

TAX ALERT

10 January 2014



Photo © Thinkstock

Property tax: A structure with a partial roof is not liable to property

On 12 November 2013 the Voivodship Administrative Court in Bydgoszcz rendered a judgment (ref. no. I SA/Bd 793/13) according to which a structure with only part of the roof does not meet conditions set out in Article 1 a section 1 subparagraph 1 of the Act on Local Taxes and Charges (Journal of Laws of 2010 No. 95, item 613 as amended) contained in the definition qualifying a given structure as a building and thus, causes this structure not to be liable to property tax.

In line with the rationale to the judgment „(...) the definition of a building provides for four conditions that are required to be met in order to levy property tax. It has to be a structure that is permanently attached to a plot of land, separated from the space by partitions and has foundations and a roof. Assuming that a structure that has 50% of the roof constitutes a building in the sense of the above-mentioned provisions, extends the clear and literally unambiguous definition of a building to buildings which have part of the roof, thus creating an additional object of taxation. Such interpretation is in breach of Article 217 of the Constitution. The fundamental principle of the tax law in a democratic country is that the scope of tax must be precisely determined in a tax act and its interpretation cannot be extensive. Under tax law the obligation of strict construction applies and in particular a prohibition of such construction extending the tax law provisions which would increase the tax burden of a taxpayer. However, extensive interpretation in favour of the taxpayer is acceptable. (...)”.

Considering the above it should be noted that treating a structure with only part of the roof as a building extends the literal definition of a building as a result of which an additional object of taxation is created. One should remember that the interpretation of tax law provisions can be extensive as long as it is favourable to the taxpayer and cannot extend the scope of their tax burden. Therefore a structure with only 50% of roof cannot be liable to property tax.

The judgment is not yet legally binding.

If you are interested in discussing this topic in further detail or in preparing an application for tax interpretation on this matter, please feel free to contact Mazars Tax Advisory Department.

How to order a Tax Alert?

Tax Alert is a free-of-charge publication 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 alert in the future, please send an e-mail with "NO" in the subject heading at:
podatki@mazars.pl*

CONTACT:

Mazars

Tax Advisory Department
podatki@mazars.pl

Address

ul. Piękna 18, 00-549 Warszawa
Tel.: +48 22 25 55 200
E-mail: podatki@mazars.pl

For more information visit:
www.mazars.pl

Area	Contact person	Phone no	E-mail
VAT	Kinga Baran	+48 691 207 058	k.baran@mazars.pl
CIT, transaction services, mergers and acquisitions	Piotr Zając	+48 691 207 057	p.zajac@mazars.pl
CIT, PIT	Anna Kucharska	+48 691 207 059	a.kucharska@mazars.pl
Transfer Pricing	Anna Bednarz	+48 691 207 065	a.bednarz@mazars.pl

The aim of this Tax Alert 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.