

TAX NEWSLETTER

Issue 40 – September 2013



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SUMMARY

- **CIT:** A new bill on taxation of limited partnerships and partnerships limited by shares
- **CIT:** Applying CIT Act provisions (concerning payment gridlock) to financial lease agreements
- **VAT:** General interpretation of the Minister of Finance on tax liability with respect to shipping and transport services
- **PIT:** Bill proposed by the Ministry of Labour with respect to the Act on Social Insurance
- **International tax law:** The President signed the agreement on the ratification of tax agreement with Singapore
- **International tax law:** A protocol amending the Convention for the Avoidance of Double Taxation with Luxembourg entered into force in July
- **Other information:** Lower rates of default interest on tax arrears from 4 July

NEXT EVENTS

Seminars:

Property Tax – current problems and opportunities for optimization
Warsaw, 10 October 2013, 9:00 a.m.

Transfer Pricing – changes to the regulations and in the approach to control
Warsaw, 24 October 2013, 9:00 a.m.

INTRODUCTION

Dear Sirs,

After the holiday period we are coming back with the latest tax information.

In the current issue of our tax newsletter you can find articles concerning the status of proposed amendments in the rules of taxation of corporate income tax on limited partnerships and partnerships limited by shares. We would like to draw your attention to the article on impact of CIT regulations introduced at the beginning of 2013 regarding payment gridlock – on the recognition of depreciation allowances on leased assets as tax deductible expenses. We also comment on the Ministry of Finance general interpretation on the tax liability of shipping and transport services. Additional information can be found in the material below.

Yours sincerely,

Krystyna Szydłowska

CIT: A new bill on taxation of limited partnerships and partnerships limited by shares

In the May issue of our Tax Newsletter we wrote about the plans of the Ministry of Finance to levy corporate income tax on limited partnerships ("LP") and partnerships limited by shares ("PLS").

The Ministry of Finance has just published another version of the bill to amend the Act on Corporate Income Tax ("CIT Act"). The new bill contains provisions stipulating that, as a rule, LP and PLS will become CIT payers starting from 1 January 2014. Only partnerships whose fiscal year is not identical to the calendar year will be allowed to apply the current principles until the end of their fiscal year. New regulations will apply to those partnerships from the first day of their fiscal year starting after 1 January 2014.

Please note that the bill has not passed yet and it may still undergo modifications at later stages of the legislation process. We will keep you informed about potential changes in the following issues of our tax newsletter.

CIT: Applying CIT Act provisions (concerning payment gridlock) to financial lease agreements

Provisions requiring taxpayers to exclude expenses not paid within statutory deadlines from tax deductible expenses have been introduced in the CIT Act in the beginning of 2013. Currently these provisions are contained in Article 15b of the CIT Act. The legislator's intention is that these regulations prevent payment gridlock.

It should be underlined that the new regulations apply not only to expenses recognized directly as tax deductible expenses but also to expenses charged to costs through depreciation allowances. Based on the above regulations, a doubt has arisen whether the new regulations shall also apply to depreciation allowances made by the beneficiary of fixed assets used under

financial lease agreement (since payments for the leased fixed assets are made in instalments within a longer period of time exceeding time limits specified in Article 15b of the CIT Act).

The above problem has already become the subject matter of interpretations given by tax authorities. Unfortunately tax authorities adopted a taxpayer-unfriendly approach by considering that Article 15b of the CIT Act also applies to the depreciation of fixed assets used under financial lease agreement. Such approach has been taken for instance in the interpretation of the Director of Tax Chamber in Poznan of 6 June 2013 (ref. no. ILPB4/423-63/13-2/LM) and the interpretation of the Director of Tax Chamber in Katowice of 1 July 2013 (ref. no. IBPBI/2/423-394/13/BG). It means in practice that the beneficiary does not have the right to recognize the full amount of depreciation allowances made on leased fixed assets as tax deductible expenses.

Moreover, according to tax authorities, the provisions contained in Article 15b of the CIT Act shall also apply to depreciation allowances made on fixed assets purchased in instalments. It is confirmed by the interpretation of the Director of Tax Chamber in Katowice of 1 July 2013 (ref. no. IBPBI/2/423-393/13/AP). Hence, also this form of acquiring fixed assets may lose popularity.

VAT: General interpretation of the Minister of Finance on tax liability with respect to shipping and transport services

In connection with the judgment of the Court of Justice of the European Union (CJEU) of 16 May 2013 in case TNT Express Worldwide Poland (case C – 169/12), the Minister of Finance issued a general interpretation on 8 August 2013 (ref. no. PT3/033/2/323/AEW/13/RD82408), where he explained how VAT Act provisions relating to the moment when tax liability with respect to shipping and transport services arises are to be interpreted.

We would like to remind that in May 2013 CJEU tackled the question whether Article 19 paragraph 13 item 2 letters a and b of the VAT Act was compliant

with relevant regulations of EU directives. In accordance with this Article the liability to pay the tax with respect to the provision of transport and shipping services shall arise on receipt in full or in part of the payment, but no later than 30 days from the date on which the following services are supplied.

In the judgement delivered on 16 May 2013 the Court considered that Article 19 paragraph 13 item 2 letters a and b of the VAT Act does not comply with EU law.

Following the judgement delivered by CJEU the Minister of Finance decided to issue a general interpretation in which he explained the way of interpretation of Article 19 paragraph 13 item 2 letters a and b of the VAT Act to the subordinate tax authorities. In the interpretation of 8 August 2013 the Minister of Finance considered that taxpayers are currently given the choice whether tax liability with respect to shipping and transport services shall be recognized in line with the current wording of Article 19 paragraph 13 item 2 letters a and b of the VAT Act or in line with general rules i.e.:

- Upon performance of the service – in line with the rule specified in Article 19 paragraph 1 of the VAT Act (if the taxpayer is not obliged to raise an invoice), or
- Upon raising an invoice but not later than on the 7th day starting from the date of performance of the service (if the taxpayer is obliged to raise an invoice).

At the same time the Minister underlined that amendments to the VAT Act becoming effective on 1 January 2014 would repeal Article 19 paragraph 1 of the VAT Act challenged by the CJEU and will introduce new rules of determining tax liability. As a result, the general interpretation shall apply exclusively to activities carried out before 1 January 2014.

PIT: Bill proposed by the Ministry of Labour with respect to the Act on Social Insurance

The bill of the Ministry of Labour and Social Policy concerning amendments to the Act on Social Insurance has been referred for inter-ministerial consultations.

Under the assumptions of the bill proposed by the Ministry, starting from 1 January 2014 supervisory board members would become subject to pension and disability insurance. The base of the contribution would be the income earned in connection with the fulfilled function, i.e. remuneration and other additional amounts that make up the emoluments of supervisory board members. It should be emphasised that, under the current legal framework, supervisory board members are only subject to mandatory health insurance.

Furthermore, the government plans to intensify the collection of tax with respect to contractors. The planned regulations are designed to limit the practice of paying mandatory contributions from a low-paid contract and actually earning money on the following contract concluded with the same contractor.

International tax law: The President signed the agreement on the ratification of tax agreement with Singapore

We would like to inform you that on 26 July 2013 the President of the Republic of Poland signed the agreement ratifying the new Agreement between the Government of the Republic of Poland and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and the Protocol to this Agreement.

In line with the ratification procedure the new Agreement for the Avoidance of Double Taxation between the Republic of Poland and Singapore will enter into force after the exchange of ratification notices by the representatives of both countries, most probably next January.

The newly signed Agreement will replace the Convention of 1993 applicable until now. Major changes introduced by the new Agreement include:

- Introducing the method of proportional credit as a method of avoiding double taxation in Poland instead of the current “exemption with progression” method;

- Reducing the rates of withholding tax on dividends (from 10% to 5-10%), interest (from 10% to 5%) and royalties (from 10% to 2-5%);
- Eliminating the exemption from taxation in Poland of income from interest, dividends and royalties arising in Singapore and exempt therein from taxes pursuant to the regulations intended to encourage economic development (the preference will continue to apply to income derived from contracts concluded until the end of the third month after the signature of the double taxation agreement);
- Introducing a full exchange of information clause (this clause allows obtaining information on business activities of Polish residents in the relationships with Singapore, including the information about funds accumulated on bank accounts).

International tax law: A protocol amending the Convention for the Avoidance of Double Taxation with Luxembourg entered into force in July

Please be informed that the Protocol amending the Convention between the Republic of Poland and the Grand Duchy of Luxembourg for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital drawn up in Luxembourg on 14 June 1995 entered into force on 25 July 2013.

Major changes introduced by the Protocol include:

- Reducing the rate of the withholding tax on interest and royalties from 10% to 5%;
- introducing 0% rate of the withholding tax on dividends if the recipient's direct participation in the capital of the company paying the dividends amounts to 10% and is held for an uninterrupted period of 24 months (in other cases dividends are taxed at 15% rate);
- introducing the method of proportional credit as a method of avoiding double taxation with respect to income from dividends, interest and royalties received by Polish residents in Luxembourg (pursuant to the current convention, if these royalties were subject to

exemption in Luxembourg, they were also eligible for exemption from taxes in Poland);

- introducing a real property clause (until now the sale of shares in a Polish real property company by an entity being a resident of Luxembourg could have been taxed only in Luxembourg; once the Protocol enters into force profits from the sale of shares of companies whose value in more than 50% comes directly or indirectly from immovable property situated in Poland may be taxable in Poland);
- Introducing a clause of full exchange of information on tax matters.

Other information: Lower rates of default interest on tax arrears from 4 July

In accordance with the notice of the Minister of Finance of 9 July 2013, new rates of default interest on tax arrears will apply starting from 4 July 2013 and will amount respectively to:

- Regular rate – 10.00% of the outstanding amount p.a.,
- Reduced rate – 7.50% of the outstanding amount p.a.

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