

Real Estate Flash

July 2024



MDR provisions partially unconstitutional

THE CONSTITUTIONAL TRIBUNAL
July 23, 2024

The Constitutional Tribunal ruled that the provisions regarding the reporting of tax schemes, to the extent that they impose an obligation on tax advisors to disclose information about a tax scheme, are unconstitutional. Additionally, the provisions requiring a promoter, who is a tax advisor, to disclose information about a tax scheme, other than a cross-border tax scheme, which was implemented before the MDR provisions came into force, were also deemed unconstitutional.

VAT taxation on compensation for expropriation of agricultural property

TSUE
July 11, 2024

The transaction of transferring ownership of agricultural land parcels through expropriation, in exchange for compensation, should be subject to VAT if the recipient of the compensation is a farmer who is a VAT taxpayer acting in that capacity. Importantly, it does not matter that the farmer does not engage in real estate trading activities and has not taken any steps to transfer ownership of the parcels.

Reverse charge mechanism in relation to acquired adaptation works

THE SUPREME ADMINISTRATIVE COURT
July 16, 2024

In the case of adapting commercial properties for tenants' needs, it is considered a comprehensive leasing service. The company, as the property owner, acts as an investor rather than a contractor, which excludes the application of the reverse charge mechanism. The lessor does not provide construction services to the tenants but delivers premises in a condition fit for the agreed use, which constitutes an integral part of the leasing service. Consequently, the company is entitled to deduct input VAT on a general basis.

OPE under Polish VAT law and EU regulations

THE SUPREME ADMINISTRATIVE COURT
July 3, 2024

The Supreme Administrative Court (NSA) confirmed that the key to assessing whether a given set of assets constitutes a OPE (organized part of an enterprise) is the ability to continue the economic activity in a similar scope without significant modifications. This means that the purchaser of the OPE intends to conduct business with the acquired OPE and does not act solely for the immediate liquidation of the activity or the sale of potential inventory. At the same time, the court emphasized that the interpretation of the OPE concept should not be overly restrictive and should consider the case law of the CJEU (Court of Justice of the European Union).

Commercial Intermediation service is not similar to advertising or consulting services

THE SUPREME ADMINISTRATIVE COURT
June 28, 2024

A commission payment made by a Polish company to a foreign contractor for a commercial intermediation service, which involves facilitating the conclusion of a sales agreement for products, cannot be considered a service similar to advertising or consulting services. Therefore, in the case of providing this service, the obligation to withholding tax does not arise.

CIT exemption for income of an investment fund from the sale of commercial real estate

THE SUPREME ADMINISTRATIVE COURT
June 27, 2024

Income obtained by the fund from the sale of real estate benefits from the CIT exemption. The exemption does not apply to income derived from rental, leasing, and similar agreements (applicable to the legal status effective from January 1, 2019).

Property Tax on industrial halls not fully utilized due to poor technical condition

THE SUPREME ADMINISTRATIVE COURT
June 25, 2024

Industrial halls that are not fully utilized for business activities due to poor technical condition should still be considered as related to conducting business activities. The ownership of the property by the entrepreneur and its potential use in business activities are sufficient to establish this connection. The technical condition of the property, requiring renovation, does not alter this connection unless the property is subject to a demolition order. Consequently, these halls are subject to property tax at the rate applicable to buildings associated with business activities.

Assignment of rights and obligations arising from a development agreement and VAT

THE SUPREME ADMINISTRATIVE COURT
June 24, 2024

The transfer (assignment) of rights and obligations from a developer agreement for a consideration in the form of a so-called "compensation payment," where the assignor does not have the right to dispose of the residential premises as the owner, constitutes a taxable activity as the provision of services rather than the supply of goods. Consequently, the standard VAT rate of 23% applies.

Building income tax and lodging services

THE PROVINCIAL ADMINISTRATIVE COURT
IN POZNAŃ
July 16, 2024

The Provincial Administrative Court in Poznań held that a contract for the provision of hotel services is a distinct and specifically regulated contract under law, and thus, not similar to a lease agreement. The court also stated that if the legislature intended to subject hotel service contracts to the building income tax, it would have explicitly included them in the provisions. Consequently, apartment buildings and cottages used for the provision of short-term stay and lodging services are not subject to the building income tax.

Criteria for including expenses related to an out-of-court settlement in tax-deductible costs

THE PROVINCIAL ADMINISTRATIVE COURT
IN WARSAW
July 10, 2024

The Provincial Administrative Court in Warsaw ruled that the out-of-court settlement was in the company's interest, as it allowed for the closure of a long-standing dispute and secured favorable financing conditions. The court emphasized that the settlement amount was significantly lower than the potential costs of losing in court, indicating the rationality of the company's actions. Therefore, expenses related to the settlement are purposeful and can be considered tax-deductible costs according to the Corporate Income Tax Act.

Issue of revenue recognition in simplified merger procedure pursuant to Art. 515(1) of the commercial companies code

THE PROVINCIAL ADMINISTRATIVE COURT
IN WARSAW
July 10, 2024

The Provincial Administrative Court in Warsaw ruled that Article 12(1)(8d) of the Corporate Income Tax Act does not apply in the case of a simplified merger of companies where no new shares are issued. The court found that this provision pertains to situations where the market value of the acquired company's assets exceeds the nominal value of the allocated shares, which is not the case in a simplified merger. Furthermore, the court emphasized that income that has not arisen cannot be taxed, rendering the tax authority's position inconsistent with the structure of income tax.

Payer obligations regarding dividend payment exemptions

THE PROVINCIAL ADMINISTRATIVE COURT
IN WARSAW
July 2, 2024

The Provincial Administrative Court in Warsaw ruled that for dividend payments not exceeding 2 million PLN within a tax year, the verification should be simplified, and the company in such circumstances will not be required to fully verify the shareholder's status as the beneficial owner of the received dividends. The court also emphasized that the amendment to the regulations on January 1, 2022, was of an orderly nature and did not significantly impact the assessment of the withholding agent's obligations.

Application of VAT exemption to the supply of undeveloped land plots

THE PROVINCIAL ADMINISTRATIVE COURT
IN GLIWICE
July 2, 2024

The supply of undeveloped land plots marked with the symbol ZP-02 is not subject to VAT, as these lands are designated for green areas (parks) and are subject to a building prohibition. Furthermore, allowing the possibility of locating sports and recreational infrastructure on the land is justified and does not alter the primary designation of these lands as green areas. Therefore, the supply of these lands can benefit from the VAT exemption under Article 43(1)(9) of the VAT Act.

Settling VAT in relation to investment expenditures on real estate

THE DIRECTOR
OF THE NATIONAL FISCAL INFORMATION
June 26, 2024

The transfer of expenditures incurred for the construction of buildings situated on leased land cannot be regarded as a supply of goods for consideration. In the case of disposal of such expenditures, there is no transfer of the right to dispose of the goods as the owner, hence this transaction will constitute a supply of services for consideration, subject to the 23% VAT rate.

VAT taxation on the sale of real estate by an Individual

THE DIRECTOR
OF THE NATIONAL FISCAL INFORMATION
June 25, 2024

The sale of land property by an individual, who acquired it with an investment intention and plans to resell it for profit, is subject to VAT. However, in the case of selling a property that has never been used, such a transaction qualifies as a sale before the first occupancy. Consequently, this sale can benefit from VAT exemption if the conditions regarding the non-deduction of input tax at the time of acquisition and the absence of expenditures on property improvements are met.

Taxation on revenue from buildings for investment properties

THE DIRECTOR
OF THE NATIONAL FISCAL INFORMATION
June 18, 2024

Investment properties that are not recorded in the fixed assets register for balance sheet purposes but are included in the fixed assets register in accordance with the CIT Act regulations are subject to the building revenue tax. The provisions of Article 24b of the CIT Act do not condition the application of the building revenue tax on the inclusion of depreciation expenses for these properties in tax costs.

Taxation of income from the sale of shares in a real estate company

THE DIRECTOR
OF THE NATIONAL FISCAL INFORMATION
June 13, 2024

The shareholder's income from the sale of shares in a Polish real estate company will be taxed exclusively in Belgium. The provisions of the Poland-Belgium double taxation agreement stipulate that income from the sale of shares in a company, whose assets consist mainly (directly or indirectly) of real estate located in the country where the real estate is situated, shall be taxed only with respect to real estate not used by the enterprise for its professional activities. Consequently, the company will not be required to pay an advance income tax on this transaction, and the shareholder will not need to transfer an advance tax payment to the company.

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