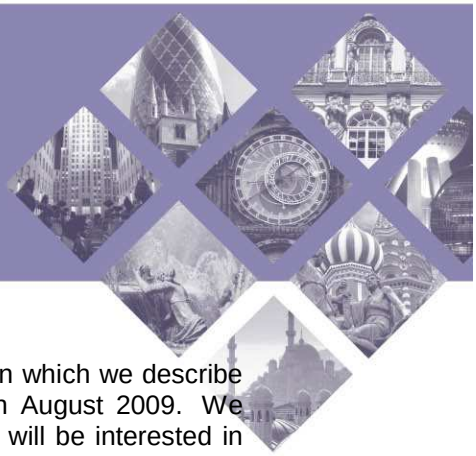
TAX PRESS REVIEW

KSP legal & tax advice



8/2009

We are pleased to present to you a new release of the Tax Press Review, in which we describe selected tax rulings and interpretations that were released or published in August 2009. We hope that you find the publication of assistance in your everyday work and will be interested in receiving further releases of the Tax Press Review.

VAT

- **The Director of the Tax Chamber in Warsaw issued an interpretation on 15 July 2009 (case ref. IP-PP2-443-581/09-4/BM) asserting that when original VAT invoices are in hard copy their copies cannot be kept in electronic form.**
  By reference to § 21. 1. 2 of the regulation of the Minister of Finance of 28 November 2008 on the refund of tax to certain taxpayers, the issuance of invoices, the method of storing invoices, and the list of goods and services which are not VAT-exempt, the Director deemed that when the original VAT invoices are in hard copy, their copies, correction invoices and duplicates cannot be kept exclusively in electronic form even if there is a possibility of their reconstitution in hard copy. The Director pointed out simultaneously that the possibility of storing copies of invoices in electronic form exclusively relates to e-invoices issued in electronic form.

- **The Director of the Tax Chamber in Warsaw issued an interpretation on 24 July 2009 (case ref. IPPP3/443-435/09-3/MM) recognizing that when a bank offers cash-pooling services as part of an agreement with a company, the company is not to be regarded as a VATpayer.**
  As the Director of the Tax Chamber emphasized, activities carried on by a company on the basis of an agreement enabling the bank to make transfers of financial resources within the framework of a cash-pooling structure do not constitute separate services rendered by that company under Art. 8 of the VAT Act, but are only an auxiliary element essential for the bank to render an effective and comprehensive financial liquidity service.

- **The Supreme Administrative Court (NSA) ruled on 7 July 2009 (case ref. I FSK 676/08) that in light of the VAT regulations prevailing to 1 December 2008, a taxpayer who performed a VATable activity in a given period had the right to a refund of the surplus of input over output VAT in the period that this activity was performed, even if the tax point for this activity arose in the next settlement period.**
  By the same token, the court questioned the tax authorities' position which held that in order to qualify for a refund of the surplus of input over output VAT, the VATpayer was obliged to carry forward the surplus amount into the next settlement period in which output VAT was declared.

- **The NSA ruled on 23 July 2009 (case ref. I FSK 1324/08) that the functional interpretation should be adopted in order to correctly interpret Art. 88. 1. 2 of the VAT Act as it stood before 1 December 2008 when it prohibited the deduction of input VAT charged on expenditure on items not being tax deductible costs.**
  The NSA ruled that the taxpayer had the right to deduct input VAT charged on expenses incurred on an investment that was subsequently aborted. As the court emphasized, the taxpayer cannot be deprived of the right to deduct input VAT from expenses incurred on an investment made within the framework of one's business activities simply because the investment was subsequently abandoned.

- **The NSA ruled on 21 July 2009 (case ref. I FSK 897/08) that expenses sustained in increasing a company's share capital are connected with the taxpayer's business activity and, as such, are tax deductible.**

The tax authorities questioned the deduction of VAT made by a company in connection with expenses incurred in increasing a company's share capital, deeming these expenses not to be tax deductible and thus, that the deduction of input VAT infringed Art. 88. 1. 2 of the VAT Act which was in force before 1 December 2008. In the court's view, the restriction envisaged in this regulation, making the deduction of input VAT contingent upon the automatic recognition of a given expense as tax deductible costs, contradicted the principle of VAT neutrality contained in the VI VAT Directive. The grammatical interpretation of Art. 88. 1. 2 of the VAT Act in conjunction with the income tax regulations, introduces a restriction which has no basis in EU Law.

Personal Income Tax (PIT)

- **The Provincial Administrative Court (WSA) in Warsaw ruled on 7 August 2009 (case ref. III SA/Wa 384/09) that a contribution to a limited partnership does not create an increase in assets for the contributor and in consequence there is no question of constituting his revenue.**
  By the same token, the court did not share the tax authorities' view which, quoting Art. 17. 1. 6a of the PIT Act, deemed the contribution of capital company shares to a limited partnership to signify their disposal for payment, and the value of the contribution to the limited partnership to constitute the contributor's revenue. In the court's opinion, a disposal for payment only comes into play when in return for the contribution, the contributor receives an equivalent benefit in the shape of payment of the purchase price. Revenue will only be achieved when the contributed shares are sold off.

- **The NSA ruled on 30 July 2009 (case ref. II FSK 506/08) that the point of payment of an insurance premium on behalf of an employee is a taxable income for that employee.**
  A company paid collective insurance premiums for its employees sent out on foreign assignments in the course of the year. In the NSA's opinion, when a specific amount paid by the company can be attributed to an employee, the employee is in receipt of a benefit-in-kind at the moment the insurance policy is purchased. This income is calculated by dividing the price of the insurance policy by the number of employees that it covers.

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We hope that the above information proves helpful. The information does not constitute a legal opinion or advice. To obtain further information or legal advice please contact us.

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