

## **IF LOAN REPAID IN ZLOTY, THERE WILL BE NO EXCHANGE DIFFERENCES**

We wish to draw your attention to the judgement of Provincial Administrative Court in Rzeszów ("PAC") dated 28 July 2014 in case no. I SA/Rz 537/15), where PAC held that, for tax purposes, there will be no exchange differences on a loan which has been disbursed in a foreign currency but repaid in Polish zloty.

The case involved a company which wanted to lend money from its shareholder to purchase shares in a limited liability company. The loan was supposed to be granted in the euro and there was no option to change the currency. According to the contract, the liability could be physically repaid either in the euro or in the Polish zloty. If the loan was repaid in PLN, the applicable exchange rate would be that agreed between the company and the lender (except that the agreed rate would not differ by more than 5% from the average NBP rate ruling on the last business day before the date of repayment). The company sought a private tax ruling from the Finance Minister ("FM") to confirm that there will be exchange differences on this loan for tax purposes, whether the loan is repaid in the euro or in the Polish zloty.

MF did not agree with that conclusion and held that no exchange differences will arise for tax purposes if, for example, a loan liability (or receivable) is expressed in a foreign currency but is physically repaid in PLN, or vice versa.

This approach was upheld by PAC in the subject case. The court stated that in a situation such as this, exchange differences will arise for tax purposes only if:

- the loan is received in foreign currency,
- the loan is repaid in foreign currency,
- there are differences between the loan value translated into PLN as at date of receipt versus as at date of repayment.

Thus, there will be no exchange differences for tax purposes where the liability arises in a foreign currency but is repaid in the Polish zloty.

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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