

## ASSIGNMENT OF A LEASING CONTRACT IS NOT A NEW CONTRACT

We wish to alert you to a taxpayer-friendly judgement of the Supreme Administrative Court ("SAC") given on 14 April 2015 (case no. II FSK 187/13), where the court held that the replacement of the lessee in a leasing contract executed on or before the end of 2012 does not affect the tax-related rights and duties of both parties.

The case involved a company engaged in the provision of marketing and promotion services targeted at pharmacies, drug wholesalers and hospitals. Following a restructuring, the company acquired a business (branch of activity) which included, among other things, operating leases of passenger cars, entered into by the previous lessee before 2012. The rights and duties of the previous lessee were assigned to the company. The company applied to the Finance Minister ("FM") for a tax ruling to confirm that the company is entitled to continue recognising the lease payments as tax costs, just as the previous lessee.

FM did not share the company's point of view and held that the tax-related rights and duties of the company should in this case be determined autonomously as if the company entered into a new lease. However, the company was ultimately able to secure a favourable outcome after it applied for judicial review and SAC concurred with its standpoint. Effectively, SAC held that:

- the statutory test allowing lease payments to be treated as tax costs concerns solely the terms of the contract (lease term, leased asset, amount of payments) but does not require that the parties to the contract must remain the same;
- the fact that the company replaced the previous contract party as the lessee does not affect the terms of the contract, therefore the company will continue to meet the test for recognition of lease payments as tax costs on the same terms as the previous lessee.

This case can be a significant step towards the unification of disparate case law of administrative courts in the matter of the tax impact of assignments of lease contracts executed under the law in force until the end of 2012. Due to changes in the CIT Act made in the meantime, this tax issue is no longer applicable under the current law.

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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