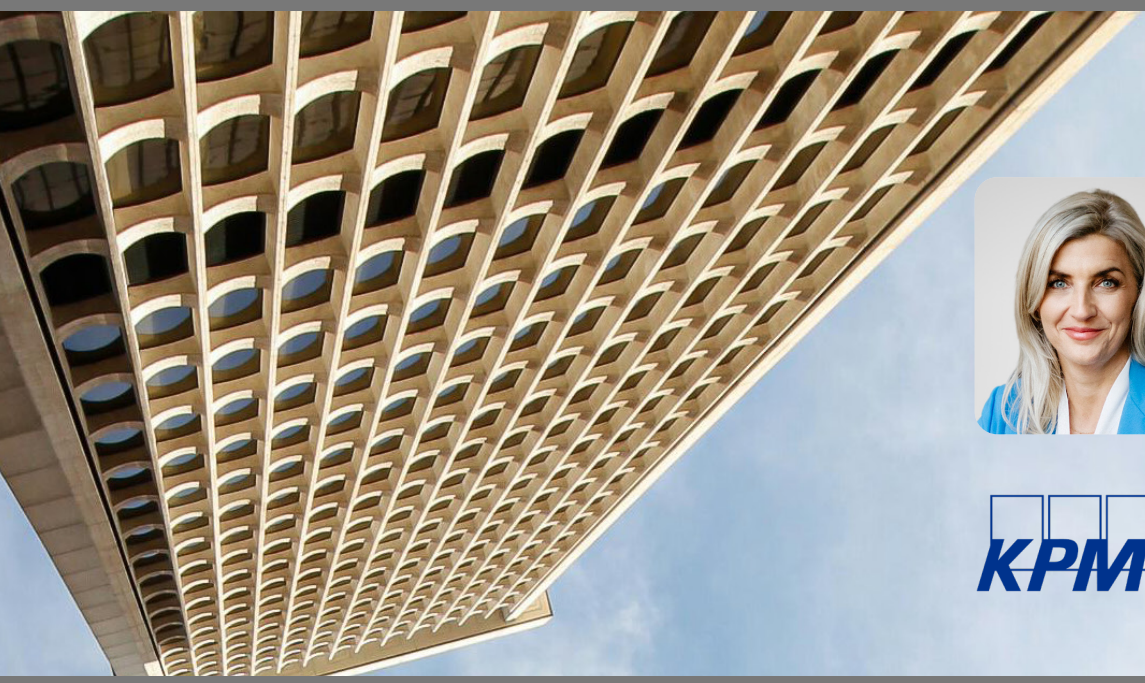
# TAX FLASH

## JANUARY 2026

PINK
Polska Izba Nieruchomości Komercyjnych





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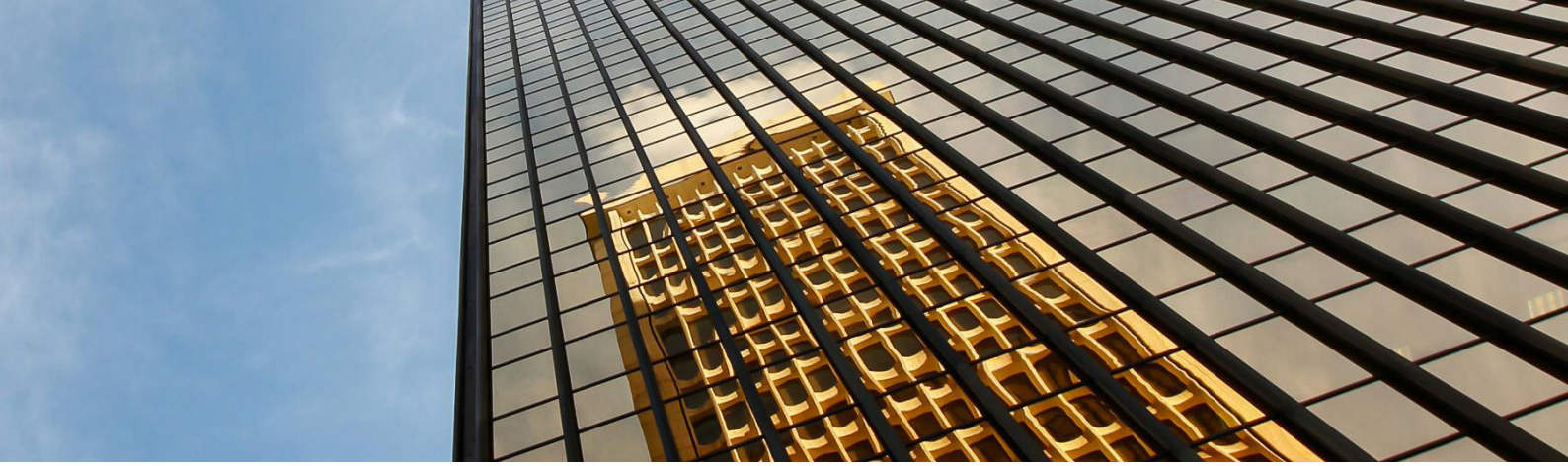
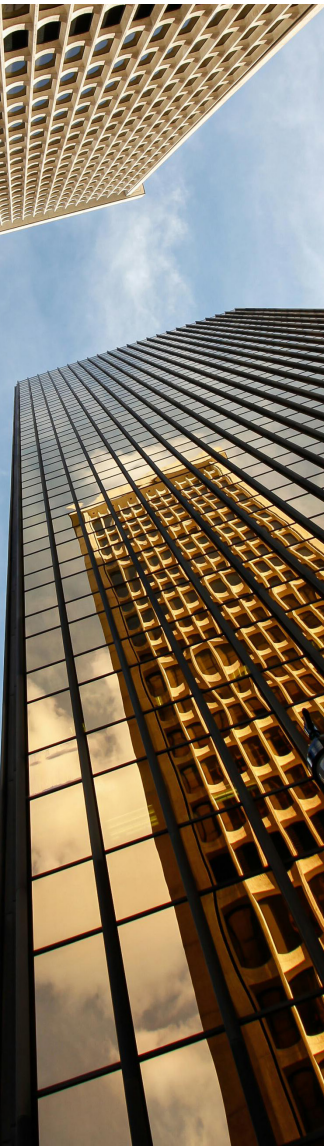
# OVERVIEW OF KEY TAX TOPICS FOR THE REAL ESTATE INDUSTRY – SECOND HALF OF 2025







# Introduction

As always, the second half of the year rarely brings relief for taxpayers, and 2025 was no exception. The tax authorities showed no signs of slowing down, presenting not only numerous noteworthy positions, primarily concerning the interpretation of tax regulations, but also a range of proposed legislative changes, including those that have yet to be implemented.

As a result, tax advisers, and especially taxpayers, were required to navigate not only the existing uncertainties and complexities of the tax system, but also the new interpretative issues and inconsistencies arising from implemented and planned changes. Therefore, tax planning and ongoing settlements required constant analysis. At a time when taxpayers were preparing for, and dealing with the challenges associated with implementing the National e-Invoicing System (Krajowy System e-Faktur) in their IT systems, any proposed changes, whether in legislation or in the interpretation of regulations, created an additional and undesirable burden.

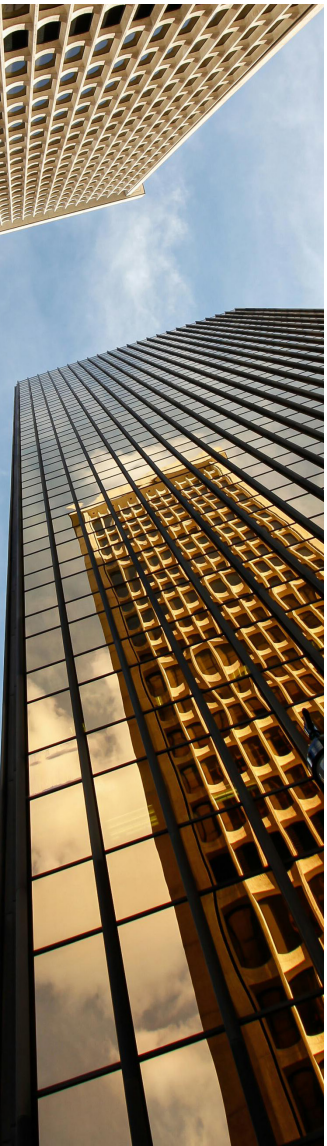
Undoubtedly, one of the most widely discussed tax topics in 2025 was the Ministry of Finance's publication, in early July, of tax guidelines on the application of the so-called beneficial owner clause. These guidelines were prepared on the basis of an analysis of, among other things, comments submitted during tax consultations with market representatives and tax advisers. Furthermore, they also addressed, inter alia, the possibility of applying the so-called look-through approach (previously recognized only in certain court judgments) as well as the concept of the so-called consolidated substance.

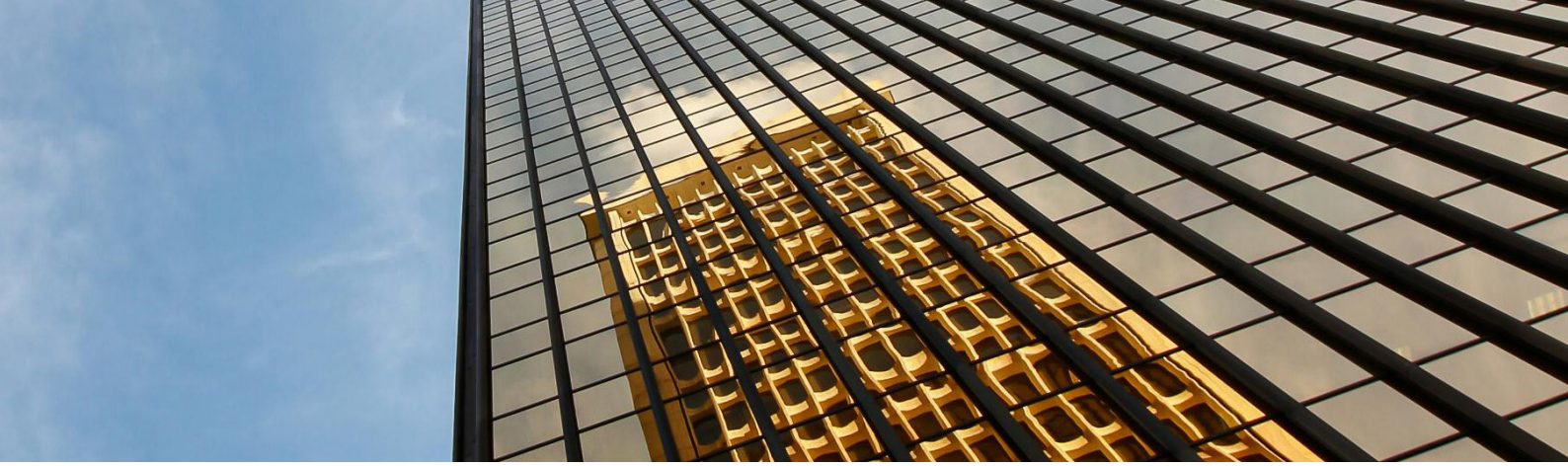
In 2025, several important rulings handed down by administrative courts had a major impact on how tax regulations are applied. These rulings already serve as an important point of reference for both tax advisers and taxpayers, providing greater certainty in the interpretation of tax provisions.

Therefore, below we present what we consider to be , the most interesting case law concerning issues that are important for the companies operating in the commercial real estate market, including:

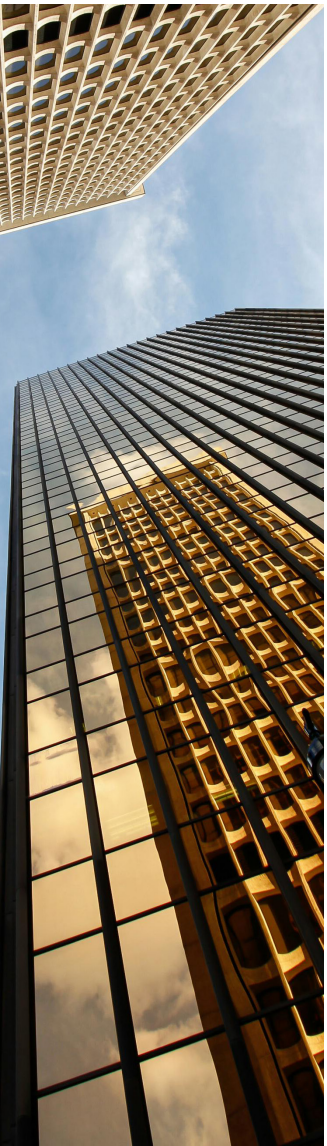
- the possibility of changing depreciation rates retroactively,
- the possibility of recognizing amounts paid by an investor to a subcontractor under joint and several liability with the main contractor as tax deductible costs,
- determining the value of structures for real estate tax purposes based on market value where depreciation is carried out by another entity,
- the lack of exclusion of the VAT exemption for undeveloped land on which transmission equipment owned by other enterprises is located,
- the issue of VAT taxation on advance payments for real estate made before submitting a declaration to waive the VAT exemption,
- the lack of income recognition for corporate income tax purposes in the case of a merger between sister companies under a simplified procedure,
- the incompatibility of a one-off tax-neutral reorganization with the provisions of the Directive.

We invite you to read this TAX FLASH.









# 1. Tax guidelines of 3 July 2025 on the application of the so-called beneficial owner clause for withholding tax purposes

On 9 July 2025, the Ministry of Finance („MoF") published the long-awaited tax guidelines on the application of the so-called beneficial owner clause for withholding tax purposes (hereinafter: the „WHT Guidelines"). The WHT Guidelines were published by the MoF following collaboration with working groups composed of numerous experts who deal with tax matters in practice, particularly those related to WHT.

## 1.1. The following provides a concise summary of the key provisions of the WHT Guidelines.

The requirement of the beneficial owner for the application of the preferential treatment provided for in the PS Directive.

The MoF takes the position that one of the conditions for the application of the WHT exemption to dividends, paid under Article 22(4), is that the payee has the status of a beneficial owner.

## 1.2. Prerequisite for receiving payments for one's own benefit and lack of an obligation to transfer all or part of the payments

The prerequisite for receiving the payment for one's own benefit and the absence of an obligation to transfer it in whole or in part should be understood as having not only formal but also economic power over the. The beneficial owner constitutes an entity that actually uses the payment and bears the risk associated with it, without obligation to transfer it to another entity. An entity that acts as a mere intermediary cannot be considered the beneficial owner. The assessment of the beneficial owner's status requires an analysis of specific circumstances, including whether the entity realizes margins on payments, bears the risk associated with a

given receivable, reinvests funds or whether the receivables are transferred to another entity in a short period of time

## 1.3. Prerequisite for conducting genuine business activity

The prerequisite for conducting genuine business activity should be examined in the context of the payment received, but also in light of the nature of business conducted. The following circumstances may indicate that the condition of conducting genuine business activity has not been met, including: the members of the management board being natural persons / other entities who perform this function on a service basis and simultaneously for other clients; outsourcing most of the company's core functions, including in particular the use of the so-called „domiciliation" services; employing only (almost only) administrative staff in the company. On the other hand, in the case of holding companies, special attention should be paid to possible restrictions preventing independent decision-making regarding the company's daily operations and the issue of segregated bank accounts or the payment of funds from an uneven pool of funds.

## 1.4. Introduction of a consolidated business substance

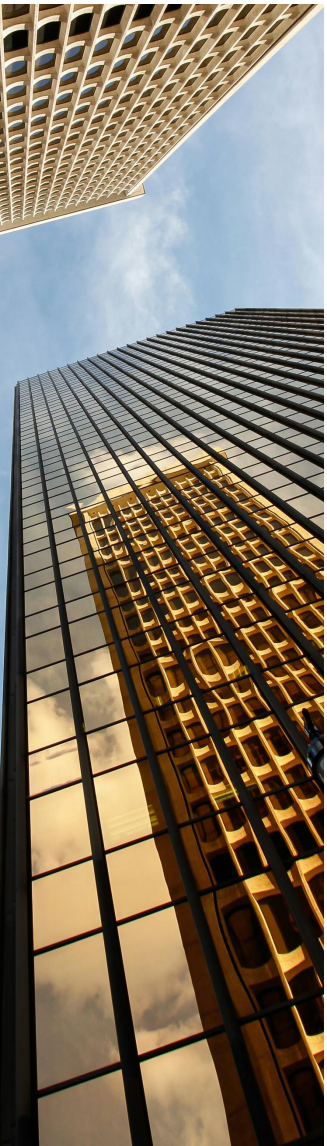
In the current wording of the WHT Guidelines, the possibility of satisfying the condition of conducting genuine business activity has been introduced in the event that the taxpayer is provided with substance by other entities from the group. In the case of the application of the preferential treatment codified in the PS or IR Directive, it was considered justified to take into account the substance made available by entities that are tax residents in one of the EU Member States. On the other hand, in the case of examining this condition for the purposes of applying the preferential treatment provided for by the double tax treaty, it is justified to take into account the substance made available by entities that resides, for tax purposes, in the same country as the company whose beneficial owner status is being assessed.

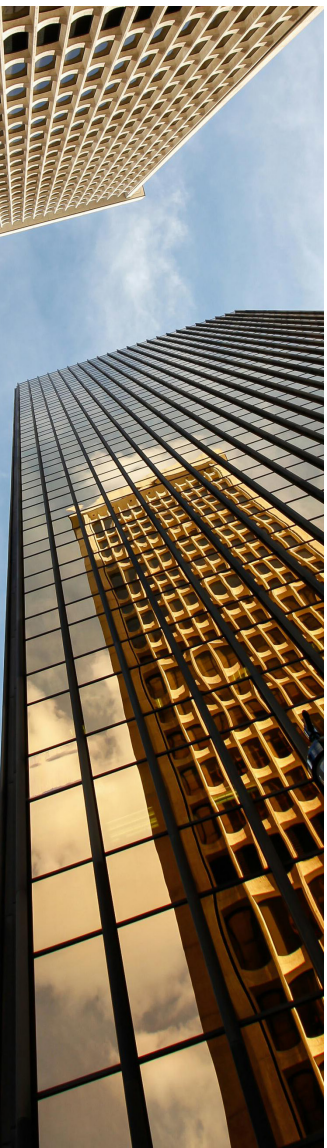
However, it has been pointed out that the fulfilment of the condition of conducting genuine business activity with the use of a consolidated business substance condition is only optional possibility for the remitter or taxpayer. The tax authorities are not obliged to apply this approach, due to the lack of knowledge regarding the functioning of the entire group.

## 1.5. Intangible services and the condition of the beneficial owner

The WHT Guidelines indicate that in the case of intangible services (e.g. advertising or consulting services), the payer is not obliged to verify the beneficial owner status.







## 1.6. Assessing compliance with the beneficial owner requirement in the context of payments to related and unrelated entities

In the case of related entities, it is necessary to examine all the circumstances that result in the qualification of the entity as the beneficial owner. In the case of a payment to a related entity, it is not sufficient to obtain declarations and certificates, but verification of other available documents is also required.

## 1.7. Look-through approach

The possibility of using the concept of look-through approch has been confirmed in the current wording of the WHT Guidelines Notes. On the other hand, it was pointed out that this concept can only be applied to the same category of payments. For example, this entails that if the payer remits a payment to an intermediary as interest, the intermediary must, in turn, remit the interest to the beneficial owner.

In addition, the conditions that must be met in order to apply preferential treatment under the look-through approach depend on the nature of the payment in question and the legal basis for granting such treatment, i.e., the PSD and IR Directive or the relevant double tax treaty (DTT). Furthermore, it was emphasized that the application of the look-through approach concept is an optional solution for the taxpayer, and the tax authorities are not obliged to apply it.

## 1.8. Extended subjective scope of the examination of the beneficial owner requirement

If:

1) it is not known whether the taxpayer will continue to pay the receivables,

2) the entity receiving the payment and the intermediary entity are established within the same legal jurisdiction that provides the basis for the preferential treatment, i.e. for payments covered by the Directive, made within the territory of the EU, and for payments covered by the double tax treaty, within a country that is a party to that treaty,

3) the other conditions for the application of the look-through approach concept are met.

The remitter may verify the legitimacy of applying preferential treatment based on the expanded assessment of the beneficial owner status. This means that if the entity to which the payment is to be made meets the beneficial owner requirement, and there are circumstances indicating that this entity could request that the payment to be transferred to it, preferential treatment may be applied.

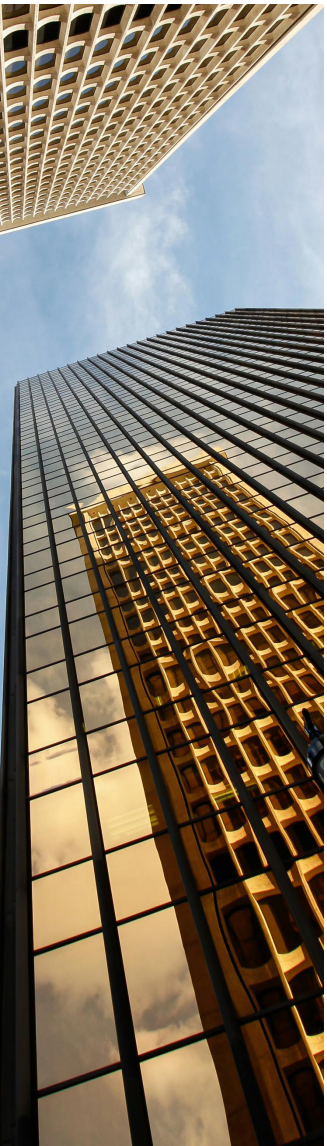
### 1.9. Presumption of fulfilment of the beneficial owner requirement under the PS Directive

It is not necessary to examine the beneficial owner requirement in order to apply preferential treatment under the PS Directive, provided that the distribution of profits is subject to at least one level of taxation within the EU.

**Comment:**

*Despite the fact that some important issues remain unaddressed and certain aspects described in the WHT Guidelines do not fully align with the market standards, their issuance represents further progress in addressing the comprehensive aspects of WHT . The WHT Guidelines introduce the mechanism of a consolidated business substance, a concept that has been repeatedly raised by tax advisors. There have also been signals from various market segments, including the real estate sector, indicating the need for tax authorities to accept such an approach. Furthermore, the possibility of using the concept of a look-through approach was confirmed.*

*The issue of WHT taxation still requires work, including ongoing collaboration with tax authorities. Many topics still need to be addressed or clarified. Nevertheless, the WHT Guidelines represent an important step towards greater transparency and a more consistent interpretation of withholding tax provisions.*



## 2. Tax changes in the field of depreciation

The draft act amending the Personal Income Tax Act, the Corporate Income Tax Act and certain other acts dated 16 September 2025 contains significant proposed changes to the provisions on depreciation.

The draft provides for an amendment to Article 15(6) of the CIT Act, clarifying that for the fixed assets classified in group 1 of the Classification, depreciation write-offs in a given tax year may not exceed the write-offs made in accordance with accounting regulations, and charged to the entity's financial result. Also, if no depreciation write-offs are made for a given asset under accounting regulations, especially if the asset has been classified as a long-term investment at market price or other fair value, tax depreciation will likewise not be permitted.

The amendment also provides for changes to Article 16i of the CIT Act, concerning the rules for adjusting depreciation rates. The legislator proposes adding a new paragraph, which clearly indicates that taxpayers may exercise the above right in relation to a given tax year, however, no later than the deadline for filing the return for that tax year.

The draft is currently at the stage of public consultation.

**Comment:**

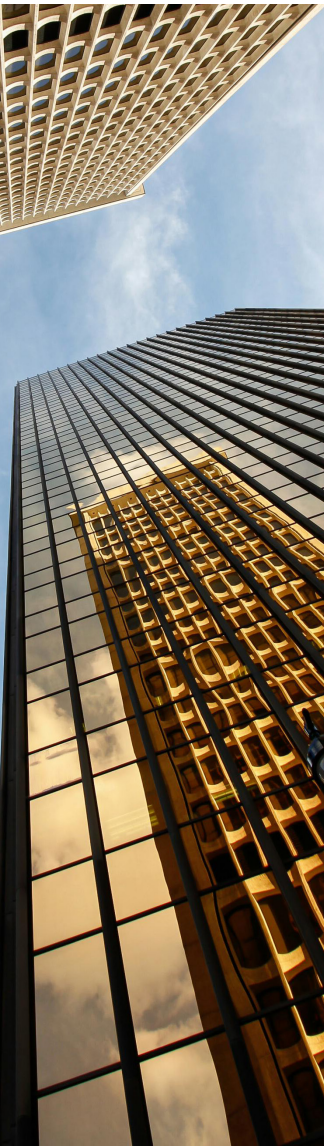
*The proposed changes are intended to resolve disputes and eliminate ambiguities concerning the application of depreciation regulations by real estate companies, as well as retroactive changes in depreciation rates– unfortunately, to the detriment of taxpayers.*

*As representatives of PINK, we participated in a meeting with the Ministry of Finance, during which the proposed tax changes, including issues related to depreciation mentioned above, were discussed. During the talks, it was pointed out that there are no tax optimizations that would be limited by the provision on limiting depreciation for real estate companies.*

*The Ministry of Finance declared that it would consider the issues raised by market representatives and tax advisors, including the aspect of safeguarding acquired rights.*

*Regardless of the above, we must wait for the final shape of the proposed changes. The Ministry announced that a new draft proposal for tax changes will be published at the beginning of January.*

# 3. An overview of the most interesting rulings and interpretations from the second half of 2025 concerning companies operating in the real estate market.



## 3.1. Possible change of depreciation rates retroactively

Judgment of the Supreme Administrative Court of 7 August 2025, ref. no. II FSK 1477/22

In the judgment, the Supreme Administrative Court unequivocally stated that taxpayers have the right to change (reduce) depreciation rates not only for the future, but also retroactively – for previous years, as long as the limitation period for tax liabilities has not expired.

In its justification, the Supreme Administrative Court emphasized that the provisions do not prohibit making such changes for previous tax years, and a literal interpretation of Article 16i(5) of the CIT Act does not limit this right. The court noted that the lack of clarity of the regulations should not lead to the restriction of taxpayers' rights. This judgment means that entrepreneurs can shape the depreciation policy of their fixed assets more flexibly, also regarding the settlements for previous years.

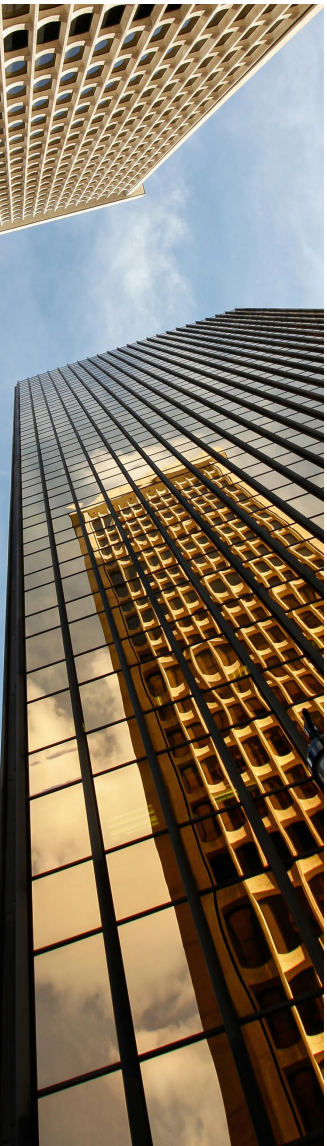
## 3.2. The amount paid by the investor to the subcontractor, by virtue of joint and several liability with the main investor, constitutes a tax- deductible cost

Judgment of the Supreme Administrative Court of 5 November 2025, ref. no. II FSK 186/23

The Supreme Administrative Court confirmed that an investor who fulfils the obligation codified in Article 647(1) § 5 of the Civil Code may include such expenses as tax-deductible costs.

The Supreme Administrative Court emphasized that the investor's liability towards subcontractors is of a guarantee nature and stems directly from the provisions of law. Even if the investor has already paid the entire remuneration to the contractor, this does not release him from the obligation to pay the subcontractor if the contractor has failed to make the payment.

Importantly, the court found that if the cost incurred by the investor is related to the conducted business activity, is properly documented, and has not been reimbursed by the contractor, it constitutes a tax deductible cost. In addition, double classification of the expense as costs will not occur, as this cost will be deducted from the company's subsequent liabilities to the general contractor.



## 3.3. Taxpayers may determine the value of a building for the purposes of RET according to the market value where depreciation write-offs are made by another entity

Judgment of the Voivodeship Administrative Court in Kraków of 29 October 2025, ref. no. I SA/Kr 570/25

The Voivodeship Administrative Court in Kraków considered a case in which the tax authority concluded that the taxpayer may use the market value of a building as a tax base only if no depreciation write-offs are made on the building. The Voivodeship Administrative Court did not agree with this interpretation.

In its reasoning, the court emphasized that the provision of Article 4(5) of the Local Taxes and Fees Act also covers situations where depreciation write-offs are made by an entity other than the taxpayer. Limiting the application of this provision only to cases where no entity makes write-offs is incorrect. The court also drew attention to the practical difficulties that would result from a different interpretation – the taxpayer may not be able to determine whether the property is being depreciated or obtain information about the basis for depreciation due to trade secrets.

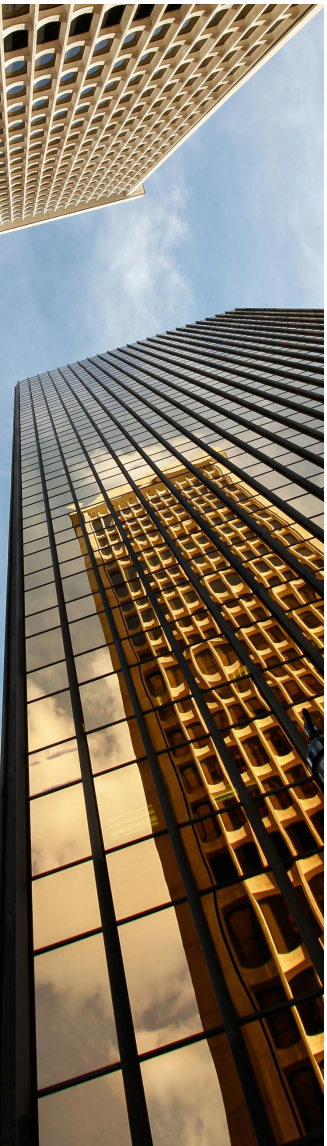
## 3.4. Transmission facilities do not preclude VAT exemption for the supply of undeveloped land

Judgment of the Voivodeship Administrative Court in Warsaw of 2025, ref. no. III SA/Wa 1535/25

The Voivodeship Administrative Court in Warsaw has decided on the issue regarding the VAT treatment of the sale of land plots containing transmission facilities belonging to other enterprises. Contrary to the position of the tax authority, the court held that the mere presence of such installations on the land does not mean that the area loses its status as undeveloped and does not exclude the possibility of benefiting from the VAT exemption under Article 43(1)(9) of the VAT Act.

The Voivodeship Administrative Court emphasized that the decisive factor is whether the transmission equipment is owned by the seller. If not, the land can still be considered undeveloped, even if there are transmission facilities on it.

## 3.5. Advance payment for real estate paid before filing the statement to waive the VAT exemption

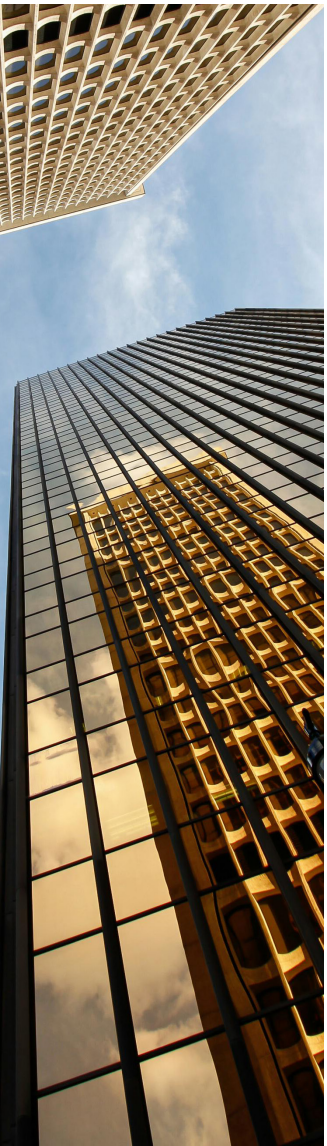


Judgment of the Supreme Administrative Court of 24 June 2025, ref. no. I FSK 540/22

The case concerned a company that had entered into a preliminary agreement for the sale of the right of perpetual usufruct to real estate, together with associated buildings and structures. The agreement allowed for the possibility of waiving from the VAT exemption, but this required a submission of an appropriate statement.

The tax authorities considered that the advance payment made before the submission of this declaration was not subject to VAT, because at that time the transaction was still exempt. The Voivodeship Administrative Court agreed with this position, emphasizing that both the supply and the advance payment may benefit from the VAT exemption until the formal submission of the statement waiving the exemption. The court noted that the will of the parties alone, even if expressed in the agreement, is not sufficient to change the tax status of the transaction –formal requirements must be met, namely, the submission of the appropriate statement.

The case was then brought before the Supreme Administrative Court, which also agreed with the position of the tax authorities and the court of first instance. The Supreme Administrative Court emphasized that only the submission of a statement waving the VAT exemption results in the taxation of the transaction and allows the issuance of a corrective invoice, and the deduction of VAT by the purchaser. Until then, both the advance payment and the delivery remain exempt from VAT.



## 3.6. The initial occupation occurs at the moment the premises are made available for use

Judgment of the Supreme Administrative Court of 18 November 2025, ref. no. I FSK 1923/22

The dispute concerned the point of time from which the period for applying the VAT exemption on the sale of commercial premises should be calculated. The Voivodeship Administrative Court held that the initial occupation occurs only upon the commencement of the actual use of the premises, e.g. when concluding a lease agreement. The Supreme Administrative Court did not agree with this approach.

The Supreme Administrative Court emphasized that in accordance with Article 2(14) of the VAT Act, the initial occupation constitutes the commissioning of the premises, not the sole use of the premises by the tenant. This means that the handover of the premises to the buyer (e.g. upon receipt from the developer) and entry into the fixed assets register triggers the period required for the application of the VAT exemption.

The Supreme Administrative Court also referred to the case law of the CJEU, which only questioned the previous requirement, namely, that the initial occupation must be associated with a taxable transaction, but did not undermine the element of „putting into use". According to the court, adopting a different interpretation would lead to illogical situations and evidentiary disputes regarding the actual manner of using the premises.

## 3.7. Merger between sister companies in a simplified procedure without CIT income

Judgment of the Voivodeship Administrative Court in Łódź of 12 November 2025, ref. no. I SA/Łd 345/25

The case concerned a planned reorganization in which the company intended to acquire a sister company that had the same sole shareholder. The merger was to be completed without the issuance of the new shares, which, in the opinion of the tax authority, could result in the revenue being recognized on the part of the acquiring company, pursuant to Article 12(1)(8d) of the CIT Act.

The Voivodeship Administrative Court did not share the position of the National Tax Administration. The Court pointed out that both in the existing case-law and in the light of the legislation amended in 2023, the absence of new share issuance and the unchanged ownership structure preclude the possibility of generating income from the merger described in the application. As it was emphasized, in a situation where the companies have the same shareholder and the assets of the acquired company are transferred to the acquiring company by operation of law, there is no enrichment justifying taxation.

The court also confirmed that expenses incurred for the preparation and execution of the merger procedure – including the costs of consultancy, analyses, documents or fees – may constitute tax-deductible costs as these expenses related to business activity and rational reorganization.

## 3.8. Non-compliance of a one-off tax-neutral reorganisation with the provisions of the Directive

Judgment of the Voivodeship Administrative Court in Warsaw of 5 June 2025, ref. no. III SA/Wa 513/25

The case concerned an entity that challenged the tax authority's interpretation of taxation of revenues arising as a result of subsequent restructuring activities, such as mergers, divisions, or exchanges of shares.

The key issue was the interpretation of Article 12(4)(12)(a) of the CIT Act, which provides for tax neutrality only for the first restructuring activity, while each subsequent activity is subject to tax. The court found that such a restriction is inconsistent with Directive 2009/133/EC, which does not introduce a limit on the number of tax-neutral restructuring transactions. This directive aims to ensure full tax neutrality for all restructuring operations carried out between companies from different EU Member States, regardless of whether they are the first or subsequent in each entity.

The Voivodeship Administrative Court in Warsaw emphasized the need for a pro-EU interpretation of national legislation and directly pointed to the need to omit the national limitation, which is not based on EU law. The Court stated that taxpayers have the right to invoke the provisions of Directive 2009/133/EC directly, and Polish regulations may not introduce additional conditions or restrictions that are not provided by EU law.

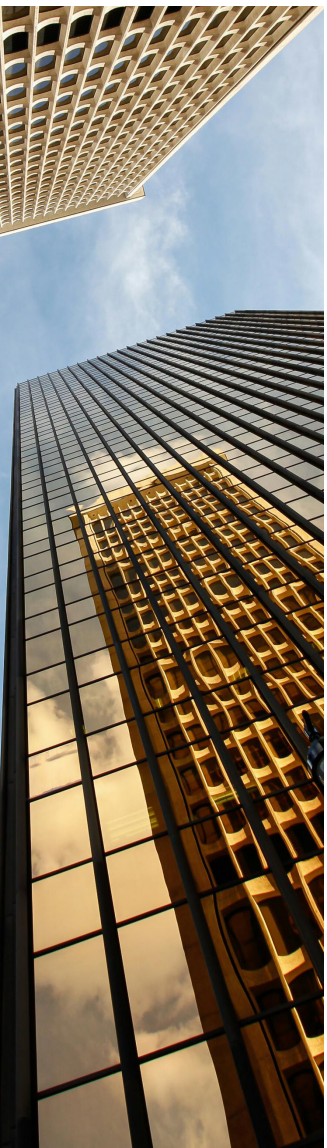
## 3.9. Inclusion of additional remuneration in the share purchase agreement as tax-deductible costs

Judgment of the Voivodeship Administrative Court in Poznań of 6 November 2025, ref. no. I SA/Po 285/25

The Voivodeship Administrative Court in Poznań issued a judgment on the tax settlement of the so-called earn-out, i.e. additional remuneration paid to the seller of shares in a company, depending on the future financial results of the acquired entity.

The court emphasized that earn-out is not an expense for the acquisition of shares within the meaning of Article 16(1)(8) of the CIT Act, as it is not a condition for the effectiveness of the transaction itself. In the opinion of the Voivodeship Administrative Court, this type of expense should be treated as an indirect tax-deductible cost – incurred in order to secure the development and expansion of the company's operating activities.





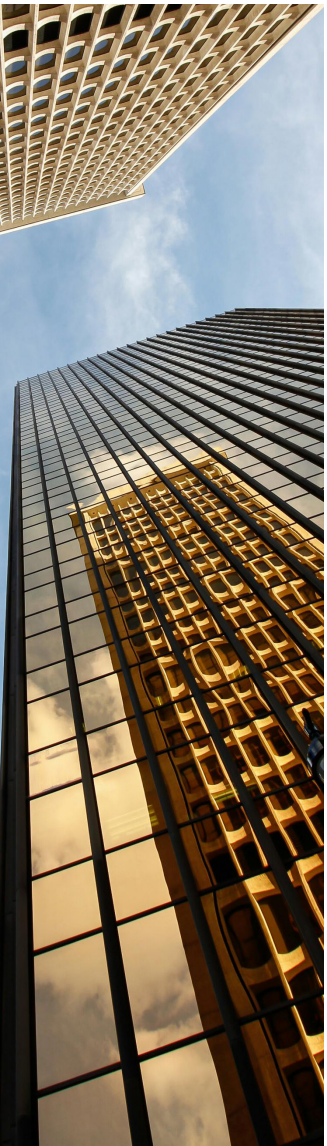
## 3.10. Determination of the withholding tax base in the case of using the cash pooling mechanism

Judgment of the Voivodeship Administrative Court in Warsaw of 30 October 2025, ref. no. III SA/Wa 1319/25

The case concerned the company's use of the cashpooling mechanism and its settlements. The company argued that the tax should be calculated only on the net balance, i.e. the difference between the interest that the company pays to the pool leader and that which it receives from him. The company indicated that the daily interest calculations are of a technical nature and should not affect tax settlements.

The court did not agree with the company's arguments. The justification emphasizes that the obligation to collect withholding tax arises both at the time of physical payment of interest and at the time of its capitalization. The regulations do not provide for the possibility to reduce the tax base by interest that is due to the company – each party should report its income and interest expenses separately. Therefore, the court stated that the basis for withholding tax cannot be the difference between interest expense and interest income, but the full amount of interest is due.

## 3.11. Inclusion of withholding tax as tax-deductible costs



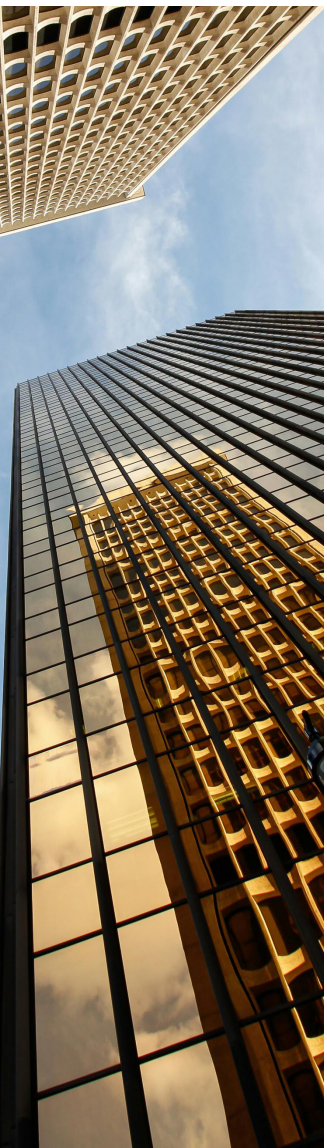
Tax ruling of the Director of the National Tax Administration of 13 November 2025, ref. no. 0114-KDIP2-1.4010.558.2025.1.MR1

The issued tax ruling concerned the possibility of deducting the withholding tax paid by the company as a result of adjustments to settlements after tax audits for the years 2019-2023.

The company used loans from a related entity and bore interest costs. As a result of tax audits, it turned out that previous settlements, in which interest was exempt from withholding tax, required correction. The company paid tax on interest receivables at the rate of 5% with interest, increased the receivables paid in all audited periods and bore the economic burden of withholding tax on the interest paid. The payment was made from its own funds, and the Company did not intend to apply for its reimbursement despite the lack of a gross up clause in the concluded loan agreements.

In connection with this situation, the company applied for a tax ruling, asking whether the withholding tax paid can be considered a tax-deductible cost.

The Director of the National Tax Administration considered the company's position to be correct. In the opinion of the authority, the lack of a gross up clause in the agreement between the parties does not exclude the possibility of including the amount of withholding tax as tax-deductible costs. However, in such cases, it is necessary to demonstrate that the



conditions of Article 15(1) of the CIT Act have been met. This means that the remitter is obliged to demonstrate that the gross payment made by him served to obtain, preserve, or secure a source of the revenue.

In addition, the authority confirmed that the withholding tax paid as a result of the adjustment of settlements is an indirect cost – it is not directly related to a specific revenue, but is related to the company's overall business activity. Therefore, the company has the right to deduct this cost on the date of its incurrence, in accordance with Article 15(4d) of the CIT Act.

## 3.12. Not including depreciation write-offs on own fixed assets in the calculation of the local minimum tax profitability ratio

Judgment of the Voivodeship Administrative Court in Warsaw of 24 October 2025, ref. no. III SA/Wa 1520/25

The subject of the case was the possibility of excluding depreciation write-offs on own fixed assets from the calculation of the profitability ratio for the purposes of the so-called „local minimum tax" (Article 24ca of the CIT Act).

The court agreed with the company, which argued that the literal meaning of the provision allows for such an exclusion. The use of the conjunction „or" in the Act was of key importance here, as emphasized by the Voivodeship Administrative Court. Therefore, it was stated that both write-offs on own fixed assets and those used on the basis of financial leasing may be excluded from the calculation of the profitability ratio if they have been included in tax-deductible costs.

In the justification of the judgment, the court also referred to the intention of the legislator, which was clearly indicated in the justification for the 2022 legislative amendment. The Voivodeship Administrative Court found that the position of the tax authority was too narrow and repealed the interpretation that was unfavorable to the taxpayer.

## 3.13. Handling the investment process as a continuous service for VAT purposes

Judgment of the Voivodeship Administrative Court in Warsaw of 10 October 2025, ref. no. III SA/Wa 1735/25

The case concerned a company that provided comprehensive services for construction investments and wanted to recognize the VAT liability only after the completion of the investment, i.e. after obtaining a building permit. The company argued that its services are one-off and are settled only after a certain end result has been achieved.

The court did not agree with this argument. In the justification of the judgment, the Voivodeship Administrative Court indicated that the services of handling the investment process are on the continuous basis, and not one-off. This means that they are provided for a certain period of time,

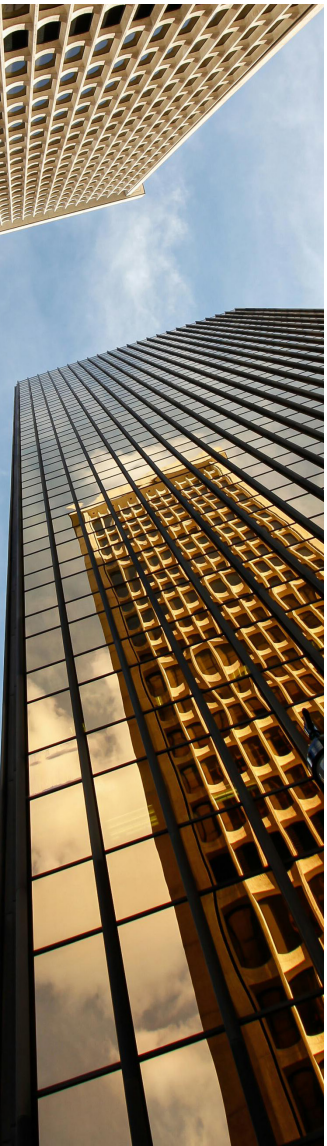
and their result is not only related to the achievement of a specific, final effect, but consists of the continuous performance of specific activities for the investor throughout the entire duration of the investment.

The interpretation of Article 19a(3) of the VAT Act was of key importance for the decision. This provision stated that in the case of services provided on a continuous basis, for which no consecutive payment or settlement deadlines have been set, the service is considered to have been performed at the end of each tax year, until the end of the provision of this service. In practice, this means that the VAT liability arises successively – at the end of each tax year – and not only after the completion of the entire investment.

The Voivodeship Administrative Court emphasized that settling VAT only after the completion of the investment would be inconsistent with the provisions of the VAT Act and the principle of neutrality . Such an approach could lead to delays in tax settlements and violate the interests of the State Treasury. The court noted that for continuous services it is crucial to determine whether the parties to the contract have stipulated payment or settlement deadlines. If there are no such deadlines, the tax obligation arises at the end of each tax year.

As a consequence, the Voivodeship Administrative Court dismissed the company's complaint, considering that its position was not supported by the provisions of tax law.





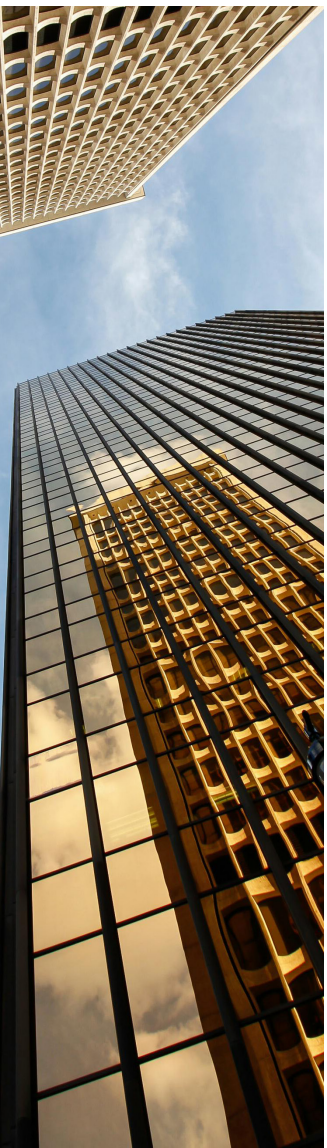
## 3.14. Possibility of deducting VAT on CSR expenses

Judgment of the Voivodeship Administrative Court in Gdańsk of 1 October 2025, ref. no. I SA/Gd 561/25

The court repealed the interpretation of the tax authority, which was unfavourable to the company, which had previously concluded that CSR expenses were not related to taxable activities and the company was not entitled to deduct VAT.

In the justification of the judgment, the court referred extensively to the nature of CSR activities, indicating that they can be treated as a modern form of advertising and promotion. This is especially important in the case of companies for which traditional forms of advertising (e.g. television, radio) are not suitable or effective. CSR activities contribute to building a positive image of the company, increasing its recognition, and indirectly contribute to generating turnover and increasing competitiveness.

The court emphasized that CSR expenses are closely related to the company's business activity. The court pointed out that such activities support the development of the company, help to minimize the negative impact on the environment, reduce regulatory risk and potential costs related to the repair of environmental damage. In addition, CSR enables building long-lasting relationships with the local community, which is in line with the company's business strategy and strengthens its position as a responsible business entity.



An important element of the court's argumentation was also the discrepancy in tax rulings – CSR expenses were considered by the tax authorities to be a tax-deductible costs under CIT, while in the field of VAT, the right to deduct was denied. The court found such an approach inconsistent and emphasized that since these expenses are considered tax-deductible costs, they should also be considered as such in the field of VAT if they are related to taxable activities.

## 3.15. Full factoring and debt financing costs

Judgment of the Voivodeship Administrative Court in Warsaw of 10 July 2025, ref. no. III SA/Wa 1034/25

The dispute concerned whether expenses incurred by enterprises utilizing full factoring should be classified as debt financing costs, which are subject to limitation under the provisions on thin capitalization. The court analysed the nature of the full factoring agreement, emphasizing that the essence of this solution is not only to obtain funds by the factoring agent before the maturity date of the receivables, but above all to transfer the debtor's insolvency risk factor. Unlike partial factoring, in which the factor may demand reimbursement of funds in the event of non-payment by the debtor, in full factoring the factor assumes the full risk of insolvency.

The Voivodeship Administrative Court in Warsaw disagreed with the earlier interpretation of the Director of the National Tax Information, who concluded that the costs of remuneration of the factor (including commissions and fees) in full factoring should be treated as debt financing costs. The court emphasized that such expenses are not external financing costs, but constitute remuneration for the factor assuming economic risk. Consequently, they are not subject to limitation according to the rules in Article 15c of the Tax Act.

In the reasoning of its judgment, the court noted that full factoring is structurally more similar to the assignment of receivables than to a traditional loan. The factor's remuneration is not compensation for making capital available, but rather for assuming risk and servicing receivables.

## 3.16. Tax implications of incentives for Tenants

Tax ruling of the Director of the National Tax Administration of 5 June 2025, ref. no. 0111-KDIB1-2.4010.183.2025.1.ANK

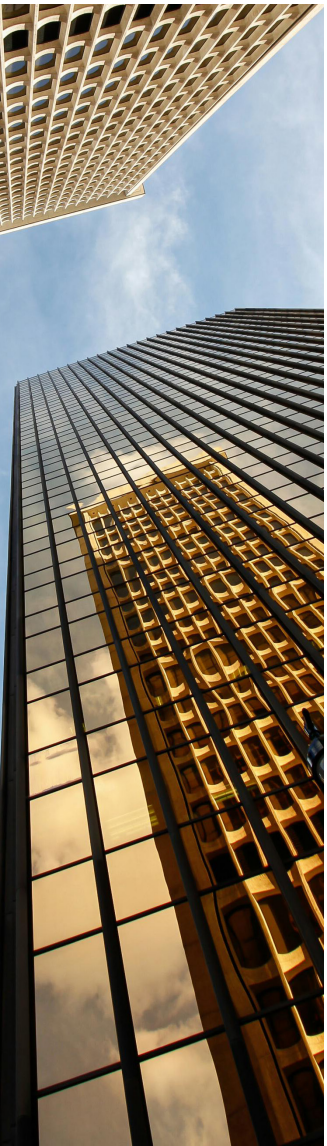
The tax ruling concerned the tax consequences of expenses incurred by a company engaged in the rental and management of commercial real estate, in particular the so-called tenant incentives, such as „Cash Contribution" and „Fit-Out". The Company uses these instruments to attract new tenants and retain existing ones.

The ruling considered the company's position to be correct and confirmed that both Cash Contribution and Fit-Out expenses may be included in tax-deductible costs on a one-off basis on the date of their incurrence.

These are indirect costs that are not directly related to a specific revenue but are necessary to run a business involving the lease of commercial space. Without these expenses, the company would not be able to effectively acquire and retain tenants, which is crucial for its operations and revenue generation.

In the case of Fit-Out expenses, i.e. adaptation works carried out for tenants, it was emphasized that they do not increase the use value of the building but serve to adapt the space to the individual needs of tenants. These expenses do not have a lasting impact on the value of the property, and their incurrence is a condition for concluding or extending the lease agreement.





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## The Polish Chamber of Commercial Real Estate

Since 2016, the Polish Chamber of Commercial Real Estate has brought together representatives from all sectors and services of the commercial real estate market in one organization, enabling them to have a real impact on the surrounding economic, political, and social environment. The PINK Association is both their representative and a platform for exchanging experiences, knowledge, and cooperation. By collaborating with other organizations, it promotes best practices in the commercial real estate market. The Association includes developers, investors, asset managers, property managers, design companies, construction consultants, real estate market advisors, as well as legal, tax, and financial advisory firms.

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