

DEBT CANCELLED (FORGIVEN) BY BANK IS NOT TAXABLE INCOME

We wish to alert you to a favourable ruling of Wrocław Provincial Administrative Court ("WPAC") dated 28 August 2015 (**case no. I SA/Wr 1004/15**), where it was held that if a bank cancels an undertaking's debt which arose from currency options and the cancellation results from a settlement between the bank and the undertaking, then the cancelled debt will not be treated as taxable income.

The case involved a business which made losses on currency options due to the depreciating zloty. The matter was litigated and the business reached a settlement with the bank according to which the bank would cancel most of the debt once the business fully complies with all the terms of the settlement.

A tax inspection was then held whereby the tax authority decided that this debt cancellation (based on a settlement) generated taxable income for the taxpayer as it received a benefit for no consideration. The business did not agree with the decision and petitioned for judicial review by WPAC.

WPAC granted the petition and agreed with the business that such a debt reduction by the bank did not cause any accretion in net asset value for the business. Thus, the business did not have to recognise any income on account of the cancellation.

This taxpayer-friendly ruling can provide an incentive for claiming refunds of tax paid in respect of currency option debts cancelled by banks.

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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