The Supreme Administrative Court's judgment of 13th June 2012 ref. II FSK 2352/10 is also important decision, according to which SEZ companies (provided the permission was granted before 24th February 2007) are allowed to recognize expenses borne outside SEZ as

qualified costs if the expenses were directly related to a SEZ investment.

„Revenue key” as a method of allocating expenses to SEZ and other activity.

The judgment of the VAC in Wrocław of 23rd April 2012 (ref. I SAWr 113-114/12) concerns the methodology of income allocation to SEZ and taxable activity. The Court stated that if direct allocation of costs to taxable or exempted activity is not possible, the revenue key should preferably be applied. Discussed key should be based on proportion of exempted or taxable revenue to the total revenue. This approach should be regarded positive as application of discussed key reflects the entrepreneur's revenue/costs division.

2. Important judgments and ruling concerning insurance activity

Please find below brief description of recent rulings related to the insurance activity and problematic tax issues.

VAT exemption of auxiliary activity.

According to the judgment of the VAC in Poznań of 17th May 2012 (ref. I SA/Po 212/12), auxiliary services of insurance and pension funds, i.e. services provided to insurers are exempted from the VAT. Nevertheless, the exemption is applicable only if the auxiliary service is typical for the main service and necessary to its provision. In the Court's opinion, the auxiliary service may be treated as related to the insurance service, as each and all of the activities are necessary for the insurance service to be provided – for obtaining the compensation it is necessary to confirm



occurrence of the event covered by the contract, scope of damages, the amount of insurance, etc. This decision was confirmed by the judgments of the VAC in Gdańsk dated 21st December 2011 (ref. I SA/Gd 885/11), of the VAC in Łódź of 27th February 2012 (ref. I SA/Łd 1626/11), of the VAC in Kraków dated 8th March 2012 (ref. I SA/Kr 70/12) and of the Supreme Administrative Court dated 8th May 2012 (ref. no. I FSK 268/12).

The Minister of Finance presented the split of claim liquidation services in the light of VAT.

Nevertheless, the split announced by the Minister of Finance On 20th July 2012, the Minister of Finance announced a general interpretation no. PT1/033/1/2/EFU/2012/PT-304 presenting the division of services related to claim management into services exempted and taxable with VAT. According to the ruling, technical services related to claims management may not be exempted from the VAT, whether they are provided on behalf and to the benefit of insurance companies or entities other than insurance companies. This is due to the fact that those services do not meet the conditions indicated in article 43 point 13 of the VAT Act. On the other hand, some activities included in the process of claim management may profit from the exemption defined in the VAT Act. This refers to the activities of "claim investigation" consisting mainly of verification of data contained in the claim (valuation of damages, report from the place of damage, etc.), which are performed in order to make sure whether the policy holder is entitled to the claim and if so, what shall be the amount payable. does not eliminate doubts, as it is contrary to the interpretation of the Polish administrative courts (e.g. judgement of the VAC in Łódź dated 30th January 2012, ref. no. I SA/Łd 1505/11, judgment of the VAC in Gdańsk dated

21st December 2011 ref. I SA/Gd 885/11), or to the judgment of the European Court of Justice. In this context, tax analysis should be performed especially in the case of entities dealing with claim management, in order to keep their tax safety.

3. CIT: Joint correcting invoice should indicate primary revenue

The current wording of the CIT Act does not allow to recognize corrections on a daily basis – stated the SAC in its judgment of 2nd August 2012 ref. II FSK 31/11. Therefore, the corrections of revenue shall always refer to revenue resulting from the initial invoice (retrospectively), which is often problematic for the taxpayers. In the Court's opinion, the aim of issuing correcting invoices is to indicate the right amount of the already gained revenue for the given period. The issuance of such invoice does not change the date of the economic event which caused the revenue or the tax point.

4. CIT: End of tax optimization for joint-stock partnerships

The Minister of Finance is planning to introduce changes into the rules of taxation of recently common form of partnership, i.e. joint-stock partnerships, in consequence of which those partnerships shall become CIT taxpayers. The amendments to the CIT Act, the draft of which was published on 27th August 2012 on the website of the Ministry of Finance, will eliminate the advantages related to this type of structure and possibly in some cases increase the tax payable by the entrepreneurs.



5. PIT: New version of the draft of regulation on travel expenses

The Ministry of Labour and Social Policy published new version of the draft regulation on the value and conditions of determining compensation of employees working for the central government or self-government budgetary units for business travels in Poland or abroad (we already mentioned this regulation in the Tax Newsletter in February 2012).

Compared to the January 2012 version of the draft regulation, the business travel allowances and the accommodation limits in some destinations were raised. Some organizing changes have also been introduced.

Contrary to the previous announcements of the Ministry, the draft regulation should enter into force no sooner than on 1 January 2013, not as it was planned, in September 2012.

Travel expenses compensations

	current	after the amendment
Daily allowance	PLN 23	PLN 30
Fixed sum for accommodation	PLN 34,5	PLN 45
Accommodation limit	unlimited, according to the note	PLN 600
Fixed sum for public transport (per day)	PLN 4,60	PLN 6

How to order Tax Newsletter?

Tax Newsletter is a free-of-charge monthly newsletter concerning tax issues.

In order to subscribe, please send an e-mail to: podatki@mazars.pl with the following data:

First name and surname

Position

Name of the company

*If you do not want to receive the newsletter in the future, please send an e-mail with "NO" in the subject heading at:
podatki@mazars.pl*

Contact:



Krystyna Szydłowska
Head of the Tax Advisory Department
k.szydłowska@mazars.pl

Tax Advisory Department
Mazars in Warsaw
Ul. Piękna 18
00-549 Warszawa
Phone no.: +48 22 25 55 200
E-mail: podatki@mazars.pl
www.mazars.pl

Mazars is a partner company of the Instytut Rachunkowości i Podatków



The aim of this Tax Newsletter is to inform the readers about the current changes related to taxes. The presented information has been prepared with due diligence, but it is presented in an abridged and general form. This publication is therefore solely informative and is no legal or tax advice. Mazars Audyt Sp. z o.o. is not responsible for the use of the presented information. Before taking any decision or steps, we suggest that you ask the consultants of Mazars Audyt Sp. z o.o. for expert advice.

© 2012 Mazars Audyt Sp. z o.o.