

Tax Newsletter

Issue # 26 – May 2012



Dear Sirs,

In May issue of our Tax Newsletter we give you an overview of major amendments to the VAT Act planned for 2013. We will keep you informed on the progress and the definitive shape of amendments. Moreover, in this issue you will also find a review of recent judgments.

Enjoy your reading!

Yours sincerely,

Krystyna Szydłowska

SUMMARY

- 1. CIT: A banquet making part of marketing strategy is considered to be a form of advertising**
- 2. CIT: Expenses related to funding for dividends considered to be tax deductible**
- 3. VAT: Changes planned to be introduced in the Act on VAT**
- 4. Transfer pricing: Transfer pricing regulations vs. lease regulations**





1 CIT: A banquet making part of marketing strategy is considered to be a form of advertising

The judgment of the Supreme Administrative Court (NSA) concerned a taxpayer who, as part of his business, has organised cyclical theme events during which the results of competitions concerning people, events or products have been announced.

These events consisted in organising readers' polls the results of which depended on readers' votes or inviting to jury well-known people selecting winners of a given competition. According to the taxpayer these activities constituted an element of marketing strategy related to promotion of magazines he edits.

In reply to the application for interpretation of regulations, the Minister of Finance excluded the costs of banquets as related to building a positive image for the company, hence having the nature of representation costs.

However, both the Voivodship Administrative Court (judgment of 24 May 2010; ref. no. III SA/Wa 1905/09) and the Supreme Administrative Court (judgment of 4 April 2012; ref. no. II FSK 1789/10) supported the position of taxpayer considering that such events represent a form of product advertising, the costs of which can be classified as tax deductible.

2 CIT: Expenses related to funding for dividends considered to be tax deductible

Issues concerning the classification of expenses for contracting a loan for dividend payment have been raising doubts for several months.

It seemed that the definitive opinion expressed in the resolution of seven judges of Supreme Administrative Court (ref. no. II FPS 2/11), excluding the possibility of classifying such expenses as tax deductible costs would dispel doubts over this matter. This topic was discussed in the March issue of our newsletter.

However, in the judgment delivered on 3 April 2012 (ref. no. II FSK 249/12), the Supreme Administrative Court radically changed its view as compared to recent resolution of 7 judges. In the rationale of the judgment the Court emphasizes that contracting a credit for dividend payment should be treated as an expense related to business activity because making a profit is both the primary goal of the operation of a joint-stock company and of shareholders whose capital is invested in its activity and earning revenues.

This taxpayer-friendly judgment was supported by the Supreme Administrative Court which referred to the criterion of rational behaviour. According to the Supreme Administrative Court it is crucial to underline that costs related to business activity will be tax deductible if they are rationally justified and each expense is assessed from this point of view. At present, it is difficult to predict which direction the Supreme Administrative Court will take in its position. We will keep you informed on any developments in this area.

3 VAT: Changes planned to be introduced in the Act on VAT

The Ministry of Finance prepared a draft amendment which will fundamentally change principles of VAT settlements.

Recent press releases indicate that the Ministry of Finance prepared a draft amendment to the VAT Act whose entry into force is planned for 2013. Planned changes are said to be "revolutionary" and are supposed to cover all taxpayers regardless of the type of business they run. This draft is currently being in the phase of departmental discussion so it can still undergo major modifications. We will inform you about the legislative path on a current basis.

The major change proposed by the Ministry of Finance is the change of the moment in which the tax obligation arises. Once the law is amended, the tax obligation will arise, in principle, at the end of the month when the goods were sold or the service was provided. Therefore, in order to determine the moment of VAT obligation, it will no longer matter when the taxpayer raises VAT invoice. The Ministry of Finance is also planning to abandon most exceptions relating to the moment of tax obligation recognition. It means that the regulations concerning the so-called specific



moment of tax obligation recognition will change significantly.

Due to the change of moment in which the tax obligation arises, the deadlines for issuing invoices will also change. Furthermore, the range of information included on invoices will be modified. According to announcements of the Ministry of Finance the liquidation of internal invoices is also planned.

In response to the demands of Polish Confederation of Private Employers Lewiatan, the amounts set in the definition of a low value present that can be given free of charge without VAT are to be increased in 2013. Currently, low value presents are defined as goods with total value not exceeding the amount of PLN 100 transmitted to one person in one fiscal year, if the taxpayer keeps records of it; and goods which are not recognized in the records, if the unit purchase price or manufacturing cost does not exceed PLN 10. The amendments to the act provide for increase of these amounts respectively up to PLN 200 and PLN 20.

Moreover, the Ministry of Finance plans to postpone the date of full deduction of input tax on vehicles with a payload capacity of over 500 kg (i.e. cars with cargo partition) from January 2013 to January 2014.

The entry into force of the planned amendment will be a fundamental change in the current method of VAT settlements. It means that taxpayers must be prepared for the necessary harmonisation of accounting systems used until now with the new rules.

4 Transfer pricing: Transfer pricing regulations vs. lease regulations

In the judgment of 11 January 2012 (ref. no I SA/Kr 1988/11) the Voivodship Administrative Court in Cracow stated that the article 11 of the Act on Corporate Income Tax (hereinafter: CIT Act) constitutes lex specialis overriding the regulations on taxation of lease agreements concluded between related entities.

In other words, further to the quoted judgment, the competence of tax authorities to apply rules arising from article 11 cannot be excluded in order to determine a different transaction price than the one fixed by related entities involved in lease agreements (both financial and operational lease). The rules concerning financial lease agreements provide especially for the buyout option of the leased asset, even if the price for buyout differs significantly from the market price of leased asset.

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