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periodic newsletter for the Real Estate sector
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The lease of hotel/commercial premises for residential purposes will be subject to VAT and non-exempt, according to the advance tax ruling issued on August 05, 2021 by the President of the National Fiscal Information (no. 0112-KDIL1-2.4012.265.2021.2.DS).

The case concerned the possibility to apply VAT exemption to the lease of hotel/commercial premises for residential purposes (incl. with respect to students and seconded employees).

"(...) VAT exemption only applies to the lease of residential properties for residential purposes," concluded the President of the National Fiscal Information.



"This advance tax ruling is important with respect to the long-term lease of premises in condo hotels and apartment hotels, especially in terms of the right to deduct VAT related to their construction and acquisition."



The use of the company's infrastructure by its manager might sometimes result in the lack of the right to deduct VAT, according to the advance tax ruling issued on August 04, 2021 by the President of the National Fiscal Information (no. 0112-KDIL1-1.4012.368.2021.1.AR).

The case concerned a natural person who was appointed as a member of the management board, while at the same time performing management services under a separate agreement. Given the fact that pursuant to the agreement, the manager is entitled to use the company's infrastructure, receives a fixed fee and does not bear liability towards third parties, he was unsure whether he was acting a VAT payer.

"(...) As part of the agreement with the Company, the Manager is / will be bound by the legal relation with the entity that requests the performance of specific tasks as regards the conditions applicable to such performance, the remuneration and the aforesaid entity's liability towards third parties," noted the President of the National Fiscal Information, deciding that the manager does not act as a VAT payer, meaning that the services performed by him will not be covered by VAT.



A company that leases residential premises to students in its own building should pay the property tax in the same way as for premises intended for business operations, according to the Provincial Administrative Court in Gliwice (judgment of July 14, 2021, case files no. I SA/Gl 487/21)

The Provincial Administrative Court decided that if the Company had not leased premises, it would not have generated income from business operations. Consequently, the lease of premises for residential purposes is not crucial for taxation purposes.

"In order to apply an adequate property tax rate, it is vital to take into account the company's object of business, and (consequently) the role that a residential building (student house) plays in generating the results of such operations, i.e. profits. Without using the residential building or its part, the company will be

unable to reach its business goals, meaning that in the case at hand, the building is occupied for the purposes of the company's business operations," concluded the Provincial Administrative Court in Gliwice.



The sale of a share in the perpetual usufruct right to a real property is not regarded as business operations as there are no criteria pointing to the taxpayer's professional activity, according to the Provincial Administrative Court in Warsaw (judgment of February 10, 2021, case files no. III SA/Wa 658/20).

The taxpayer wanted to sell the right of perpetual usufruct as part of management of private assets. In relation to the executed lease agreement and the actions taken with respect to the property, the authority decided that the taxpayer acts as an entity that is not subject to VAT.

"Summing up, it needs to be concluded that under the circumstances specified in the case description, the planned sale of a share in the perpetual usufruct right to the Property will not constitute business operations that are subject to VAT as there are no criteria pointing to the Applicant's activity that would be comparable to the activity of entities whose professional operations cover such transactions. There are no reasons to believe that such actions are professional, regular and organized in nature," noted the Provincial Administrative Court in Warsaw.



"This judgment shows that not every single sale of a real property needs to be automatically regarded as made as part of business operations. It is always necessary to analyze a range of circumstances related to the transaction."



Income from participation in a limited partnership [*spółka komandytowa*] through an ordinary partnership [*spółka jawna*], generated by a natural person, is not subject to the so-called solidarity levy, according to the advance tax ruling issued on June 09, 2021 by the President of the National Fiscal Information (no. 0113-KDIPT2-3.4011.308.2021.1.MS).

The case concerned a natural person who is a partner in an ordinary partnership and generated income from participation in the profits of a limited partnership

(through the ordinary partnership). The authority believes that such income is not included in the taxation base for the purposes of the solidarity levy.

"The Applicant's income (revenue) from participation in the profits of a limited partnership, generated through the ordinary partnership, will not be taken into account when determining the taxation base related to the solidarity levy," concluded the President of the National Fiscal Information.



Independent residential unit owned by the Company are not regarded as buildings, and are this not covered by income tax on revenues from a fixed asset (building) referred to in article 24b section 1 of the CIT Act, according to the advance tax ruling issued on August 26, 2021 by the President of the National Fiscal Information (no. 0111-KDIB1-2.4010.253.2021.1.ANK).

The case concerned a company that owns independent residential premises that are successively sold to tenants. While selling those apartments, the company establishes a separate ownership title to them.

"It needs to be noted that if the tax referred to in article 24b of the CIT Act (effective as of January 01, 2019) was supposed to cover independent residential units that are subject to a separate ownership right, the lawmaker would make that clear through an unequivocal legal regulation that refers specifically to residential units categorized as separate property," concluded the President of the National Fiscal Information.



In order to decide that a given entity meets the criteria of a "real estate company," all applicable statutory requirements have to be fulfilled, according to the advance tax ruling issued on August 24, 2021 by the President of the National Fiscal Information (no. 0111-KDIB1-2.4010.235.2021.1.AK).

The case concerned an SPV that had doubts as to whether the sale of its shares, held by a Dutch tax resident, will mean that it is subject to CIT in Poland even though it does not generate revenues from lease, and the balance sheet value of the property in the preceding year did not exceed PLN 10 million.

"Given the fact that the Applicant does not meet the criteria for being classified as a 'real estate company,' as defined in article 4a item 35 of the CIT Act, it will not be obliged to pay a tax advance in relation to the Transaction under article 26aa section 1 of the CIT Act," concluded the President of the National Fiscal Information.

Need any assistance? **Got any questions?** Call or e-mail us



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