



Tax Alert |

Risk of lack of tax depreciation in the real estate companies

KPMG in Poland

February 2022

According to an article published in *Dziennik Gazeta Prawna* (DGP) on 15 February 2022, in reply to the DGP's inquiry, the Ministry of Finance confirmed that real estate companies that disclose real estate as an investment assets in the balance sheet at the fair market value and, consequently, do not make depreciation write-offs in line with the accounting provisions, are not eligible to recognise corresponding tax-deductible depreciation write-offs in corporate income tax and personal income tax as tax deductible costs.

In our view, interpretation of the currently applicable regulation on the depreciation limit for real estate companies presented by the Ministry in the issued reply is controversial and raises reasonable doubts as to its correctness. Our arguments supporting this thesis can be found below.

Provisions in force

Amended provisions on tax depreciation in real estate companies were brought by the Polish Deal Act and came into force on 1 January 2022. According to the amended Article 15(6) of the CIT Act, tax-deductible costs are write-offs from fixed assets and intangible assets (depreciation write-offs) made exclusively in accordance with the provisions of Article 16a - 16m, however, in the case of qualifying real estate companies, write-offs related to fixed assets included in group 1 (Real estates) of the Classification may not be higher in the tax year than the depreciation or amortization write-offs of fixed assets, made in accordance with the accounting regulations, charged to the entity's financial result in this tax year.

Commentary by the Ministry of Finance

According to an article published in *Dziennik Gazeta Prawna* (DGP), in reply to the DGP's inquiry, the Ministry of Finance stated that qualifying real estate companies that disclose real estate as an investment asset in the balance sheet at the fair market value and, consequently, do not make depreciation write-offs in line with the accounting provisions, are not eligible to recognise corresponding tax-deductible depreciation write-offs in corporate income tax and personal income tax as tax deductible costs. The exact content and scope of the inquiry made and submitted by DGP to the Ministry remain unknown, yet, they may have importantly influenced the shape of the response obtained. Furthermore, it must be kept in mind that the quoted reply does not reflect the official position of the Ministry of Finance or tax authorities, nor does it provide an official interpretation of regulations it invokes.

Position of KPMG

In the view of KPMG, interpretation and argumentation presented in the invoked article raise numerous doubts.

As it follows from the content of Article 15(6), the cap on tax-deductible depreciation write-offs corresponding to the value of write-offs made for accounting purposes applies to qualifying real estate companies that treat assets included in group 1 of Fixed Assets Classification (Real estate) as depreciable fixed assets and use the depreciation write-offs to reduce their financial result. In turn, entities to which the Ministry's reply pertains do not make such write-offs and, consequently, they should not be subject to the above-determined limitation. In particular, they do not meet all the prerequisites set by the this provision.

Hence, in the view of KPMG, if the legislator's purpose was to eliminate the possibility of making depreciation write-offs, it would make the structure of the provisions similar to the provision precluding deduction of depreciation write-offs on residential property, introduced under Article 16c(2a) to the CIT Act, effective as of 1 January 2023.

Furthermore, the interpretation presented in the quoted reply may pose a threat to taxpayers' acquired rights.

Anticipating the unofficial position of the Ministry of Finance, we have developed a solution to tackle this issue, being of crucial importance to the market.

> How can we assist you?

The vast array of services provided by KPMG includes:

- developing a solution to address further tax depreciation of real estate,
- analysing any possible doubts related to the matter and suggesting the best approach in individual cases,
- drafting applications for individual tax rulings in this respect.

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