

A Grand Chamber of the Polish Supreme Administrative Court ruled on taxable revenue derived from an asset contribution to a capital company.

The written justification of the Polish Supreme Administrative court's ruling on taxable revenue derived from an in-kind contribution in exchange for shares of a nominal value lower than the fair market value of the contributed asset has recently been published. The oral justification of the ruling was published on 20 July 2015.

The case involves a dispute between a Polish corporate income tax taxpayer and the Polish Minister of Finance on the amount of taxable revenue derived by the taxpayer upon asset contribution to a capital company in exchange for shares of a nominal value lower than the fair market value of the contributed asset. The Minister of Finance, in reply to the taxpayer's motion for an individual tax interpretation, ruled that the taxpayer derives taxable revenue amounting to the fair market value of the contributed asset, despite clear wording in the corporate income tax act provisions stating that, in such a case, the taxable revenue amounts to the nominal value of the shares obtained. The Minister of Finance pointed out that, in the case where a nominal value of shares obtained is lower than the fair market value of the asset contributed, a separate tax law provision gives a tax office the right to adjust taxable revenue to the fair market value of the contributed asset.

The administrative court of the first instance (the Cracow Administrative Court) overturned the Minister of Finance's ruling. In reply to this ruling, the Minister of Finance filed a complaint to the Supreme Administrative Court. In a 28 January 2015 decision, the Supreme Administrative Court submitted the legal issue, raising serious doubts, for consideration to the Grand Chamber (a panel of seven judges), which acting for the Supreme Administrative Court dismissed the complaint and upheld the ruling of the Cracow Administrative Court.

The Supreme Administrative Court did not have any doubts that the Minister of Finance's ruling was in conflict with Polish tax and commercial law. The court pointed out that the Minister of Finance's tax law interpretation would lead to double taxation of the same income. According to the court's ruling, upon obtaining shares in a capital company, taxable revenue amounts to the nominal value of the shares obtained and a tax office has no right to adjust the nominal value of the shares (for tax purposes) to their fair market value. The fair market value of the shares will be reflected in their sale price, so the difference between the fair market and the nominal value of the shares will be taxed at that point.

Our view

We fully agree with the verdict of the Supreme Administrative Court, which very accurately points out the drawbacks of the Minister of Finance's standpoint presented in the dispute with the taxpayer. The ruling confirms that upon obtaining shares in a capital company in exchange for an asset contribution, taxable revenue amounts to the nominal value of the shares obtained, even if the fair market value of the asset contributed is higher than the nominal value of the shares obtained. That means that the difference between the fair market and the book value of the contributed asset is subject to taxation only when the shares are disposed.

Despite the fact that the Supreme Administrative Court's ruling is binding only in the case analysed by the court, due to the fact that the ruling has been issued by the bench of seven judges of the Supreme Administrative Court, this ruling should greatly impact case law pertaining to the discussed issue.

Contacts



Adrian Jonca
Partner
Adrian.Jonca@wolftheiss.com



Katarzyna Stec
Associate
Katarzyna.Stec@wolftheiss.com

This memorandum has been prepared solely for the purpose of general information and is not a substitute for legal advice. WOLF THEISS accepts no responsibility if, in reliance on the information contained in this Client Alert, you act, or fail to act, in any particular way. If you would like to know more about the topics covered in this Client Alert or our services in general, please get in touch with the contacts listed above, or with:

WOLF THEISS
P. Daszkowski sp.k.
ul. Mokotowska 49
00-542 Warsaw
Poland

T +48 22 378 8900
F +48 22 378 8901
warszawa@wolftheiss.com