

**ASSIGNMENT OF LEASE AND SUBSTITUTION OF FINANCE PARTY  
DOES NOT AFFECT TAX TREATMENT**

We wish to draw your attention to a taxpayer-friendly resolution of the Supreme Administrative Court ("SAC") dated 23 May 2016 (case no. II FPS 1/16, bench of 7 justices), which held with respect to leasing arrangements that a substitution of the lessor before 1 January 2013 will not affect the tax treatment of the lease, as long as all of its other terms remain unchanged.

The case involved a company that operated a car lease business. Pursuing its expansion strategy, the company wanted to approach another company engaged in the same business to purchase its vehicles, which at the time of such purchase would be used by the other company's customers under leasing arrangements. The transaction would involve:

- a substitution of the finance party at different stages of the leases,
- no change to any other terms of the leases.

SAC ruled that, under the law in force before 1 January 2013, the substitution of a party to a pending lease does not require re-verification whether the lease can still be treated as operating lease for CIT Act purposes.

SAC made it clear that where the substitution of a party is the only change to a lease, the terms of the lease remain the same, as do those of its elements for which tax law provides certain requirements. There is thus no "new contract" because the terms remain unchanged.

This is now statutory law as, since 1 January 2013, the CIT Act expressly provides in Article 17a.2 that in the event of the substitution of any party or parties to a lease, the initial term of the lease is considered to remain the same if no other provisions of the contract are changed.

Under the law in force before 1 January 2013, courts would take different approaches to this issue. Even though the SAC resolution has binding force only with respect to the specific case, it will surely help develop a consistent taxpayer-friendly line of authority from administrative courts dealing with similar cases according to the law in force before 1 January 2013.

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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