

PAYMENT IS NOT THE RIGHT TIME TO RECOGNISE EXIT FEE AS DEDUCTIBLE FOR TAX PURPOSES

A restructuring consideration becomes deductible for tax purposes not when paid but when posted on a relevant expense account for accounting purposes, ruled Director of Katowice Tax Chamber on 13 December 2016 (tax ruling ref. 2461-IBPB-1-3.4510-954.2016.1.JKT).

The case involved a Polish subsidiary ("Company") of a multinational corporation. The Company is engaged in the distribution of group products in Poland. Plans are in place to restructure the group so that the Company would take over the distribution functions from Czech and Slovak subsidiaries in the local markets while those subsidiaries would only be involved in marketing and aftersales services. In consideration for taking over the distribution functions, the Company will pay the Czech and Slovak subsidiaries a fee for the transfer of the profit potential of the business ("Exit Fee"). The Exit Fee will be based on multi-annual profitability projections for the transferred business and will be paid in tranches (quarterly or annual).

In the opinion of the Company, the Exit Fee should be recognised as cost for tax purposes on payment of each tranche. To obtain assurance, the Company requested a ruling with authoritative interpretation of the relevant tax regulations.

Director of Katowice Tax Chamber did not agree with Company's opinion. He argued that cost recordkeeping for tax purposes should be in accordance with accounting regulations. The authority ruled that the cost represented by the Exit Fee should be recognised for tax purposes on the date on which it is recognised as an expense for accounting purposes. This is the date on which it is posted on a relevant expense account. The authority also held that it is not until an expense item is recorded on a P&L account that it becomes relevant for determination of the correct financial profit or loss, which is when income tax consequences arise. Thus, the date on which the Exit Fee is actually paid by the Company is irrelevant for its recognition as a tax-deductible cost.

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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