

Real Estate Flash

October 2025



VAT exemption for supply of green areas with primary recreational purpose

The Supreme Administrative Court,
October 16, 2025

The character of land for VAT exemption purposes is determined by its primary designation specified in the local zoning plan, not by permitted supplementary development. When land is designated in the local plan primarily as municipal green areas or recreational zones with a general prohibition on construction, and permitted structures (such as stages or sports infrastructure) merely serve to implement the main non-construction purposes of the area, the supply of such land qualifies for VAT exemption. Technical infrastructure not included in the seller's fixed assets does not affect the classification of land as undeveloped.

Obligation to apply Split Payment Mechanism by the investor paying the subcontractor directly

The Supreme Administrative Court
September 26, 2025

When the investor pays the subcontractor directly due to the contractor's failure to do so, the split payment mechanism must be applied. A purposive interpretation of VAT regulations supports this obligation, aiming to prevent abuse of the law.

Moment of VAT Liability for Continuous Investment Services

VAT liability for continuous services related to investment process support provided to SPV arises at the end of each tax year, not upon obtaining a building permit. There are no grounds for applying the CJEU judgment in Case C-224/18 (Budimex), as there is no uncertainty about remuneration in the case under review.

The Provincial Administrative Court in
Warsaw, October 10, 2025

Discount on bonds not classified as debt financing cost

The discount paid on zero-coupon bonds does not constitute a debt financing cost if the issuer did not receive any financial means from the bondholder. The definition from the ATAD Directive cannot be directly applied due to improper implementation into Polish law. Offsetting mutual receivables cannot expand the scope of debt financing costs.

The Provincial Administrative Court
in Rzeszów, October 9, 2025

Hotel and conference services not qualifying as real estate company income

Income from hotel and conference services does not constitute income from lease or similar agreements, and therefore the company does not meet the criteria of a real estate rich company.

The Provincial Administrative Court in Łódź
September 24, 2025

VAT Taxation of a Penalty for Unilateral Lease Termination

A contractual penalty received by a landlord due to unilateral termination of a lease agreement caused by the tenant's fault is subject to VAT. The penalty constitutes remuneration for the readiness to provide rental services and compensation for waiving claims for lost benefits, remaining directly connected to previously rendered rental services. Therefore, the contractual penalty cannot be considered outside the scope of VAT taxation, even though it results from a unilateral action by the landlord.

The Director of the National Fiscal Information
September 25, 2025

Tenant remuneration for lease signing/extension as a one-time tax deductible cost

The Director of the National Fiscal Information
October 22, 2025

Remuneration paid by a landlord to a tenant for agreeing to enter into or extend a lease agreement (a signing bonus) constitutes an indirect tax-deductible cost. However, this expense should be recognized as a tax-deductible cost in a single amount on the date it is incurred, i.e., on the day it is recorded in the accounting books based on an invoice, rather than being allocated proportionally over the lease term. This remuneration relates to a one-time event – the moment of signing/extending the agreement – and not to the period for which the lease was concluded.

Look-through approach for interest payments to Japanese bank refinancing a loan through a transparent entity

The Director of the National Fiscal Information
October 2, 2025

A Polish borrower may apply the reduced 10% withholding tax rate under the Poland-Japan double tax treaty when paying interest to a Japanese bank that refinanced part of a loan granted through a US transparent entity (SPV). The look-through approach applies because the Japanese bank is the beneficial owner of the interest, while the US lender is treated as a transparent entity for US federal tax purposes. To benefit from the preferential treatment, the borrower must exercise due diligence and possess a tax residency certificate for the Japanese bank.

No depreciation for residential units rented short-term

The Director of the National Fiscal Information
October 3, 2025

Premises classified as residential are subject to a prohibition on depreciation, regardless of their actual use. A company renting residential units on a short-term basis cannot claim depreciation deductions as tax-deductible costs because the units were classified under "Classification of Fixed Assets" as residential. The authority determined that classification of a fixed asset under the appropriate "Classification of Fixed Assets" category is based on its intended purpose, construction, and equipment, not on the actual manner of use.

Rent of land for construction increases the initial value of a fixed asset

The Director of National Fiscal Information
September 25, 2025

Lease rent for land on which a fixed asset is being constructed should increase the production cost of that asset until it is put into use. These expenses are directly related to investment execution and do not constitute general management costs or other operating costs, as they would not arise without the decision to construct the fixed asset. Consequently, lease rent cannot be recognized as indirect costs settled on an ongoing basis, but instead increases the initial value of the produced fixed asset.

No effective VAT exemption waiver without literal declaration in notarial deed

The Director of National Fiscal Information
October 3, 2025

Merely stating in a notarial deed that the price includes 23% VAT does not constitute an effective waiver of VAT exemption. The authority emphasized that an explicit, mutual declaration by both transaction parties choosing taxation must be provided in the notarial deed. An invoice issued with a 23% VAT rate, payment of the price including VAT, and settlement in SAF-T declarations do not substitute for such a declaration. Consequently, the purchaser cannot deduct input VAT from the invoice documenting an exempt transaction.

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