



We are pleased to present to you KSP Tax News, in which we describe selected rulings and interpretations passed or published in April 2014. We hope this publication is of interest to you.

The Minister of Finance says limited joint stock partnerships are not eligible to use a financial year other than a calendar year.

The authorities have adopted a stricter policy with respect to limited joint stock partnerships which postponed their financial year before the amended regulations took effect in January. In the opinion of Directors of the Fiscal Chambers of Poznan (an interpretation of 15 April 2014, file ILPB3/423-80/14-2/JG) and of Bydgoszcz (an interpretation of 31 March 2014, file ITPB4/415-42/13/TK) it is a calendar year that should be used as a financial year for a limited joint stock partnership whose shareholder is a natural person.

The Head of the Fiscal Chamber of Poznan held that the fact that shareholders in a limited joint stock partnership were natural persons not eligible to use a tax year other than a calendar year means that the partnership in which they are shareholders must also adopt a calendar year as the accounting period. Director of the Fiscal Chamber of Poznan held that this approach would facilitate compliance with the tax obligations by all the shareholders. The same standpoint, in a similar situation, was expressed by the Head of the Fiscal Chamber of Bydgoszcz.

Expert Comment

"Starting from 1 January 2014, the legislator deprived limited joint stock partnerships of their most essential tax asset, i.e. the possibility to settle the tax on profits earned by the partnership upon payment of dividend. However, a number of entities resolved to postpone their financial year by changing the same as appropriate. By postponing the financial year, the shareholders may use the preferential taxation rules for limited joint stock partnerships until the end of the financial year (in practice it is even by 31 October 2015). It seems that the Minister of Finance, in an attempt to prevent the adverse effects of such steps for the State budget, adopted a decision which is non-compliant with the wording of interim provisions to the act amending the taxation of limited joint stock partnerships. According to the Minister of Finance, if a shareholder in a limited joint stock partnership is a natural person, the financial year must correspond to the calendar year and all such partnerships became corporate income tax payers as of 1 January 2014. In my opinion, the standpoint presented by the authorities is not supported by legal regulations. The interim provisions resulting from the amending law clearly apply to a financial year and not a tax year as the indicator of the moment of entry in force of the provisions for entities whose financial year does not end on 31 December 2013. The principles for determination of the financial year are provided in the Accounting Act, which is applicable to limited joint stock partnerships as well. It provides for a possibility to use a financial year other than a calendar year. Hopefully, if



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appeals are brought against the interpretations to administrative courts, the decisions taken by the latter will be positive for taxpayers."

VAT

The Supreme Administrative Court (Naczelny Sąd Administracyjny - NSA) held that compliance with technical conditions with respect to a special purpose vehicle (a cash-in-transit vehicle) is not sufficient to benefit from full VAT deduction (a judgment by NSA of 8 April 2014, file I FSK 505/13).

The Court was of the opinion that to deduct the entire VAT amount on the purchase of a special purpose vehicle, the vehicle must be used for its intended purpose. Moreover, the Court held that deduction of the entire VAT on purchase while the vehicle was only partially used for the intended purpose would be an abuse of law. The Court provided the example of a sporadic use of a cash-in-transit vehicle for the purpose of transporting cash. In pursuance of the judgment, tax authorities may challenge VAT deduction made on purchase of special purpose vehicles that are not used solely for their intended purpose. However, it needs to be emphasized that the judgment applies to a tax interpretation issued under previous legal status.

When making a supply of goods at the end of a month, the taxpayer must take into account that the tax obligation will not arise at the moment of sales invoice issuance, but in the subsequent month, when the supply is actually completed - an interpretation issued by the Director of Fiscal Chamber in Warsaw on 14 March 2014, file IPPP2/443-1390/13-2/KOM.

The director held that if goods are sold at the end of a month and handed to the carrier, the risk must be taken into account that they would be actually delivered next month. It means that the supply of goods with respect to which the parties agree that it is made once the goods are physically delivered to the buyer, the tax obligation may arise in the month following the one in which the sales were made. The Director expressed the opinion that the fact of the date of sale and the date of invoicing being in previous month was of no significance. Additionally, the Director informed that the taxpayer must state the date of supply in the invoice, which cannot be replaced with the date of sale, as the latter does not reflect the actual date of delivery. The interpretation indicates that accurate identification of the delivery date in the invoice is of key significance for reliable determination of the taxable base in a given account period.

CIT

The Supreme Administrative Court, in the judgment of 25 April 2014 9file II FSK 4/12), held that issuance of a correction invoice with respect to goods returned has no impact on the tax point for income tax purposes.

The Court held that a correction invoice should be taken into account in the period when the tax obligation resulting from the supply of goods arose. By the same token, in the Court's opinion, after the correction invoice is issued, revenue should be corrected retrospectively for the month or quarter in which the supply was made. This standpoint is inconsistent with a number of previous decisions issued by courts whereby the corrections could be recognized on a current basis if they resulted from current reasons.

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The Province Administrative Court of Wrocław, in the judgment of 23 April 2014 (file I SA/Wr 296/14), held that interest on a loan incurred by a company whose enterprise was acquired by a bank are to be recognized as deductible costs by the buyer.

The Court expressed an opinion that in a situation where the bank acquired the rights and obligations of the debtor as a result of a loan, the interest on the loan incurred by the company, accrued and due after the date of acquisition of an organized part of the enterprise by the bank would be deductible costs for the bank upon their payment by the bank.

The Province Administrative Court of Warsaw, in the judgment of 10 April 2014 (file III SA/WA 2691/13), held that depreciation write-offs on the portion of a fixed asset made available gratuitously were not be recognized as deductible costs.

The Court was of the opinion that where a part of the area of a fixed asset was made accessible free of charge (e.g. office space for a foundation), the depreciation write-offs determined as a ratio of the share of the area made accessible free of charge to the entire area of the fixed asset should be excluded from tax costs.

The Province Administrative Court of Poznan (judgment of 2 April 2014, file I SA/PO 1014/13) held the restrictions on insufficient capitalization were applicable to cash-pooling agreements.

The Court held that a cash-pooling agreement is an unnamed agreement and there are no separate regulations for it in Polish law, yet it is quite similar to a loan or credit agreement. Therefore, in the Court's opinion, in a situation where a company has a debit balance and the pool leader provides funds to it, this transaction is in fact a form of providing a loan for the purpose of the company's business activity. Thus, the interest paid by the company in connection with participation in the cash-pooling system may be subject to restrictions on insufficient capitalization.

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If you wish to be provided with additional information in this respect, please contact us.

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