

# *Tax & Legal Alert*

## Personal Income Tax

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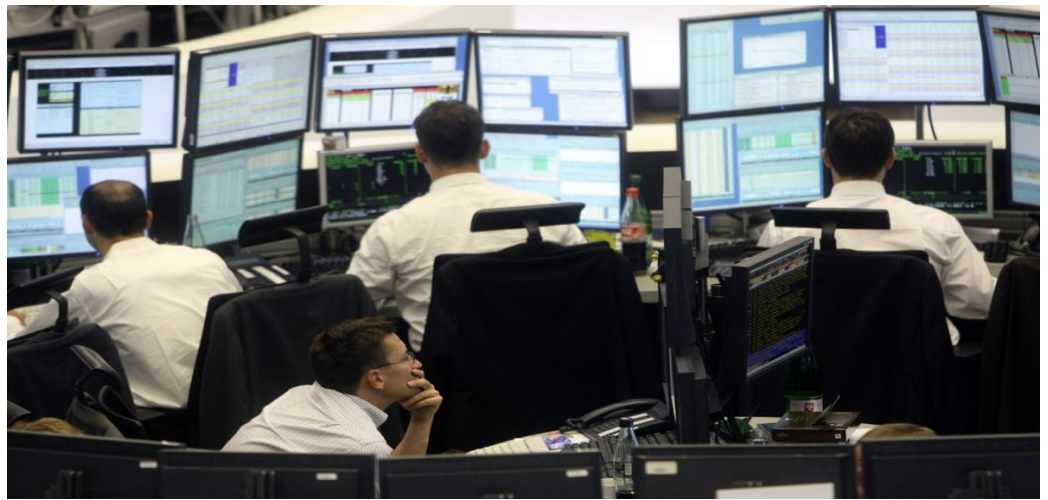
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On 27 April 2011, the Supreme Administrative Court (“SAC”) issued a resolution favourable for a taxpayer having great importance to all employees participating in Employee Equity Plans (“EEP”) (ref. II FSK 1410/10). On 7 June 2011 a written justification of the resolution was published.

### ***The first SAC resolution regarding taxation of the Employee Equity Plans***

The SAC stated among others that preferential acquisition of a foreign company’s shares by employees who are not employed by this company does not constitute employment income within the meaning of the Article 12 Paragraph 1 of the Personal Income Tax Act (“PIT Act”).

According to the application investigated by the SAC, all plans were approved by the foreign company and the Polish company had no influence on the appointment of the employees entitled to participate in the plans. However, the costs of participation of the Polish employees in the plans were cross charged to the Polish company.

The SAC has also confirmed a favourable interpretation of the Article 24 Paragraph 11 of the PIT Act (according to the legislation remaining in force until the end of 2010).

According to this provision, income calculated as surplus between the market value of the acquired shares and the costs incurred on their acquisition is not subject to taxation at the moment of acquisition of the shares, but only when they are sold. The SAC stated that this applies not only to the shares of Polish companies, but also to foreign companies' shares.

Due to the previously presented by the Polish tax authorities inconsistent approach regarding taxation of EEP, the resolution of the SAC is very important for both employees and their employers.

In practice, thesis resulting from the above resolution may be used as a justification of the position of the taxpayer in case of:

- applying for an individual tax interpretation,
- taking legal action (including the level of the SAC), in case of receiving an unfavourable individual tax interpretation.

This applies in particular in cases where it is not possible to defer the moment of taxation due to the fact that the conditions stipulated in the Article 24 Paragraph 11 of the PIT Act are not met.

*Should you be interested in obtaining more detailed information on the above issues please contact our team:*

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