

TAX NEWSLETTER

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SUMMARY

- **International tax law:** new tax convention with the US, new agreement with India, tax Information Exchange Agreement with Gibraltar
- **VAT:** Filing an interpretation application concerning a contractor
- **PIT:** Integration events, changes in settlement of business travels
- **CIT:** New draft law on CIT

INTRODUCTION

Dear Sirs,

This month we would like to present some significant changes in the double tax avoidance treaties, in particular a new agreement between Poland and the US, which has been signed recently and will come into force in 2014, as well as a protocol amending the double tax avoidance treaty concluded with India. In this issue we also discuss in detail the major changes in the WHT rates, the methods of avoiding the double taxation and the exchange of information clause.

Furthermore, I hope that the recent court judgments that we present will be of interest to you. In particular, we recommend you to get familiar with the favorable judgment of the Supreme Administrative Court regarding the taxation of income derived from the participation in team building events organized by the employer. The judgment which was issued in January could be a breakthrough in the unfavorable judicial practice as it states that the participation in this type of event (in case where the attribution of particular benefits to the employee is impossible) does not constitute a personal income tax liability.

We invite you to read the February issue.

Yours sincerely,

Krystyna Szydłowska

International tax law:

• New tax convention with the USA

A new Convention between the Republic of Poland and the United States of America for the avoidance of double taxation and the prevention of fiscal evasion with respect to income was signed on 13 February 2013 with the expected effective date in 2014.

The provisions of the Convention will apply, among others, to the taxation of income from real property, running business in another country, capital gains, remuneration and retirement pay and disability pensions. The withholding tax rate, i.e. tax on the passive income has been fixed at 5% on interest and royalties. For dividends the tax rate amounts to 5% of the gross amount of the dividend where the actual beneficiary is a company holding at least 10% of voting rights in the company paying the dividends – in other cases the rate equals 15% of the gross amount of the dividend.

The basic method for the avoidance of double taxation under the new Convention is the exemption method with progression. For income from dividends, interest, royalties, profits from transfer of the ownership of assets and other income not subject to the Convention, tax credit method will apply.

The Convention also provides for the solution according to which the application of its provisions is only possible for selected persons and entities while blocking the possibility of deriving contractual benefits by the residents of third party countries.

The Convention has been drawn up taking into account the OECD guidelines.

Similarly to other treaties, the Convention contains a full exchange of information clause.

• New agreement with India

The protocol amending the Agreement between the Government of the Polish People's Republic and the Government of the Republic of India for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income concluded in 1989 has been signed. The most important changes introduced by the protocol include, among others, the method of avoiding double taxation with respect to the Polish residents and taxation of dividends, interest, royalties and fees for technical services.

The tax credit method introduced by the protocol for all categories of income will apply instead of the exemption method with progression applied to date with respect to the categories of income governed by the agreement (with the exception of the taxation of dividends, royalties and fees for technical services and interest).

A novelty introduced by the protocol is the provision in the form of clause preventing the fiscal evasion, which is intended to limit the contractual advantages.

Changes were also introduced to the provisions concerning dividends and interest where the withholding tax rate was reduced for both categories from 15% to 10%, while for the royalties and fees for technical services the tax rates were reduced from 22.5% to 15%.

Another important issue aiming at harmonization with OECD guidelines is the introduction of a full clause of exchange of information on tax matters.

• Tax Information Exchange Agreement with Gibraltar

The Republic of Poland and Gibraltar signed the tax information exchange agreement in London on 31 January 2013.

The present agreement, due to the fact that it was made based on the OECD Model Agreement on

Exchange of Information on Tax Matters, meet all the OECD standards on tax information exchange and forms the basis, among others, for the bilateral exchange of information held by banks. In case of Poland this agreement applies to personal and corporate income taxes, and in case of Gibraltar to all taxes whatever their type and name.

The procedure adopted by the parties provides for the exchange of information on request, Poland and Gibraltar can exchange information concerning for example tax assessment and collection, recovery and enforcement of tax arrears or investigation in tax matters or prosecution in tax offences.

Moreover, the questions related to performing control abroad, incurring costs of giving information and rules for maintaining its confidentiality were addressed.

VAT:

- **Filing an interpretation application concerning a contractor**

According to the newly issued judgment of the Supreme Administrative Court (NSA) of 8 January 2013 (ref. I FSK 1572/12) due to construction and specific character of the Tax on Goods and Services, the inherent element of which is the mechanism of input and output VAT, taxpayers can ask the tax authority questions concerning the legal and tax status of a contractor. The Supreme Administrative Court decisions apply mostly to the contractor who raises invoices where the input tax is specified, due to the fact that the correct taxation of purchases also affect the tax situation of the buyer. Considering the above, there are grounds for granting the right to the buyer to ask for interpretation of tax regulations concerning his contractors.

PIT:

- **Integration events**

The taxation of income derived from the participation in an integration event organised by the employer has been provoking disputes between taxpayers and tax authorities for a long time.

The correct assessment of the consequences of the participation of employees in the integration event is though quite difficult due to inconsistent judicial decisions on this matter, especially with a recently adopted taxpayer unfriendly approach (in particular after the Supreme Administrative Court resolution on the “medical benefit packages” of 24 October 2011, ref. no II FPS 7/10). According to this approach, persons participating in the event organised by the employer receive income subject to taxation whether they actually used the services made available during the event or not and whether it is possible to determine its real value or not.

However, we can hope that the judgment of the Supreme Administrative Court of 24 January 2013 (ref. no. II FSK 1064/11) will be a breakthrough in this unfavourable judicial practice. In this judgment the Supreme Administrative Court considered that offering an employee a possibility of taking part in an integration event is not a decisive factor for the revenue recognition. Moreover, the NSA stated that in the event that the value of employee benefits cannot be attributed to benefits received by a particular employee – it is not possible to determine the amount of revenue that the employee obtained.

Therefore, in line with the NSA position, the participation in an integration event during which employees decide on their own to what extent they are going to profit from the benefits offered by the



employer does not give rise to the obligation of paying related tax by employees.

It is also worth mentioning that in January the Polish Confederation of Private Employers Lewiatan lodged claim regarding the non-constitutionality of PIT provisions on free-of-charge benefits. Therefore, the judgment of the Constitutional Tribunal on this matter is to be expected.

- **Changes in settlement of business travels**

On 29 January 2013 the Minister of Labour and Social Policy signed a regulation on business trip allowance, which concerns both local and foreign business travels. We have already presented the draft regulation in detail in our tax newsletter in February and September 2012.

As a result of the signature of the regulation, starting from 1 March 2013 the local per diem allowance will amount to PLN 30. 20% lump sum for covering the travel costs using local means of transport will amount to PLN 6.00, and the lump sum for accommodation accounting for 150% of per diem allowance – PLN 45.

CIT:

- **New draft law on CIT**

We would like to inform you that the Ministry of Finance submitted a bill on CIT. One of the major changes planned is to recognize not only partnerships limited by shares but also limited partnerships as CIT payers. We will keep you updated about the status of the planned amendments.

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