

Real Estate Flash

October 2024



Settlement of expenses on third-party property as supply of goods

THE SUPREME ADMINISTRATIVE COURT
OCTOBER 21, 2024

Reimbursement of expenses incurred by a lessee for constructing halls on third-party land constitutes a supply of goods for VAT purposes, not a provision of services. Although under civil law buildings belong to the landowner, from a VAT perspective, what matters is the actual disposal of property (economic ownership), not formal transfer of ownership. Thus, the settlement of expenses should be treated as a supply of specific goods rather than provision of services.

Residential property rental and real estate tax

THE SUPREME ADMINISTRATIVE COURT
OCTOBER 21, 2024

Residential buildings intended for rental as part of business activity are subject to preferential property tax rates - the same as for residential buildings, if they actually serve to meet tenants' housing needs. Higher tax rates apply to properties used for short-term rentals, temporary accommodation, or deliberately kept vacant ("ghost units").

No reverse charge mechanism for adaptation works in leased premises

THE SUPREME ADMINISTRATIVE COURT
SEPTEMBER 27, 2024

The Supreme Administrative Court confirmed that the VAT reverse charge mechanism does not apply when a shopping center owner purchases construction services to adapt premises for tenants' needs. The owner acts as an investor, not a main contractor, and the premises adaptation constitutes an element of a complex lease service, even if its costs are later passed on to the tenant. Consequently, contractors performing adaptation works do not act as subcontractors within the meaning of VAT regulations.

Refund of expenses for a building constructed by a tenant as a supply of goods

THE SUPREME ADMINISTRATIVE COURT
SEPTEMBER 27, 2024

The Supreme Administrative Court confirmed that the tenant's refund of expenses for a building constructed by the lessee constitutes a supply of goods for VAT purposes, rather than a provision of services. Supply of goods has an economic character and means transfer of control over property, regardless of the civil law regulations. Thus, such supply of a building may benefit from VAT exemption.

Verification of beneficial owner status in case of dividend payments

THE SUPREME ADMINISTRATIVE COURT
OCTOBER 9, 2024

The Supreme Administrative Court ruled that the tax remitter is not required to verify the recipient's status as the beneficial owner when applying withholding tax exemption on dividends. However, when applying for a refund of already collected tax, the tax remitter must submit all required documents, including the taxpayer's declaration of being the beneficial owner of the dividend.

Allocation of share acquisition costs to different sources of revenue

THE SUPREME ADMINISTRATIVE COURT
OCTOBER 10, 2024

Expenses related to acquiring shares in other companies can be proportionally allocated between capital gains revenue and operating revenue if they are related to generating income from both sources.

Preferential VAT treatment for the construction of a student dormitory

THE SUPREME ADMINISTRATIVE COURT
OCTOBER 17, 2024

Construction of a student dormitory is subject to a preferential 8% VAT rate as a building covered by social housing program. Rooms in a student dormitory serve students' housing needs and constitute a place of permanent residence, unlike hotels or recreational facilities. The fact that residence is linked to the period of study does not deprive it of its permanent residence nature.

Building in poor technical condition as a property related to business activity in terms of RET

THE SUPREME ADMINISTRATIVE COURT
OCTOBER 11, 2024

The mere possibility of potential future use of a building in business activity after renovation is sufficient to classify it as property related to business activity and apply a higher property tax rate. The current technical condition of the building and lack of entry in the fixed assets register are irrelevant for this classification if the property may serve the taxpayer's business activities in the future.

Tax loss settlement in downstream merger of companies

THE SUPREME ADMINISTRATIVE COURT
OCTOBER 17, 2024

Provisions limiting the possibility of settling tax losses in case of taking over another entity do not automatically apply to downstream merger. The Court indicated that when after the merger the shares of the acquiring company will be held by the same entities as before the merger, a comprehensive analysis taking into account purposive and systematic interpretation of provisions is necessary.

Recognition contractual penalties as tax-deductible costs in real estate development

THE PROVINCIAL ADMINISTRATIVE COURT
IN WARSAW
SEPTEMBER 24, 2024

Contractual penalties paid by developers for failing to meet deadlines for property handover and ownership transfer can be recognized as tax-deductible costs. The court ruled that statutory exclusion from tax costs only applies to penalties for defects in goods and services, not to penalties for delays in their delivery.

Taxable income on merger of sister companies without share capital increase

THE PROVINCIAL ADMINISTRATIVE COURT
IN WARSAW
OCTOBER 3, 2024

In case of a merger of capital companies where no new shares are issued and one entity owns 100% shares in both merging companies, no taxable income arises for the acquiring company. The Court recognised that since no shares are issued, the sole owner's participation ratio in both "sister" companies remains unchanged and there can be no discussion regarding "issue value". Thus the prerequisite for generating income is not met.

Possibility of amendment depreciation rates for previous years

THE PROVINCIAL ADMINISTRATIVE COURT
IN KRAKÓW
OCTOBER 9, 2024

A taxpayer is entitled to reduce depreciation rates for fixed assets for past periods and file appropriate tax return corrections. The CT regulations does not prohibit retrospective changes to depreciation rates, only requiring that the change takes effect from the first month of a given tax year.

Taxable revenue from the sale of an organized part of enterprise

THE PROVINCIAL ADMINISTRATIVE COURT
IN POZNAŃ
OCTOBER 9, 2024

The value of liabilities taken over by the buyer of an organized part of enterprise constitutes additional taxable revenue for the seller, even if not explicitly included in the sale price. The Court indicated that the price specified in the agreement cannot be understood merely as the final amount payable, but should reflect the actual value of the transferred assets, which is also affected by the buyer's take over of liabilities.

Allocation of share acquisition costs to different sources of revenue

THE PROVINCIAL ADMINISTRATIVE COURT
IN WROCLAW
OCTOBER 10, 2024

Transaction and financing costs related to share acquisition can be allocated proportionally between capital gains revenue and other sources if the acquisition serves both purposes. The mere acquisition of shares does not determine the allocation of costs solely to capital gains source when the transaction also aims to develop operational activities, for example through gaining control over a competitor or expanding the scale of operations.

Method of determining real estate company status

THE PROVINCIAL ADMINISTRATIVE COURT
IN WARSAW
OCTOBER 16, 2024

The Warsaw Administrative Court confirmed the tax authority's position that when determining real estate company status, the actual balance sheet value of directly and indirectly held properties (through subsidiaries) should be considered, rather than the value of shares held in real estate companies.

Contractual penalty for delay in contract performance as tax deductible cost

THE PROVINCIAL ADMINISTRATIVE COURT
IN KRAKÓW
OCTOBER 17, 2024

A contractual penalty for late completion of a construction contract can constitute tax deductible costs, as it is not explicitly listed in the catalogue of contractual penalties excluded from tax costs.

Depreciation of investments in third-party residential buildings

THE PROVINCIAL ADMINISTRATIVE COURT
IN WARSAW
OCTOBER 17, 2024

Investments in third-party fixed assets may be subject to tax depreciation, even if they concern residential buildings. Statutory exclusion of residential buildings from depreciation does not cover investment expenses in third-party fixed assets, as the regulations clearly distinguish between these two categories of fixed assets. Consequently, a taxpayer can depreciate the costs of adapting rented residential premises for business purposes.

Treatment of CAP Instrument Results in Debt Financing Cost Calculations

THE HEAD
OF THE NATIONAL FISCAL INFORMATION
OCTOBER 1, 2024

A company may reduce its debt financing costs by the positive result from settling a CAP instrument that hedges against interest rate risk. The tax authority ruled that since the CAP instrument was required by the loan agreement, its settlement result should be included in the calculation of debt financing costs, similar to foreign exchange differences explicitly mentioned in the ATAD Directive.

Tax neutrality of share exchange with a company in formation

MINISTER OF FINANCE
SEPTEMBER 25, 2024

The Minister of Finance issued a general interpretation recognizing that share exchange involving a company in formation can benefit from tax neutrality under general rules. It was indicated that a company in organization represents merely a transitional stage in a capital company's development, not a separate legal form. The company's registration itself does not cause any transformation in its rights and obligations. Therefore, there is entity identity between the company in organization and the registered company, meaning the legal form requirement for tax-neutral share exchange is met.

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