

BUY-OUT PRICE IS A DIRECT TAX COST

We wish to alert you to a recent change in tax rulings on the treatment of buy-out price as a tax cost.

Buy-out price (*opłata zastępcza*) is paid by any company that sells electricity to final customers connected to the grid in Poland if the company fails to present to the energy market regulator certificates of origin testifying that the company purchases renewable electricity. The price is payable by March 31 by reference to the prior year.

For many years, the tax authorities claimed in their private tax rulings that the buy-out price expense is indirectly related to income for tax purposes (is an indirect tax cost).

As of 2016, the tax authorities have uniformly ruled that the buy-out price expense is a direct tax cost and, as such, should be recognised for tax purposes in the tax year in which the taxpayer receives income from sale of the related electricity, not the tax year in which he pays the buy-out price (see tax rulings ref. 2461-IBPB-1-2.4510.903.2016.1.ANK, 1462-IPPB5.4510.1003.2016.1.RS, 1462-IPPB5.4510.870.2016.2.BC).

This construal is at odds with the approach of administrative courts which hold that the buy-out price expense is directly related to income of the year.

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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