

NEW WITHHOLDING TAX RATE ON LICENCE FEES AND INTEREST

A new withholding tax rate on revenues described in Art. 21(1)(1) of the Corporate Income Tax Act of 15 February 1992, specifically interest and licence fees, is in effect as of 1 July 2009. The 10% rate that was in effect through the end of June 2009 has now been replaced by a rate of 5% of such revenues.

Not all entities are eligible to apply this rate. It is primarily available to companies with their tax residence within the European Union which also meet the following requirements:

- 1) the entity paying the fees is a CIT payer with its registered office or management in Poland,
- 2) the entity receiving revenue on these fees, as well as the recipient of the fees, is a company with its tax residence in an EU member state other than Poland, provided that the payer obtains a tax residence certificate from the entity receiving the fees and deriving revenue therefrom,
- 3) the payer directly holds at least 25% of the shares in the share capital of the entity obtaining the revenue, or the entity obtaining the revenue directly holds at least 25% of the shares in the share capital of the payer, or another company with its tax residence in an EU member state directly holds at least 25% of the shares in the share capital of the payer and the entity obtaining the revenue, provided that the ownership levels indicated above continue uninterrupted for at least two years (even if the

2-year period does not end until after the recipient obtains the fees subject to the withholding tax).

The current rate of 5% will be in effect through 30 June 2013. From 1 July 2013 such fees will be exempt from withholding with respect to entities from the European Union.

It is also worth noting that entities may avoid withholding tax on such fees under applicable tax treaties to which Poland is a party. Tax treaties often provide for a lower rate of withholding for licence fees and interest, or exclude such revenue from withholding altogether. In order to be able to apply these agreements, the payer must hold a tax residence certificate for the entity to whom the fees are paid.

Should you wish to obtain additional information on this topic, please contact A. Faderewska (aleksandra.faderewska@laszczuk.pl).

NEW DEFINITION OF SMALL BUSINESS TAXPAYER AND NEW LIMIT FOR ONE-OFF DEPRECIATION

A new definition of a small business taxpayer for purposes of the Personal Income Tax Act and the Corporate Income Tax Act came into effect on 22 May 2009.

Now a small business taxpayer means a taxpayer whose sales revenue in the preceding financial year (including output VAT) did not exceed the PLN equivalent of EUR 1,200,000 (at

the average exchange rate promulgated by the National Bank of Poland for the first business day in October of the preceding financial year), rounded to the nearest PLN 1,000.

The new limit applies to revenues generated from 1 January 2009. Entities which have obtained the status of a small business taxpayer as a result of the change in the limit may elect to settle income tax quarterly, provided that they notify their tax office by 20 August 2009.

For 2009–2010 there is also a new limit for one-off depreciation, which has been increased from EUR 50,000 to EUR 100,000. One-off depreciation may be elected by small business taxpayers, or other taxpayers in the year when they commence business operations.

Should you wish to obtain additional information on this topic, please contact A. Faderewska (aleksandra.faderewska@laszczuk.pl).

PROCEEDINGS TO HOLD MANAGEMENT BOARD MEMBERS LIABLE FOR A COMPANY'S TAX LIABILITIES

On 9 March 2009 (Case No. I FPS 4/08) the Supreme Administrative Court adopted a resolution holding that tax authorities are obliged to conduct tax proceedings with respect to the liability for a company's tax arrears against all potentially liable persons.

This holding means that a tax authority may not conduct proceedings against a single member of the management board with respect to liability for tax arrears of a company if the management board comprised more than one person when the tax arrears arose. In such

case, a tax proceeding must be brought against all persons who were members of the management board of the company at the time. This does not mean, however, that the tax authority must conduct a single proceeding against all members of the management board. Proceedings may be conducted separately, provided that they include all persons liable for the company's obligations.

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