

TAX NEWSLETTER

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UPCOMING TAX CONFERENCE

„VAT: New tax – Revolutionary changes”

Wednesday, 12 December 2012, Katowice

INTRODUCTION

Dear Sirs,

In the November issue of Tax Newsletter we present, among other things, a controversial judgment on rules of settlement in partnerships limited by shares. In line with the Supreme Administrative Court's judgment of 23 October 2012 shareholders of the partnerships limited by shares should pay advance on income tax on a current basis whether they actually received a dividend or not. Such judgment does not comply with the Supreme Administrative Court's resolution on this matter and general interpretation issued by the Minister of Finance.

We also give you an outline of major goals of the bill introduced by the Ministry of Economy which is aimed at reducing payment gridlocks in business (by imposing tax sanctions).

Yours sincerely,

Krystyna Szydłowska

PIT: Uncertain taxation regime for shareholders of the partnership limited by shares

Taxpayers who are shareholders of partnerships limited by shares cannot be certain of the regime applicable to the recognition of revenues arising from shares and the obligation to pay advances on income tax. It seemed that the resolution of the Supreme Administrative Court (NSA) and general interpretation of the Ministry of Finance removed doubts as to the rules of recognition of revenues by the shareholder. According to the presented approach, the revenue was recognized only upon receipt of the dividend.

Then, the Ministry of Finance introduced a bill amending the Act on Corporate Income Tax under which the partnership limited by shares would be a payer of corporate income tax. At present, the entry into force of the proposed amendments in 2013 seems unlikely as the legislation works take longer than expected (for one month now the bill has been under cross-ministerial consultations). In our opinion, the discussed changes are likely to be introduced only at the beginning of 2014.

Unfortunately shareholders of partnerships limited by shares cannot be sure as to the applicable rules of recognition of revenues arising from shares, despite the resolution of the Supreme Administrative Court and general interpretation issued by the Minister of Finance. In the judgment of 23rd October 2012 ref. no. II FSK 382/11 the Supreme Administrative Court adopted another position by concluding that the shareholder of the partnership limited by shares should pay advance on income tax on a current basis whether he received the dividend or not.

Please note that the justification of the above judgment has not been published yet, therefore we should refrain from definitive conclusions until the official position of NSA will be known.

CIT: Changes in tax-deductible cost recognition rules proposed by the Ministry of Economy

The Ministry of Economy has just presented a bill in respect of reducing certain administrative burdens in the economy, introducing, among others, changes to the VAT Act by decreasing payment gridlocks occurring in transactions between contractors. The bill adopted by the government on 24th October 2012 imposes sanctions on taxpayers failing to meet deadlines for payment of invoices within 150 days after the payment date in the form of exclusion of the expenses resulting from invoices from tax deductible costs of the buyer. The proposed solution will also be used to settlement of fixed assets where the depreciation allowances on expenses classified as actually unpaid initial value will not be treated as tax deductible costs. The proposal concerning adjustment obligation will apply whether the creditor could use the bad debt relief or not. The solution proposed by the Ministry of Economy is aimed at improving financial liquidity between companies on the one hand, and increase the payment discipline of contractors on the other hand.

CIT: Increased tax controls of free-of-charge benefits provided by management board members

We would like to inform that during recent corporate income tax controls, the tax authorities focus their attention on the verification whether persons exercising management board member functions are remunerated for this or not. If management board members, who are not at the same time shareholders entitled to profit sharing fulfil these functions without being remunerated, tax authorities recognize for the company an additional income from free-of-charge benefits received from management board members.

Considering the above, companies whose management board members not being shareholders perform these functions without being paid should proceed to resolving the question of remuneration for the exercised functions. In case of control, the tax authorities are entitled to estimate the amount of income arising from free-of-charge benefits obtained by the company based on the average remuneration of persons employed in a similar position, which may prove disadvantageous for the company in practice.

CIT/International tax law: Tax optimisation through companies registered in the United Arab Emirates free zones

In the light of introduction relevant modifications in respect of the double taxation avoidance agreement with Cyprus, significant amount of entrepreneurs considering to establish a company in the United Arab Emirates (UAE).

Companies registered in the UAE free zones are entitled to many tax benefits, e.g.:

- Possibility of taxation in respect of remuneration of members of management or supervisory board or a similar company body in the UAE;
- Possibility of applying the exemption method for the taxation of revenues of directors of UAE-based companies with tax residence in Poland.
- As a result, Poland is obliged to exempt these revenues from taxation in accordance with double taxation avoidance agreement whereas UAE tax authorities having the right to levy tax on these revenues do not exercise this right;
- In UAE there are only two categories of companies (onshore and offshore), with regard to which the decisive criterion for taxation is the notion of the “company’s registered office”, not the one of “tax residence”;
- No public access to the information concerning companies based in UAE

It should also be underlined that the only cost borne by the company is the annual government fee (in amount of several hundred euros).

VAT: advance without VAT

In line with the view taken by the Supreme Administrative Court in its judgment of 23rd October 2012, ref. no. I FSK 2121/11, if the agreement concluded with a contractor does not specify, on which delivery the advance was paid, it does not give rise to the VAT payment obligation. This settlement was based on the judgment of the European Court of Justice of 21 February 2006 (C-419/02), whereby the Court considered that if the payment is made prior to the delivery of goods or performance of service the VAT becomes chargeable only if it is clearly specified which service or delivery is concerned by payment.

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