KSP TAX NEWS 6/2012

We are pleased to present to you KSP Tax News, in which we describe selected rulings passed in May 2012. We hope this publication proves useful in your everyday operation.

PIT levied on extra employee benefits - a judgment issued by the Province Administrative Court of Krakow

In the judgment of 8 May 2012 (file I SA/Kr 299/12), the Province Administrative Court of Krakow ruled that where, in accordance with a contract of employment, the place of work is the entire territory of a province, reimbursement of accommodation expenses and parking fees incurred by the employee should be treated as the employee benefit to be taxed with PIT. The court is of the opinion that no provisions of law oblige the taxpayer to cover the costs of overnight accommodation and private car used by employees. Also the list of tax exemptions does not include this type of benefits.

Expert Comment

"It is yet another one of the series of adverse judgments passed by administrative courts with respect to employee extra benefits. Another judgment concerning this type of benefits was issued by the Supreme Administrative Court on June 1, 2012 (file II FSK 2351/10) and it concerned insurance premiums paid by employers for drivers on business trips abroad. The direction of the judgments indicates that employee extra benefits, as a rule, are to be considered the employee's income which (if its value can be estimated) should be taxed. Although the NSA resolution on medical package, adopted on October 24, 2011 (file II FPS 1/10), does not automatically apply to other types of benefits funded by employers in favour of employees, the courts often make reference to it. In this context, taxpayers should verify the type of benefits provided to their staff and determine whether they are adequately recognized in view of PIT regulations. However, we must remember that for a benefit to be taxed, the benefit must actually be received by the employee and it must be possible to calculate its value. Where the value cannot be clearly specified, there are arguments to support the view that the benefit should not be taxed. In the light of the

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judgments passed by some administrative courts, the revenue must not be determined statistically, but in a concrete and real manner (e.g. WSA of Poznań in the judgment of September 23, 2011, I SA/Po 407/11)."

VAT

The Supreme Administrative Court in the judgment of May 15, 2012 (file I FSK 1223/11) resolved that the terms of "undertaking" or "organised part of undertaking" should be understood in line with Community interpretation (based on article 19 of Directive 112).
The NSA is of the opinion that the term "undertaking" refers to a set of tangible and intangible components serving to accomplish certain business goals. The fact of whether the set of components includes all or just some part of the entity's assets does not affect its classification. The court emphasized that what mattered was whether the set of components could be isolated based on a functional link, i.e. its usefulness to accomplish a specific business function. Thus, certain components making up the undertaking can be set apart, as part of a specific legal transaction (e.g. commitment or interest in third parties), with the status of the undertaking remaining unaffected. The NSA judgment is important for taxpayers who engage in transactions of sale of an undertaking or an organised part thereof in the context of being liable to pay VAT.

The Province Administrative Court of Warsaw in the judgment of May 23, 2012 (file III SA/Wa 2465/11) assessed the premises for considering loans given to related entities as occasional transactions within the meaning of Art. 90 par. 6 of the VAT Act.
The WSA decided that, when estimating whether loans given by a company to group members are of occasional nature, as specified in Art. 90 par. 6 of the VAT Act, it must be considered whether their granting is exceptional and whether they do not in fact constitute the core activity of the company, as well as whether the value of the profit obtained from the loans is not high compared to profits from the company's core activity. If said premises occur, the loans should be considered occasional for VAT purposes. The judgment confirms that if certain conditions are met, such activities may be disregarded for the purpose of calculating the taxpayer's turnover for the sake of proportion of input tax settlement.

CIT

The Province Administrative Court of Gdańsk in the judgment of May 22, 2012 (file I SA/Gd 1276/11) resolved that sale of land property constituted a disposal of a property right, and the income from the transaction arose upon transfer of the property right to the buyer.

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According to WSA judgment, land property cannot be classified in the category of goods or services. It is a property right and therefore, according to Art. 12 par. 3a of the CIT Act, income arises on the date of disposal of the property right but not later than on the day of invoicing or payment of the amount due. Income from sale of land property arises in the year in which the parties concluded a notarized agreement on transfer of the property right to the land. Transfer of the land to the buyer is not a condition for property right transfer, and consequently for income generation. The judgment confirms that income from the sale of real property should be settled in terms of taxes in the year of conclusion of the sale agreement. The fact that the real property was actually transferred to the buyer in the subsequent year does not affect income generation from the real property sale.

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