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Depreciation rates may be decreased ex post for years that are not covered by statute of limitations

In accordance with the judgment of the Supreme Administrative Court of 3 February 2022 in case II FSK 1413/19 **it is admissible to adjust tax depreciation rates** for years that are not yet covered by statute of limitations.

The judgment is ground-breaking especially for taxpayers that:

- incurred losses and have difficulties in settling them,
- were unable to settle older losses over periods that are not statute-barred yet due to lack of sufficient income,

and at the same time used write-downs following the linear fixed-asset depreciation method.

Based on the reported oral reasoning, the taxpayer may under article 16i section 5 of the CIT Act **decide to decrease depreciation rates for the given year also ex post**. The change must take effect beginning **with the first month of each tax year**. The taxpayer can implement this change at any time when depreciation write-downs are made and the change will also cause retroactive consequences.

Following the SAC's stance, the principle that decreased rates apply from the month following the month during which fixed assets are added to the register or beginning with the first month of the year following the current year does not imply that the taxpayer cannot adjust settlements for a past period in order to accordingly decrease the said rates.

The SAC upheld previous judgment III SA/Wa 566/18 of the Voivodship Administrative Court in Warsaw of 11 December 2018 according to which:

- *"In the Court's opinion, the change in question can be applied both "on current basis" by adjusting the rates applicable to future periods and "retroactively" - for previous periods, taking account the limitation periods. It is worth noticing that unclear legal regulations should not give rise to adverse consequences for the parties, such as the imposition of an obligation or the restriction of rights."*
- *"In the Court's view, article 16i section 5 of the CIT Act does not introduce in any way a direct prohibition to change depreciation rates for previous years."*

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Currently, settlements not being statute-barred and thus **being potentially subject to adjustment are in principle those for the years beginning with 2016** (for taxpayers whose tax year overlaps the calendar year).

If you are interested in discussing what this precedential judgment may in practice mean for your business, please do not hesitate to contact us:

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Changes in the scope of documentation obligations:

- Extended catalogue of **exemptions from the obligation to prepare local transfer pricing documentation** for:
 - transactions between foreign permanent establishments located in Poland with related entities as parent companies thereof,
 - transactions between a non-resident related entity located in Poland and a related entity that has tax residency in Poland,
 - controlled transactions covered by a tax agreement and an investment agreement,
 - controlled transactions covered by the safe harbour mechanism for loans, credits, bonds,
 - transactions concerning settlements with regard to the so-called net re invoicing (provided that certain conditions are met).
- Introduced possibility of **waiving the preparation of benchmarking/compliance analysis** for:
 - controlled transactions concluded by taxpayers that are micro or small entrepreneurs (possibility to apply for the tax year beginning in 2021),
 - transactions other than controlled transactions concluded with so-called tax havens (direct transactions) or in which the beneficial owner of the counterparty is a resident of so-called tax havens (indirect transactions), covered by the documentation obligation (possibility of application for the tax year beginning in 2021).

Other changes:

- Clarified moment for which a loan (facility, bond) agreement should comply with the conditions of the **safe harbour mechanism** with respect to interest rates - the terms and conditions should be met each time a loan agreement is amended.
- **Transfer pricing adjustments:**
 - allowed possibility to apply an adjustment when the taxpayer has received an accounting evidence from a related party that confirms the TP adjustment,
 - lack of obligation to inform about the TP adjustment in the annual return - one of the formal conditions for the effective making of such an adjustment repealed.
- Added statutory definition of a tax agreement and an investment agreement within the meaning of the Tax Code.
- Changed reference period from a financial year to a tax year in transfer pricing regulations.
- Clarified documentation obligation for companies forming a tax capital group.

If you are interested in obtaining further information, or would like to discuss the impact of the above changes please contact:

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