

Initial lease payment – the standpoint of the Minister of Finance

There are still disputes as to the tax treatment of the initial lease payment as tax deductible cost.

Last week we informed you about the judgment of the Administrative Court in Warsaw from which results that the initial lease payment should constitute a tax deductible cost proportionally to the duration of the lease agreement. This standpoint was also recently confirmed by the Minister of Finance.

In the letter of 31 October (sign.DD6/0602/59/MDA/08/BMI7-4134/08) the Minister of Finance, responding the question of a member of Parliament indicated that the initial lease payment made in connection with the lease agreement is a tax deductible cost other than tax deductible costs directly relating to generating revenues, and therefore, pursuant to Article 15.4d of the CIT Act, should be treated as tax deductible when incurred as a so-called indirect cost.

The Minister of Finance stated that, in the light of the current law, the costs of the initial lease payment, as not relating directly to generating

revenues, should be settled when incurred, i.e. when booked as prepayments and accruals.

In the opinion of the Minister of Finance, in the case at hand, there should be taken into consideration not only the regulations of the Article 15.4d of the CIT Act (being in force since 1 January 2007) allowing technical settlement of the costs relating to term exceeding the tax year but also, the regulations of Article 15.4e of the CIT Act. The above mentioned regulation provides that the indirect costs should be settled in accordance with the provisions of the Accounting Act.

In connection with the above, the tax authority indicated that, *„there is full justification for settling the initial lease payment in time, as it constitutes the initial and basic condition of concluding the lease agreement allowing to use the leased object throughout the entire term. Increasing the tax deductible costs with such an expense on one-off basis would disfigure the financial situation of the taxpayer, especially as regards initial lease payments of significant value.”*

Taking the above into account, as regards settling the initial lease payment, there is still no uniform approach to the treatment of deductible costs.

It is possible that the standpoint of the Supreme Administrative Court, to which the complaints of the tax authorities against the judgments of the Administrative Court in Warsaw (of 17 June and 8 August, favourable for the lessees) were filed, will solve the controversies in this respect. It will also allow the lessees to plan the tax deductible cost settlement in a free of uncertainties and safe way.

If you are interested in more detailed information, please feel free to contact us.

Contact details

Grzegorz Jaszczuk*Partner*

Tel.: + 48 (22) 528 11 83

Fax: + 48 (22) 528 11 59

*gjaszczuk@kpmg.pl***Joanna Krzemińska***Senior Manager*

Tel.: +48 (22) 528 10 02

Fax: +48 (22) 528 11 59

*jkrzeminska@kpmg.pl***Warsaw Office**

ul. Chłodna 51

00-867 Warszawa

Tel.: +48 (22) 528 11 65-71

Fax: +48 (22) 528 11 59

*tax@kpmg.pl***Cracow Office**

al. Armii Krajowej 18

30-150 Kraków

Tel.: +48 (12) 424 94 00

Fax: +48 (12) 424 94 01

*tax.krakow@kpmg.pl***Poznan Office**

ul. Roosevelta 18

60-829 Poznań

Tel.: +48 (61) 845 46 00

Fax: +48 (61) 845 46 01

*tax.poznan@kpmg.pl***Wroclaw Office**

ul. Bema 2

50-265 Wrocław

Tel.: +48 (71) 370 49 00

Fax: +48 (71) 370 49 01

*tax.wroclaw@kpmg.pl***Gdansk Office**

ul. Piwna 28-31

80-831 Gdańsk

Tel.: +48 (58) 321 96 00

Fax: +48 (58) 321 96 01

*tax.gdansk@kpmg.pl***Katowice Office**

ul. Powstańców 43

40-024 Katowice

Tel.: +48 (32) 200 65 05

Fax: +48 (32) 200 65 10

tax.katowice@kpmg.pl

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.

KPMG and the KPMG logo are registered trademarks of KPMG International, a Swiss cooperative.

© 2008 KPMG Tax M.Michna sp.k., a Polish limited partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International, a Swiss cooperative. All rights reserved.