

Litigation Newsletter

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In this Issue of the Tax Litigation Newsletter, we focus on current tax disputes where the Highest Administrative Court of Ukraine (hereinafter – the “HACU”) has supported the taxpayers.

Financing from a head office is not an income of its permanent establishment in Ukraine

During 2013 the HACU similarly resolved several cases involving the tax treatment of financing received by permanent establishments from their head offices.

In each case the tax authorities assessed CPT from the financing provided by the foreign companies to their permanent establishments in Ukraine. Those assessments were challenged by the companies in all court instances.

In one of the cases, the HACU stated in its decision that a permanent establishment is not a separate legal entity, but a part of its head office. Therefore the financing does not result in the holder of the funds changing. Based on this logic, the HACU took the decision in favour of the permanent establishment and cancelled the assessment.

This HACU decision may potentially be used in court disputes by non-commercial representative offices as an argument for excluding the financing from the taxable income if it is assessed.

Deductibility of expenses for staff provided by a related party

The HACU made a decision in a case concerning the deductibility of expenses for the staff provided by a related party.

The company in the case challenged an individual tax ruling of the State Tax Service of Kyiv, which disallowed the deduction of the expenses related to the services rendered. According to the tax ruling, the provision of the staff was not connected with the business activity of the company and cannot be tax deducted.

Having considered the case, the HACU cancelled the tax ruling and confirmed the deductibility of the expenses for the staff provided by a related party.

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