KSP TAX NEWS 9/2014

We have the pleasure of presenting to you the KSP Tax News, a bulletin in which we describe selected judgments and interpretations issued or published in August 2014. We hope you find this publication interesting.

It is not necessary for the financial year of a limited joint stock partnership to overlap with the calendar year - a judgment issued by the Province Administrative Court in Bydgoszcz

The Province Administrative Court of Bydgoszcz *[Wojewódzki Sąd Administracyjny - WSA],* in the judgment of 15 July 2014 (case no I SA/Bd 694/14), held that the financial year in a limited joint stock partnership needs not be the same as the fiscal year of the partners thereof who are natural persons.
The judgment applies to a limited joint stock partnership whose financial year covered the period from 1 October to 30 September. In a request for an individual interpretation, the Entity expressed the opinion that the provision of Article 4.2 of the Act amending the CIT Act which prescribes the obligation to close the books of account as at 31 December 2013, did not apply to it, as it did not change the accounting year nor was it set up after the entry in force of the provision of the amending act. Due to the fact that the Entity's shareholders included natural persons, the tax authority, in an individual interpretation, held that the Entity should close the books of account as at 31 December 2013 anyway, as its financial year should overlap with the financial year of its shareholders, i.e. natural persons. The WSA canceled the interpretation, and considered it erroneous to associate the tax year of a shareholder being a natural person and the financial year of a limited joint stock partnership which was not a taxpayer until 31 December 2013.

Expert Comment

The dispute between taxpayers and the tax authority commenced in connection with an amendment to the CIT Act which provides for taxation of limited joint stock partnerships with CIT. The tax authorities were of the opinion that extending the financial year and adopting a financial year other than the calendar year was contrary to the law, because in a situation where a natural person is a shareholder in such an entity, for whom the tax year overlaps with the calendar year, the financial year of the partnership must not be different from the calendar year. Otherwise, it would not be possible to accurately determine the income per each shareholder - a natural person. (cf. an individual interpretation by Director of Poznan Fiscal Chamber of 05.04.2014, no ILPB3/423-80/14-2/JG, Director of Katowice FC of 28.05.2014, no IPPB3/423-267/14-3/MS).

This standpoint presented by the authority should be considered groundless. The rules for determining the financial year are laid down in the Accounting Act, which is applicable to limited joint stock partnerships as well. It is a fact that the Act provides that the financial year is also to be applied for tax purposes. It must be remembered however that partnerships (including also limited joint stock partnerships until the end of 2013) are not income tax payers, although their financial year is specified in the articles.

Michał Wilk
KSP Tax Advisor

E: michal.wilk@ksplegal.pl
T: +48 32 731 6869

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What the tax authority forgets about is the fact that, according to the general interpretation of the Ministry of Finance, until the end of 2013 the income of shareholders being natural persons in this type partnership was not determined on the basis of the books of account but solely on the basis of a resolution concerning dividend payment. Additionally, if all the shareholders in a limited joint stock partnership were legal entities, and one of them had their financial year corresponding to the changeable year of the partnership, while another one adopted a year overlapping with the calendar year, the situation referred to by the Ministry would occur as well, and in theory the financial year would have to be the same as the calendar year.

The judgment by the WSA of Bydgoszcz confirms that a situation where a shareholder in a limited joint stock partnership is a natural person must not lead to no choice on the side of the partnership with respect to selecting the financial year other than the calendar year. The judgment should be evaluated as positive. We hope it will change the negative approach adopted to date by the Ministry of Financial in this respect.

VAT

The Province Administrative Court of Poznan, in the judgment of 7 August 2014 (case no I SA/Po 1032/13), held that gratuitous handover of goods to a participant of a promotional campaign did not trigger the necessity to charge output VAT, because with respect to organizing promotional campaigns, this was a part of a comprehensive service.

The decision was issued with respect to a company that provided broadly understood marketing services consisting of comprehensive organization and handling of various types of promotional campaigns contracted to it by other entities. As part of the campaign, the company purchased goods that were used as prizes for participants, the cost of which was included in the taxable base for the service of promotional campaign organization. The court held that this service was of comprehensive nature, and the gratuitous handover of goods to promotion participants could not be separated therefrom.

Director of Łódź Fiscal Chamber, in an individual interpretation 25 July 2014 (case no IPPP1/443-442/14-4/ISZ), held that a company was eligible to deduct the input tax if it incurred expenses for the lease of office property with parking spaces. However, with respect to expenses incurred for motorway toll and parking fees during business trips, relating to company cars, the company was eligible to deduct 50% of VAT.

The request for interpretation of legal regulations was filed by a company renting office space and parking spaces. The FC Director shared the Requestor's opinion that expenses for rental, also those connected with the parking spaces, were associated with the overall operation of the company, and they formed the overhead costs relating to the business activity it was engaged in. Therefore, they could be recognized as expenses for goods and services used for the purpose of taxable transactions, which the company was eligible to deduct in full. However, the cars used by the company were used for various purposes, and thus the right to deduct the tax was limited to 50% for all expenses related to the operation and use of such vehicles, pursuant to Article 86a sec. 2.3 of the VAT Act.

CIT

The Province Administrative Court of Bydgoszcz, in the judgment of 20 August 2014 (I SA/Bd 745/14), held that expenses incurred by a company for payment of tax on liabilities incurred by the company making an in-kind contribution in the form of an organized part of enterprise were not to be treated as deductible costs by the company receiving the contribution.

KSP Legal &Tax Advice
ul. Chorzowska 50
40-121 Katowice

T: +48 32 731 68 50
F: +48 32 731 68 51

E: kancelaria@kspelagal.pl
www.ksplegal.pl

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The court shared the opinion expressed by the tax authority, whereby if an in-kind contribution is made, no tax succession occurs. Additionally, liabilities generating interest were incurred by the company making the in-kind contribution, so there is no link between the payment of the interest by the company to which the contribution was made, and the securing or retaining of the sources of revenue from the company's business activity, which is why the expenses cannot be recognized as deductible costs.

The Province Administrative Court of Łódź, in the judgment of 7 August 2014 (case no I SA/Łd 414/14), held that a company may commence the depreciation of a trade mark from the moment of the decision is issued by the Patent Office of the Republic of Poland on granting the protection right for the trademark.
The case applied to a company which acquired the right under a trademark notification made to the Patent Office. The WSA held that depreciation was to apply to a trademark for which the protection right was granted, and the notification for registration was insufficient.

The Province Administrative Court of Warsaw, in the judgment of 7 August 2014 (case no III SA/Wa 2941/13), held that, according to the accrual method, the moment to recognize eligible costs in the company's books of account shall be the moment an entity holding a license to operate within a special economic zone incurs expenses eligible for public aid in the form of tax exemption, based on the invoice or bill received.
The court indicated that according to the CIT Act, the date of incurring the costs is established based on the accrual method. The same rule is stipulated in the Accounting Act. Thus, reference to the literal meaning of the word "incur", as used in § 6 of the Regulation by the Council of Ministers of 10.12.2008 concerning public aid granted to economic operators acting under a license to operate business on the territory of special economic zones, should be considered ungrounded.

Director of Warsaw Fiscal Chamber, in an individual interpretation of 17 July 2014 (case no IPPP3/443-406/14-2/SM), confirmed the standpoint adopted by a taxpayer regarding accounting for "in plus" correction invoices in the period the correction was made.
The tax authority thus confirmed the method of accounting for correction invoices depending on the reason for the correction, as approved in judicial decisions. According to this method, if an adjustment is made to correct an error existing at the time of issuance of the original VAT invoice, it should be made backwards. In a situation where the adjustment is made for other reasons which occurred after an event and invoice issuance, it should be made on a current basis.

Director of Katowice Fiscal Chamber, in an individual interpretation of 28 July 2014 (case no IBPBI/2/423-445/14/PC), held that discounts, bonuses or returns of goods documented with a correction invoice should reduce the revenue for the account period in which the revenue under the original invoice documenting the sale of goods was recorded.
The authority indicated that a correction did not generate a new revenue point, but it just modified the original value indicated in the invoice to be corrected. A return of goods, a bonus or a price discount are not separate business events, but they are closely related to the original transaction. In taking this decision, the authority shared the opinions regarding the determination of the moment of accounting for correction invoices as depending on the reason for the correction.

The Supreme Administrative Court (Naczelny Sąd Administracyjny - NSA), in the judgment of 30 July 2014 (case no II FSK 2046/12), expressed the standpoint that if a contribution made by a limited partner being a legal person in a limited joint stock partnership is reduced, no revenue is thus generated for the limited partner under the CIT Act.

KSP Legal &Tax Advice
ul. Chorzowska 50
40-121 Katowice

T: +48 32 731 68 50
F: +48 32 731 68 51

E: kancelaria@kspelagal.pl
www.ksplegal.pl

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The NSA indicated that the CIT Act did not provide for the issue of reduction of the value of an in kind contribution made by a partner who was not a legal entity. For this reason, by analogy, the regulation should be used which refers to withdrawal of a partner from a partnership, and which provides that cash received in connection with the partner's withdrawal from a partnership, in the part corresponding to expenses for purchase or acquisition of the right to a share in the partnership and a surplus of revenue over deductible costs less payments made for the share in the partnership, was not to be recognized as revenue.

PIT

The Province Administrative Court of Wrocław, in a judgment of 20 August 2014 (case no I SA/Wr 1674/14), held that participation in Christmas meetings or other holiday events and meetings, integration meetings, trips and training sessions is not to be considered as revenue for the Company's employees.

The matter concerned a company which organized events for its employees several times a year, during which attendance of individual employees was not checked. The WSA, based on the last judgment issued by the Constitutional Tribunal on 8 July 2014 (case no K7/13), shared the company's opinion and held that revenue was derived only in a situation where the performance could be individually allocated, the cash value could be determined and the recipient could be specified, while in the case of events organized by the company, these conditions were not satisfied.

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

KSP contact :

Magdalena Patryas
Partner
T: +48 32 731 68 53
E: magdalena.patryas@ksplegal.pl

Elżbieta Lis
Partner
T: +48 32 731 68 58
E: elzbieta.lis@ksplegal.pl

KSP Legal &Tax Advice
ul. Chorzowska 50
40-121 Katowice

T: +48 32 731 68 50
F: +48 32 731 68 51

E: kancelaria@kspelagal.pl
www.ksplegal.pl

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