

UNCOLLECTABLE RECEIVABLES CAN BE DEDUCTED ONLY IN NET AMOUNT

We wish to alert you to a taxpayer-unfriendly judgement of the Supreme Administrative Court ("SAC") in case no. **II FSK 3875/13**. **SAC held that an amount receivable which has on balance of probabilities been demonstrated to be uncollectable can be deducted for income tax purposes only in its net amount.**

The case involved a company with outstanding debtors in respect of sales invoices. These amounts have been demonstrated as uncollectable, including by court orders to conclude debtor's winding-up process and court orders to discontinue enforcement for lack of debtor's assets. The company also submitted that it recognised these amounts as its tax costs and did not use the bad debt relief provided for in Article 89a.1 VAT Act.

The company requested the Finance Minister ("FM") to confirm that these uncollectable receivables are deductible for tax purposes in their gross amounts, i.e. inclusive of VAT.

FM did not agree with the company and held that VAT included in those uncollectable amounts could not be recognised as income pursuant to Article 12.3 CIT Act and as such cannot now be deducted as a tax cost.

FM's position was affirmed by Provincial Administrative Court in Wrocław and later also PAC. According to both courts, VAT does not affect the amount of corporate income tax payable (because it is recognised under a separate legal framework), therefore it cannot be treated as deductible for income tax purposes (this is clearly stated in Article 12.4.9 CIT Act).

Note however that, with respect to VAT due under invoices for supplies of goods or services, you have the right on certain statutory conditions to enjoy the bad debt relief with respect to amounts which have been proved on balance of probabilities to be uncollectable.

If this issue pertains to your business and you are interested in our assistance, please contact your WTS&SAJA consultant or our office.

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