

# Ministry of Finance explains how to file taxes

## I. Confirmation of transaction may constitute accounting document

If based on separate regulations, evidence that confirms the incurrence of expenses consists of accounting documents underlying the entry of those expenses in the tax revenue and expense ledger, this evidence will also be sufficient for the purposes of personal income tax. Confirmation of a transaction meets the requirements of an accounting document in accordance with §12 par. 3 point 2 of the Minister's of Finance decree on keeping a tax revenue and expense ledger. It contains credible information about the issuer and buyer, the transaction date, subject and value, as well as signature of the person authorized to correctly document economic transactions - according to an individual tax interpretation issued on 11 May 2023 (number 0114-KDIP4-3.4012.30.2023.2.JJ).

## II. VAT adjustment possible after business activity discontinued

Where a supply was taxed incorrectly, while it should have benefited from a value added tax exemption, a former trader can correct a previously issued invoice and adjust the VAT in connection with the resulting tax overpayment, even after discontinuing business activities and deregistering as an active VAT taxable person. An entity that has discontinued business activities and deregistered as a VAT taxable person is entitled to issue an invoice to correct the output VAT for the period in which it was registered as an active VAT taxable person - the Director of National Tax Information has found in an individual tax interpretation of 31 May 2023 (number 0115-KDIT1-3.4012.3.2019.8.S.MS.PRM).

The tax-deductibility of certain expenses invariably continues to raise doubts among taxable persons. It is also one of the most frequently raised issues in requests for tax interpretations. But it is not the only such issue. Just as often the subject of interpretation is VAT and regulations applicable to tax remitters. This is why today we present what we believe to be the most interesting tax interpretations published in May and June 2023.



## V. Withholding tax must be collected when using disk space abroad

Disk space sharing services are to be classified as industrial, commercial or scientific equipment as defined in Article 21 par. 1 point 1 of the CIT Act. IT infrastructure, both physical and virtual, is a mechanism or set of elements used to perform certain activities, and as such should be treated as industrial equipment. In consequence, the expenses incurred by the taxable person for the purchase of disk space sharing services from a company based in Ireland fall within the catalog of performances listed in Article 21 par. 1 of the CIT Act. In view of this, as a remitter, the taxable person is required to collect withholding tax on payments for those services. This was the position presented by the tax authorities in an individual interpretation issued on 9 June 2023 (number 0111-KDIB1-2.4010.138.2023.2.EJ).

## III. Remitter cannot correct previously withheld advance

As a tax remitter the company is not authorized to correct income tax advances on the contractor's remuneration paid in 2022. In view of this, the company is not required to correct forms PIT-11 or PIT-4R, as they reflected the amount of income and income tax advances that were consistent with the state of affairs in 2022 - says an individual tax interpretation issued by the tax authorities on 5 June 2023 (number 0112-KDIL2-1.4011.265.2023.2.MKA).

## IV. Early issue of invoice does not obligate to correct return

Where an invoice documents an actual economic event that is subject to taxation, the mere fact that the invoice was issued prematurely does not give rise to an obligation to pay tax based on Article 108 of the VAT Act. The invoice should be recorded and accounted for on general terms, i.e. as the tax obligation arises - says the Supreme Administrative Court in a ruling issued on 21 April 2023 (case file I FSK 229/20). As explained by the Court, where an invoice is issued prematurely, it will not be necessary to correct it, firstly none of the factual circumstances listed in Article 106j of the VAT Act necessitating the correction of the invoice is present, and in particular no error has been made in the contents of the invoice (regarding the date of supply). Secondly, the invoice will document an actual economic event that is, in principle, subject to taxation, and the early issue of the invoice remains without effect on the tax point.



## VI. Loss of eligibility to file quarterly does not preclude the cash method

Having the status of small taxable person grants the right to apply the cash method. This is, however, voluntary. Thus the law provides that the cash method is applied if a relevant notice is filed to this effect - in which the taxable person expresses their intent to apply the method. Where a trader meets the definition of "small taxable person" and has chosen to have their tax liability arise in accordance with the cash method, the taxable person has met the conditions for applying the cash method. In such cases, losing the ability to file quarterly returns will not result in losing the right to accounting for VAT using the cash method - the Director of National Tax Information in an individual tax interpretation of 12 June 2023 (number 0114-KDIP1-3.4012.282.2023.1.KP).

## VII. Remitter continues to take into account previously submitted declarations

Where remuneration under a previously concluded contract for hire is being compensated or corrected, nothing stands in the way of calculating the income tax advance on the amount due to the contractor in accordance with the declaration the contractor had previously submitted in that respect. When compensating or correcting remuneration paid out to contractors, the income from a contract-for-hire resulting from the legal relationship between the contractor and the principal includes all types of payments and benefits. This is why, when paying remuneration for a contract performed in January, assuming that the contract is not continued, payment for the services made in February will take into account the request to not collect an advance as the legal relationship continued to exist at the time of payment, and so there was no bases for the remitter to disregard the requests and declarations made - according to an individual tax interpretation of 16 June 2023 (number 0114-KDIP3-2.4011.427.2023.1.MN).



The information presented herein does not constitute comprehensive information or opinion. Consult your adviser before making any decisions.

BDO is an international network of independent audit and advisory firms. Service provision within the BDO network is coordinated from the Brussels global office. BDO's beginnings go back to 1963. We have been present in Poland since 1991. We have 5 offices in: Warsaw, Kraków, Poznań, Wrocław and Katowice.

BDO has for years been recognized in prestigious rankings of the activities performed by its Audit and Tax Advisory Departments, including most recently:

The last distinctions for the company are related to the Rankings:

Companies and Tax Advisors of Dziennik Gazeta Prawna for 2022:

■ 1<sup>st</sup> place The Best Tax Advisor in the category of medium-sized companies

The 2022 rankings prepared by the Rzeczpospolita and Parkiet dailies:

■ 4<sup>th</sup> Most Active Firm on the Stock Exchange

■ 5<sup>th</sup> Best Audit Firm

■ 6<sup>th</sup> Best Auditor of Listed Companies

BDO spółka z ograniczoną odpowiedzialnością sp.k., ul. Postępu 12, 02-676 Warszawa;  
tel.: +48 22 543 1600, fax: +48 22 543 1601, e-mail: office@bdo.pl

