

### **“LIQUIDATION OF A ASSET” SHOULD BE INTERPRETED BROADLY**

The Province Administrative Court in Cracow has held that the concept of “liquidation of a fixed asset” as used in Art. 16(1)(6) of the Corporate Income Tax Act dated 15 February 1992 includes not only permanent, physical destruction of the asset, but also removal from the register of fixed assets, definitively ceasing to use the asset, or leaving the asset to the disposal of another entity (judgment dated 19 April 2011, Case No. I SA/Kr 228/11).

Under the facts of the case, the taxpayer maintained that it was entitled to recognize revenue-earning costs in the amount of the undepreciated value of buildings constructed on land belonging to other persons, as of the date of delivery of the land to its owners, i.e. the date of the delivery protocol. According to the taxpayer, under the CIT Act, for the taxpayer to recognize the undepreciated value of buildings as a one-time revenue-earning cost, the following conditions must be met: (1) there must be liquidation of a fixed asset (the asset was not completely depreciated, and there must be a loss to the taxpayer as a result of the liquidation), (2) the liquidation of the fixed asset may not occur because of loss of its commercial value due to a change in the nature of the company’s business, and (3) the cost must be incurred in order to generate revenue or secure a source of revenue. The taxpayer took the position that all of these conditions were

met in its case, but there was an issue of how to interpret the concept of “liquidation.” The taxpayer argued for a broad interpretation and took the position that liquidation is not limited to physical destruction of a thing but also includes definitively ceasing to use the asset and removing it from the register of fixed assets.

In an individual interpretation, the Polish Minister of Finance found that the taxpayer’s position was incorrect, and removal of a fixed asset from the books could not be equated with physical liquidation, which, the minister found, is required by the CIT Act.

The taxpayer challenged the interpretation before the province administrative court. The court rejected the position taken by the Minister of Finance and upheld a broad interpretation of the concept of liquidation of a fixed asset. In the court’s view, “liquidation” does not mean only permanent elimination of an asset, but also removal from the books, definitively ceasing to use the asset, or leaving it to the disposal of another entity—an interpretation supported by other judicial decisions.

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## **COPIES OF INVOICES FOR INTRA-COMMUNITY SUPPLIES MAY BE STORED IN ELECTRONIC FORM**

The Province Administrative Court in Poznań has held that it is permissible to apply the zero VAT rate on intra-Community supply of goods when copies of invoices are stored only in electronic form (judgment dated 20 May 2011, Case No. I SA/Po 250/11).

The judgment was issued in a case where a taxpayer requested an individual tax law interpretation. The applicant explained in its request for the interpretation that it stores copies of invoices documenting intra-Community supplies using electronic data archiving systems. The applicant took the view that copies of invoices archived in this manner constitute properly issued invoices for purposes of Art. 106(1) of the Polish VAT Act dated 11 March 2004. Thus, in the case of intra-Community supplies, the applicant meets the requirement to hold a copy of a VAT invoice as referred to in Art. 42(3)(2) of the VAT Act, which is one of the conditions for applying the zero VAT rate to intra-Community supplies.

In the individual tax law interpretation, the director of the Poznań Tax Chamber found that the applicant's position was incorrect, and in order to meet the requirements imposed by the VAT regulations, the taxpayer must print out copies of the invoices it issues and store them in paper form. A copy of an invoice documenting intra-Community supplies that was only archived in a computer system by the taxpayer but not printed out could not be regarded as a copy of the invoice issued in accordance with the VAT Act or the executive regula-

tions under the act. Thus, the tax chamber found, the taxpayer did not meet the condition of holding a copy of the VAT invoice and was not entitled to apply the zero VAT rate.

The taxpayer challenged the interpretation before the Province Administrative Court in Poznań. The court upheld the challenge and vacated the interpretation. The court explained that in the case of intra-Community supplies, it is a condition for applying the zero VAT rate that the taxpayer have in its possession documentation evidencing that the goods that were the subject of the supply were removed from the territory of Poland and delivered to the buyer in another EU member state. Under Art. 42(3)(2) of the VAT Act, such evidence includes copies of invoices. Under current law, there is no requirement that a copy of an invoice be stored by the seller in paper form, even if the original was sent to the buyer in that form. The stored invoice need not be identical in form to the invoice sent to the buyer, but must be identical in content. Thus, copies of invoices may be stored in paper or electronic form. As a result, copies of invoices archived in electronic form may be regarded for the purposes of Art. 106(1) of the VAT Act as invoices that were properly issued, i.e. in compliance with the requirements of tax law. In the case of intra-Community supplies, a document stored in this manner should be regarded as a copy of the VAT invoice transmitted to the buyer as referred to in Art. 42(3)(2) of the VAT Act, which enables application of the zero VAT rate.

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