

ACCOUNTING OF EXPENSES FOR SHARE CAPITAL INCREASE

So far the tax authorities were of the opinion that all expenses incurred by a capital company in connection with share capital increase could not be included into the revenue earning costs of the company, since such expenses were connected with a revenue not subject to taxation (contributions made for the coverage of the share capital are not included into the company's revenues). Until recently this view was also shared by administrative courts.

However, the Supreme Administrative Court in the resolution dated 24 January 2011 (case file no. II FPS 6/10) mitigated its previous standpoint and stated that only expenses without which the share capital increase is impossible are not revenue earning costs (the Court in this case considered the question of accounting of expenses connected with the issue of new shares in a joint-stock company, however the conclusions of the Court may be applied similarly to share capital increase in a limited liability company). The remaining expenses, which have only an indirect connection with the share capital increase will constitute revenue earning costs.

In the light of the abovementioned resolution of the Supreme Administrative Court it needs to be assumed that the

costs of the tax on civil law transactions, the notary fees or the court fees, without which it is impossible to increase the share capital will not constitute revenue earning costs. However, the expenses incurred on legal assistance, or other advisory services, audit services, costs of preparation of opinions and analyses, valuations or translations concerning the share capital increase will constitute revenue earning costs for the company.

The tax authorities present a much more liberal standpoint with respect to the possibility of deduction of the input VAT from the invoices documenting the expenses connected with the share capital increase. In the opinion of the tax authorities, although the share capital increase does not constitute an action taxed with VAT, the taxpayer has the right to deduct the entire VAT from the expenses incurred for purchase of services connected with the share capital increase, provided that the taxpayer operates a VAT-taxed business activity. It is thereby of no importance, whether such expenses have been included into the revenue earning costs within the meaning of the act on the corporate income tax.

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INTERTEMPORAL PROBLEMS CONCERNING THE POLISH MORTGAGE LAW AMENDMENT

An amendment to the Act on Land and Mortgage Registers and on Mortgages entered into force on 20 February 2011. From this moment on there will be mortgages functioning under varying legal systems: mortgages to which the previous provisions will apply, mortgages to which the new provisions will apply with certain exceptions, and mortgages to which only the new provisions will apply.

Thus it seems crucial to specify the boundary point determining which of these groups a given mortgage belongs to. Pursuant to Article 10 of the Amending Act, the boundary date (determining the line of division between the application of the old and new provisions) is the date of formation of an ordinary or capped mortgage, as the case may be.

But to form a contractual mortgage it is necessary to undertake certain actions in the following order: (i) entering into a contract on establishment of the mortgage, (ii) filing a motion for entry of the mortgage in the land and mortgage register, and (iii) entry of the mortgage by the land and mortgage register court. It is equally complicated to form a compulsory mortgage; in this case the first stage of the process is to draw up a document constituting the basis for entry of the compulsory mortgage.

The construction of Article 10 overlooks the issue of the complexity of this

process and how long it may take from the filing of the statement on establishment of the mortgage until entry thereof in the land and mortgage register. It may therefore happen that even though the statement on establishing a mortgage was made before 20 February 2011, the procedure for forming the mortgage will continue long after this date.

It is therefore possible to adopt any of three different concepts concerning the boundary point for application of the new provisions: the date of ruling on the motion for entry of the mortgage, the date of filing of such motion, or the date of establishment of the mortgage (making a statement on establishment of the mortgage, or drawing up the document constituting the basis for the entry).

None of these interpretational variants was singled out by the Parliament, and therefore the solution of this question will be left to be decided in practice. This may result in further difficulties.

The Amending Act also contains a number of other issues which have not been clearly specified, e.g. the exception for application of the provisions regulating the consequences of partition of mortgaged real estate after 20 February 2011. Article 10 of the Amending Act does not specify whether this exception pertains also to partition of real estate effected before 20 February 2011.

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