

Tax Newsletter



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Dear Sirs,

We would like to present to you this year's first issue of the Tax Newsletter. Taking into consideration the amendment of tax regulations, this issue is wholly devoted to its short summary. We pay particular attention to the amendment of VAT regulations which may be of key importance to your businesses, including the new (but not always higher) rates, new subjective exemptions - limited as compared to the previously binding catalogue and new principles of deducting VAT on cars.

There may be also certain doubts as to the taxation of transactions at the turn of 2010 and 2011.

We would also like to recommend that you read about the changes with regard to income taxes, especially if your enterprise is planning a transformation in the near future. In this respect the hitherto optimisation possibilities e.g. contributions in kind, transformations with the use of partnerships, have been significantly limited.

I wish you a pleasant reading,
Krystyna Szydłowska

EDITORIAL

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Changes in the VAT

New VAT rates

*Pursuant to the amended provisions of the Act on VAT, as of 1 January 2011 **the basic VAT rate amounts to 23% and the decreased rates to 8% and 5%.***

Schedules to the amended Act on VAT which contain the list of goods and services subject to decreased rates do not overlap with the hitherto binding schedules indicating the instances of applying decreased rates. Consequently not all products hitherto subject to the 3% rate will now be taxed with the 5% rate and not all those subject to 7% rate will be taxed with the 8% rate. However, the transition from the old rate to the new one does not function automatically in all instances (for some goods the rate is decreased e.g. from 7% to 5%, such as for some foodstuffs). Upon establishing the relevant VAT rate one needs to consider the transitory provisions which stipulate which rate (new or hitherto binding) should be applied in relation to actions executed at the turn of 2010 and 2011.

It should also be noted that **goods and services subject to decreased rates are identified with the use of the Polish Classification of Products and Services of 2008** and not, as hitherto, according to the classification of 1997.

VAT on cars

One of the most significant changes in the Act on VAT binding as of 1 January 2011 is the introduction of new principles of deducting VAT on cars used in business activity. In the case of passenger cars with the total weight of up to 3.5 tons there is a binding limit in deducting input VAT (60% of input tax, not more than PLN 6,000). Furthermore, a change has been introduced in the principles of deducting input VAT upon purchasing cars with cargo partitions. Let us remember that as a result of the ECJ's decision in Magoora's case the abovementioned limitation in deducting VAT had no application in practice upon purchasing cars with cargo partitions and fuel for them.

As of 2011, upon purchasing a car with a cargo partition taxpayers are entitled to deduct 60% input tax, however not more than PLN 6,000. Taxpayers are also not entitled to deduct input VAT on fuel used for this type of car. The abovementioned limitations are applicable not only in case of purchasing cars with cargo partitions but also for their usage under a lease, rent or leasing agreement. Only if one of the abovementioned agreements was concluded prior to the end of 2010 taxpayers **retain their right to deduct the whole amount of input VAT on the car** (subject to registering the relevant agreement in the Tax Office by 31 January 2011). However, even in such situations **taxpayers are not entitled to deduct input VAT on fuel.**

The abovementioned changes relating to deducting input VAT on cars and fuels for them are to be binding in the period 2011-2012. However, it cannot be ruled out that their binding period will be prolonged.

Free-of-charge transfer of goods

Probably as of 1 February 2011 free-of-charge transfer of goods belonging to an enterprise, also for purposes related to business activity of the taxpayer, will be subject to VAT taxation **irrespective of the purpose of their transfer if the taxpayer was entitled to deduct input VAT upon their purchase**. The literal interpretation of the provisions of VAT Act in the wording binding until the end of 2010 led to the conclusion that free-of-charge transfer of goods is subject to taxation only when it is not related to the taxpayer's enterprise. Such an interpretation, albeit founded in legal regulations, does not conform to the provisions of Directive 2006/112/EC. Amending the Act on VAT is aimed at removing this incompliance.

New catalogue of subjective VAT exemptions

As of 1 January 2011 there is an amended catalogue of subjective VAT exemptions. Firstly, the catalogue of exemptions has been transferred from the Schedule to the Act on VAT to the main part of the Act. Secondly, the scope of exemptions is no longer defined through referring to statistical classification; services exempted from the VAT are defined through their detailed description. Although in respective cases the scope of hitherto binding exemptions was not significantly changed, there are some examples of actions **in the case of which the scope of exemptions has been subject to important modifications**. This refers in particular to financial services, services in the field of healthcare, educational services and services pertaining to culture and sports.

In general, it can be said that the new catalogue of subjective exemptions has been limited as compared to the previously binding one.

Changes in the CIT

Deductions also for foreign plants

The Act on CIT expands the group of entities entitled to deduct the amount of tax paid abroad from the Polish tax. New regulations grant the right to deduct such taxes to **residents of European Union or European Economic Area Member States other than Poland which pursue business activity through a plant abroad located within the territory of Poland and which ascribe to that plant the incomes generated from dividends received from entities with their seats outside the European Union, EEA and Switzerland** (Article 20 sec. 2a-2b Act on CIT).

New terms of taxation exemptions for income from dividends, interest and license revenues

The amended Act on CIT provides for an additional condition for exempting from the taxation of dividends, interest and license revenues (apart from the certificate of residence). This condition consists in submitting to the withholding agent a representation on non-usage of the exemption from taxation with income tax on the whole income. Additionally, exemption from the taxation of income from dividends paid between various companies from different Member States will be applied if the company obtaining income from dividends holds shares (stock) in the capital of the company paying the dividend on the basis of title of ownership or a title other than ownership title,

subject to the condition that the income would be subject to exemption even if the ownership of the said shares was not transferred. In case of a failure to submit the aforementioned documents the withholding agent will not have the possibility of applying the exemption and will be obligated to withhold the tax in the amount arising from the provisions of the Act on CIT.

Expanding the catalogue of entities exempted from income tax

Apart from the Polish funds hitherto exempted from the income tax, as of 1 January 2011 the catalogue of exempted entities will be expanded by foreign investment and pension funds (Article 6 sec. 1 item 10a and sec. 3 of the Act on CIT).

No tax relief on biocomponents

The tax relief for the producers of biocomponents for liquid fuels will be binding only until the end of April 2011.

Changes in PIT and CIT (common issues)

The act amending the Act on PIT and the Act on CIT introduced some changes which pertain to issues common for these two taxes.

Income from voluntary redemption of shares

As of 1 January 2011 income from the sales of stock (shares) to the company for the purpose of their redemption (the so-called voluntary redemption of shares) will not be included in income from share in the profits of legal persons in the meaning of Article 10 of the Act on CIT. This income will be combined with other incomes and taxed under general principles.

As a consequence, the company being the income will not be charged with the obligations of withholding agent. Furthermore, persons obtaining income from voluntary redemption of shares will not be authorised to enjoy the redemption provided for under Article 22 sec. 4 of the Act on CIT. Additionally, fiscal bodies will be entitled to verify whether the consideration for the redeemed shares reflects their market value.

Changes were introduced respectively also in the Act on PIT. For a PIT taxpayer it means an obligation to settle independently incomes from voluntary redemption of shares according to general principles. It will render possible using Article 24 sec. 5d of the Act on PIT, referring to shares or stock acquired by way of deed of gift and hitherto used as a tool of tax optimisation.

Settlements after winding-up a company without legal personality or after a withdrawal of a partner

Hitherto the Act on CIT did not contain direct provisions relating to the consequences of winding up a company without legal personality or of resignation of companies from the participation in an entity without legal personality.

Pursuant to the new regulations, the principles of taxation for **winding up a company without legal personality** will depend on the type of property components which the partner receives as a result of winding up the company. Should the partner receive a pecuniary performance, it will not be included in income. On the other hand, if the partner receives other property components (non-pecuniary performance), the value of such performance constitutes an income of the partner only upon selling such components.

Similar rules apply **in case of a partner withdrawing from a company which is not a legal person**. Property components other than monetary performance (non-monetary performance) will be subject to taxation upon their sales. However, if a partner receives monetary performance, it will not constitute the partner's income but only to the amount reflecting the contribution made and unpaid profits.

Analogical amendments were introduced in the Act on PIT. Consequently, a natural person who is a partner will not include monetary performance obtained in relation to company wind-up in incomes. In case of receiving non-monetary performance the value of the received property component will constitute an income only upon its sales. Furthermore, sales taking place after the lapse of 6 years (from the end of the month in which the partner received the alienated property components) will not be subject to taxation at all insofar as the sales does not take place within the scope of business activity pursued.

Contribution in kind of enterprise or its organised part: new tax consequences

Making a contribution in kind in the form of an enterprise or its organised part will not be related (as hitherto) with the possibility of overpleading the value of certain property components to the level reflecting the market price. Instead of overpleading, there will be an obligation to continue the valuation of fixed assets and intangible assets as well as other property components subject to the contribution in kind (**amortization/depreciation continuation principle**). These changes are binding for both PIT and CIT taxes and render impossible the hitherto model of tax optimisation consisting among others in using the overpleading of property components' value.

Pursuant to the new provisions introduced to the Act on CIT, making a contribution in kind to a partnership does not result in income on the part of the person making such a contribution. This principle has been binding also in previous years but has not been directly regulated in the Act on CIT.

Transformation of companies with the participation of partnerships: valuation of property taken over

The valuation continuation principle will be applied also in the case of restructuring conducted with the participation of companies which are not legal persons. Therefore, pursuant to the amended Act, the hitherto valuation continuation principle applied to the property components of an enterprise or its organised part and pertaining to the components included in the register of fixed assets and intangible assets will be expanded to include **also other property components**.

Definition of a company not being a legal person

The amended Act on CIT (PIT) defines the term of a company not being a legal person as a company which is not a payer of income tax (Article 4a item 14 of the Act on CIT and Article 5a item 24 of the Act on PIT).

Changes in the PIT

Modification of tax reliefs

As of 1 January 2011 there is a change in provisions regulating exercising the right to tax relief for single parents, the right to Internet relief and rehabilitation relief.

The Act amending PIT regulations provides more precision to discrepancies hitherto existing in adjudicature and pertaining to the definition of a single parent; it indicates that the right to use the tax relief is vested **with parents or legal guardians who bring up a child alone**, who are single or with regard to whom separation has been decided or who remain in a marriage, if their spouse is subject to imprisonment or has been deprived of parenting rights.

As of 1 January 2011 **the condition of using the Internet at the apartment (building) which is the taxpayer's place of residence is revoked**. Therefore the place of using the Internet will have no influence on the right to use the Internet relief. Furthermore, the amended Act accepts **any document confirming the expenses incurred with regard to using the internet as the evidence of incurring them (not only the VAT invoice)**.

The amended Act on PIT expands the catalogue of entities entitled to use the rehabilitation relief pertaining to the expenses incurred from the maintenance of assistance dogs by **persons with vision impairment** categorised in the 1st or 2nd disability group and **persons with motor organ impairment** categorised in the 1st disability group.

Employee (stock) incentive programs

The amended Act on PIT lays down in more detail the provisions on the moment of taxing income on account of free (or partially free) receipt of shares. As of 1 January 2011 postponement of the moment of taxation is applied also in case of purchasing previously issued shares.

At the same time the Act limits the application of Article 24 sec. 11 of the Act on PIT solely to purchasing or acquiring stock of companies whose seats are located within the territories of the Member States of the European Union or the European Economic Area. It cannot be used by the buyers of stock in companies with their seats outside these countries (e.g. from Switzerland or the USA).

Exemption of performance on account of accommodation from income tax

All performance on account of accommodation paid by the employer will be exempted from taxation **irrespective of its type** (e.g. private accommodation, staff accommodation), if its **value does not exceed PLN 500 per month** (Article 21 sec. 1 item 19 of the Act on PIT).

Change in taxation of income on account of contract of mandate in the form of flat-rate taxation

As of 1 January 2011 **each** contract concluded with a person who is not the taxpayer's employee will be subject to flat-rate taxation if its value does not exceed PLN 200, **irrespective of the number of contracts concluded per month and their total value**. Additionally, there will be no monthly limit. This change is disadvantageous for people using the staff accommodation (until the end of 2010 performance on that account was fully exempted from PIT).

Liquidation of PIT on winding-up inventory

As of 1 January 2011 terminating business activity **will no longer be subject to the obligation to pay 10% tax on winding-up inventory**. It is required to prepare the list of property components as at the day of winding up business activity (also if the activity was pursued in the form of company without legal personality or as at the date of a partner withdrawing from such company). The potential taxable income will exist solely upon payable alienation of property components remaining as at the date of winding-up.

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