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We are proud to present the next edition of our Tax Press Review which contains a selection of rulings and interpretations that had been issued or published in October. We hope that our publication will prove useful to you in your everyday work and that you will be interested in receiving further editions of our Tax Press Review.

VAT

- ❖ **The NSA (Supreme Administrative Court) ruled on October 28, 2008 (case ref. I FSK 1278/07) that a supply of advertising leaflets by a company does not constitute a supply of goods and is not subject to VAT.**

The verdict came in response to an actual case of a taxpayer who supplied advertising leaflets, containing details on the firm, the goods it offered and their prices, as part of his business activities. The court emphasised that what determines a *de facto* supply of goods is whether the goods are supplied by the taxpayer for purposes other than those connected with his enterprise. Since the supply of advertising leaflets was connected with his business activities, it did not constitute a supply of goods and, as such, was not subject to VAT.

- ❖ **The Constitutional Tribunal ruled on October 13, 2008 (case ref. K 16/07) that the regulation that allows the tax authorities to extend the deadline for refunding the difference in VAT up to the time of completing explanatory proceedings, does not infringe the Constitution.**

Under art. 87.2 of the VAT Act, a refund of the difference in VAT is made into the taxpayer's bank account within 60 days of the day the settlement is made by the taxpayer. On the other hand, if the grounds for tax refund require additional verification, the tax authorities may extend the refund deadline until explanatory proceedings are completed. In the Tribunal's assessment, explanatory proceedings come under

verification activities, and Polish regulations do not diverge from the standards applied in other European Union countries.

- ❖ **The WSA (Provincial Administrative Court) in Warsaw ruled on October 21, 2008 (case ref. III SA/Wa 1098/08) that an entrepreneur who received a VAT invoice from an entity not registered for VAT purposes, has the right to reduce the output VAT by input VAT shown on the invoice.**

The tax authorities invoked art. 88.3a.1.a of the VAT Act to question the taxpayer's right to reduce the output VAT by input VAT shown on the invoice issued by a contractor who was not registered for VAT. The article in question provides that in case when the sale was documented with invoices issued by non-existent or unauthorised entities, such invoices do not provide the basis for reducing output VAT. The court waived the decision arguing that 'an unauthorised entity' should not be identified with 'an unregistered entity'. Moreover, it cannot be said that only registered VAT payers are obliged to issue VAT invoices. The court stressed that an entity carrying out VAT-taxable activities and issuing VAT invoices that meet formal requirements, cannot be denied the right to issue such invoices.

- ❖ **The WSA in Warsaw confirmed by a judgment issued on October 16, 2008 (case ref. III SA/Wa 1105/08) that input VAT connected with acquisition of goods and services used in the course of a share issue may be deducted.**

The company applied for an interpretation as to whether it can deduct input VAT connected with court fees, notary's fees, and



publication costs incurred in the process of increasing its share capital. The tax authorities deemed such costs to be undeductible on the argument that an increase in share capital via share issue is not a VAT-taxable activity and the expenses on purchasing goods and services in question cannot be used for performing taxable activities. The court took the view that selling shares, while not being a taxable activity, led the company to acquire monetary resources to carry on its economic activity. Thus, since the objects of the economic activity are VAT-taxable activities, the expenses sustained on the issue and disposal of shares for shareholders, are deductible.

Corporate Income Tax (CIT)

- ❖ **The Director of the Tax Chamber in Poznań issued an interpretation on September 15, 2008 (case ref. ILPB3/423-364/08-2) which indicates that expenses associated with acquisition of perishable goods supplied as refreshments at client meetings do not constitute representation expenses.**

The Director of the Tax Chamber shared the company's opinion stating that the expenses on the acquisition of perishables such as tea, coffee, sugar, sandwiches, milk etc., are not of a representative nature and confirmed that it would be difficult to classify such hospitality as sophisticated and publicity making representation.

Refreshment is an established feature of a meeting and thus serves the main aim which is to reach specific terms with a client or to convey to him specific information on the company's activities.

In consequence, expenses associated with the acquisition of refreshments constitute revenue earning costs for the company.

Personal Income Tax (PIT)

- ❖ **The Director of the Tax Chamber in Warsaw issued an interpretation on October 2, 2008 (case ref. IPPB2/415-1034/08-4/SP) asserting that hotel expenses backed by a VAT invoice or receipt refunded to employee on an official business trip, when exceeding the official per diem rate do not constitute income subject to PIT.**

The interpretation was issued on the basis of a factual situation where a company refunded hotel expenses of employees on official business trips abroad, backed by invoices or receipts, which exceeded the per diem allowance limits envisaged in the Regulation of the Minister of Labour and Social Policy of December 19, 2002.

The Director of the Tax Chamber took the view that if the employer agrees to refund the hotel costs backed by an invoice or receipt exceeding the per diem allowance limit set by the Regulation, recognising such an event to be justified, the refunded excess will not be subject to PIT.

Miscellaneous Information

- ❖ **On October 30, 2008, the Senate adopted the Tax Ordinance amendment passed by the Lower House (Sejm), which envisages changes in the enforceability of tax authorities' decisions and in carrying out tax controls. These changes are to come into effect on January 1, 2009.**

Under the currently binding legal regime, an appeal to a higher authority causes the



enforceability of a decision to be automatically suspended. As from January 1, 2009, non-final decisions shall not be subject to enforcement unless it is under immediate enforcement order. Among the changes concerning tax controls, the most significant seems to be the institution of giving the taxpayer of a planned control seven-day advance warning. Taxpayers will also be entitled to appoint more than one person to represent them in case of tax control. The amended act also anticipates that a control or certain activities undertaken during its course, may also be carried out at the seat of the controlling tax authority if that is to help expedite the control or if the controlled entity opts out of participating in the control activities.

❖ **On October 30, the Senate voted through its revisions to the amended VAT Act.**

The changes adopted by the Senate include:

- abolition of guarantee deposits,
- simplification in benefiting from bad debt relief,
- introduction of consignment stores,
- abolition of the 30% VAT sanction.

Most of the changed regulations are to take effect as of December 1, 2008.

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We hope that the above information will prove to be useful. The information however does not constitute legal opinion or advice. Should you require full information or legal advice on any issue, please contact us.

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