

TRANSFER OF KNOW-HOW TO COMPANY IN PAYMENT FOR ITS SHARES ENABLES TAX DEDUCTION

This is to alert you to a taxpayer-friendly judgement of the Supreme Administrative Court ("SAC") dated 27 May 2015 in case no. II FSK 993/13. The court held that where know-how is transferred to a company in payment for its shares, the expenses incurred to develop the know-how can be treated as tax-deductible.

The case involved an individual who was not in business. The person took shares in a limited liability company in exchange for know-how. The value of the know-how was quantified on the basis of the person's expenses incurred to create it (e.g. expenses to acquire expertise).

The lower court argued that if the expenses on an asset (know-how) are to be tax-deductible, the asset must first be included as a tangible/intangible in relevant business records.

SAC disagreed and held that:

- the mere fact that a person is not in business does not prevent the person from being entitled to deduct tax costs from income represented by shares taken in exchange for non-cash assets;
- in this particular case, the tax costs equal the expenses which the taxpayer actually incurred to develop his know-how.

This case offers a real chance of paying lower PIT for shareholders who contribute know-how to their companies

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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