

RECOVER VAT ON THE PETROL FOR COMPANY CARS

The judgement of the European Court of Justice passed on 22 December 2008 in the case of Magoora sp. z o.o. against the Director of the Tax Chamber in Kraków (case no. C-414/07) has made it possible for Polish entrepreneurs to claim return of the VAT on purchase of cars used for the purposes of conducting business activity (or on leasing instalments), as well as on petrol to such cars. ECJ has decided that introduction by the Polish legislator after the day of 1 May 2004 of provisions limiting to an even greater extent the possibility of deducting VAT on purchase of the company cars and on petrol to such cars is in breach of the Community Law.

It is disputable whether the decision issued by ECJ makes it possible to deduct VAT on purchase of all cars used for the purposes of conducting business activity and for purchase of petrol to all such cars, or whether this pertains only to cars with truck homologation. In our opinion, based on the passed ECJ judgement it is possible to claim return of the input VAT on cars with truck homologation (and on petrol to such cars) with respect whereto the taxpayer lost, as of 1 May 2004, the right to deduct the input VAT (this refers to the so-called grid cars or cars compliant with the so-called Lisak's pattern). What is more, the taxpayers who use such cars may on an ongoing basis deduct VAT from petrol bought for such cars.

In order to receive the return of the VAT paid, it is necessary to file a corrected VAT return for a given period with justification of the reasons for the correction together with a request for return of the overpayment. The deadline for filing the corrected VAT return for the period from 1 May to 31 December 2004 al-

ready lapsed with the end of the year 2008. There however still exists the possibility to correct the VAT returns for particular settlement periods, starting from 1 January 2005.

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FIREMAN IN THE WORK ESTABLISHMENT

New provisions of the Polish Labour Code laying upon the employers additional responsibilities, among others in the scope of fire protection, entered into force on 18 January 2009.

The new chief obligation of the employer connected with the fire protection is to appoint an employee responsible for undertaking actions in the scope of fire protection and for evacuation of employees. Such employee should have at least high school education. Moreover, such employee should complete training for the fire protection inspector. Such training is provided by fire-fighting service schools of National Fire Service and by the training centres in province offices of the National Fire Service. The costs of the training for one employee amount at the moment to ca. PLN 1,250. Employees with the title of a professional fire-fighting technician do not need to undergo the training.

The obligation of appointment of the employee responsible for undertaking actions in the scope of fire protection and for evacuation of employees applies to all employers irrespective of the number of employees employed.

Appointment of the employee responsible for fire protection may be subject to inspection by the National Labour Inspectorate. In case of

failure to appoint such person, the inspectorate may impose on the employer a fine in the amount from PLN 1,000 to 30,000. As it follows from the announcement of the National Labour Inspectorate, the inspection activities in the scope of the discussed obligation will be undertaken by the inspectors of the National Labour Inspectorate not earlier than from the beginning of February 2009. Thus, the Inspectorate has decided that the legislator has prescribed a too short period for the employers to meet the requirements imposed by the new provisions.

The provision obliging the employees to appoint an employee responsible for fire protection has caused a lot of controversies. These controversies concern *inter alia* the fact that this obligation has been laid even on those employees who employ only one employee. Due to numerous doubts of the employers connected with the application of the new provisions, the Ministry of Labour and Social Policy has undertaken works on further amendments of the Polish Labour Law aimed *inter alia* at modification of the described obligation.

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THE END OF THE CURRENCY MATCHING PRINCIPLE

The amendment of the Polish Civil Code and of the Foreign Exchange Law Act abolishing the currency matching principle entered into force on 24 January 2009. Pursuant to the provisions previously in force, any pecuniary obligations within the territory of Poland could be expressed solely in the Polish currency (with the exceptions stipulated in the statutory law).

From the date of entry into force of the abovementioned amendments on, it is admissible to determine and make within the territory of Poland performances in foreign currencies, also between residents operating business

activity, without the necessity to obtain a foreign exchange permit.

Presently, in an agreement between Polish entrepreneurs it is possible to determine the amount of the pecuniary obligations in foreign currencies. One should however pay attention to the new wording of Article 358 of the Polish Civil Code. This provision differentiates and regulates two issues: the determination of the amount of the performance in the foreign currency (e.g. determination of the amount of remuneration), and the determination of the manner of payment of such performance.

If the entrepreneur wishes to receive remuneration solely in the foreign currency, agreement should not only stipulate the amount of the remuneration in the foreign currency, but it should also contain the reservation that the payment of such remuneration can be effected solely in that currency. In case of lack of such reservation, the debtor will be able, despite the determination of the amount of the remuneration in the foreign currency, to make the performance (i.e. pay the remuneration) in the Polish currency. The possibility of making the performance in the Polish currency is moreover excluded in the case where the statutory law or a court decision being the basis of the obligation contains the reservation that the performance is to be made in the foreign currency.

As a rule, the amount of the performance determined in the foreign currency which is made in the Polish currency should be calculated in accordance with the average exchange rate promulgated by the National Bank of Poland as of the day when the performance becomes due, unless the statutory law, a court decision or a legal action provides otherwise.

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