



## Get the RET right. The tax side of real estate.

March 30, 2022

**It is possible to categorize uncollectible receivables from any type of guarantee issued by a bank (rather than exclusively from loans) as tax-deductible expenses, according to the ruling issued on March 09, 2022 by the Supreme Administrative Court (case files no. II FSK 1553/19).**

The Supreme Administrative Court noted that bad debts written off in relation to such guarantees can be recognized as tax-deductible expenses in case the guarantees referred to in article 16 section 1 item 25 c) of the CIT Act are provided not only in connection with a loan, but also for any other purpose. Based on a linguistic interpretation of that provision, the phrase “repayment of loans” refers only to “sureties” and does not apply to “guarantees.”

**Repayment of debts secured with a mortgage on a real property directly to the account of the mortgage creditor is regarded as the seller’s income, according to the ruling issued on March 09, 2022 by the Provincial Administrative Court in Gdańsk (case files no. ISA/GD 1062/21).**

We cannot rely on the general concept of revenue (i.e. a definite gain) in a case involving disposal for a specific fee because – as specified in article 14 section 1 of the CIT Act, which forms a special provision in relation to article 12 section 1 of the CIT Act and defines the concept of revenue from disposal of items and proprietary rights for a specific fee, the revenue from such disposal corresponds to the value of the item (proprietary right), as expressed by the price specified in the agreement, regardless of the recipient. Consequently, the repayment of mortgage-secured

debt to the mortgage creditor is regarded as a gain for the seller of the property.

**Loss on the sale of a claim covering a “security deposit” which has not been returned by the contracting party, formerly included in the revenues of the transformed company, may be regarded as tax-deductible expenses of the newly-established private limited liability company, according to the ruling issued on March 08, 2022 by the Supreme Administrative Court (case files no. II FSK 1543/19).**

The case concerned the transformation of a sole proprietorship into a private limited liability company. The newly-established company will be entitled to obtain the return of the amount of the security deposit which was retained by the taxpayer’s business partner in order to secure the proper performance of construction works.

The legal predecessor of the private limited liability company recognized the claim as its receivables, meaning that the future event meets the criteria specified in article 16 section 1 item 39 of the CIT Act, according to which tax-deductible expenses do not include “*losses on the disposal of claims/receivables for a specific fee, including in the manner specified in article 12 section 1 item 7, except for the claims/receivables or parts thereof which were previously recognized as revenue due – up to the amount formerly recognized as revenue due.*” Given the above, a loss resulting from the sale of the aforesaid claims/receivables may be considered as a tax-deductible expense of a sole-shareholder private limited liability company.

**Revenue in the form of a free-of-charge benefit emerges upon execution of a suretyship agreement, rather than upon its performance, according to the**

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ruling issued on March 09, 2022 by the Supreme Administrative Court (case files no. II FSK 1615/19)

The company believed that revenues only arise upon performance of a suretyship agreement. However, according to the court, revenues in the form of a free-of-charge benefit emerge earlier, i.e. upon execution of such agreement. Moreover, the court did not share the company's position that it is not possible to establish the value of the benefit in question, and that there are no regulations which could be used to determine that value. Pursuant to the CIT Act, *"the value of in-kind benefits, incl. unpaid ones, is determined on the basis of market prices used for performance of services or provision of items/rights of the same type and category, taking into account their condition, degree of wear, and the time/place."* In the case at hand, the amount and conditions of the loan are clear, which means that there should be no difficulty in establishing the value of remuneration for the surety with respect to a specific borrower and the loan obtained by that borrower.

**It is possible to amend the VAT amount incorrectly included in an invoice that allegedly covers non-existent operations if the tax authority has ultimately denied the invoice recipient's right to deduct VAT, according to the verbal statement of reasons to the ruling issued on March 09, 2022 by the Provincial Administrative Court in Łódź.**

The Provincial Administrative Court has decided that if the tax authority denied the recipient of a "fake invoice" the right to deduct input VAT resulting from such invoice, the risk of loss of tax revenues related to the deduction ceased to exist. Consequently, the tax authority cannot refuse the option to amend VAT that was incorrectly specified in the invoice – this goes beyond the prevention of the tax revenue losses because there is no longer any possibility of such losses.

## Need any assistance?

## Got any questions?

## Call or e-mail us.



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