

# TAX Alert

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## Amortization for tax purposes of property in real estate companies

The provisions of the so-called "Polish Deal" in effect since January 1st, 2022, introduced Article 15(6) of the CIT Law, according to which real estate companies may recognize as deductible expenses amortization allowances on, among other things: commercial real estate in an amount not exceeding the value of amortization allowances made for accounting purposes charging the entity's financial result.

### Consequences of introducing Art. 15(6) of the CIT Law for companies valuing property at fair value

In practice, Article 15(6) of the CIT Law excluded amortization of buildings for tax purposes in case of real estate companies which value buildings at what is known as fair value, and thus do not amortize them for balance sheet purposes. Such an interpretation has been confirmed by the Director of the Tax Chamber in numerous individual interpretations issued in 2022.

In the individual interpretation issued on April 25, 2022 sig. 0111-KDIB1-1.4010.107.2022.2.MF the Director of the Tax Chamber claimed: "Since the value of the amortization allowance in the case in question reaches "0", as the Company does not depreciate the asset under the accounting regulations, then - given the wording of the legal standard in question, the Company is not entitled to recognize amortization allowances on fixed assets included in Group 1 of the Classification as deductible expenses under the amended provision of Article 15(6) of the CIT Law."

**Important:** In consequence of introducing this provision, real estate companies which have not changed the method of real estate valuation do not include amortization allowance on the initial value of property as tax deductible costs.

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## Precedential rulings of the Provincial Administrative Courts

In the first weeks of February, the first rulings of the Provincial Administrative Court in this matter were issued. As it turns out, the Provincial Administrative Courts in Warsaw and Poznan **disagreed with the interpretation of the provision made by the the Director of the Tax Chamber** (rulings: sig. III SA/Wa 1788/22, III SA/Wa 2755/22, III SA/Wa 2756/22, sig. I SA/Po 752/22 and sig. I SA/Po 789/22, I SA/Po 790/22, I SA/Po 795/22).

Contrary to the tax authorities, the Provincial Administrative Court decided that the tax **depreciation restrictions do not apply to those taxpayers who value property at fair value for balance sheet purposes** (they do not make amortization allowance for balance sheet purposes). This means that real estate companies which have chosen this method of presentation and valuation of assets, **may perform amortization write-offs from real estate on rules applicable from the 31st of December 2021**.

Given the number of individual interpretations and the relatively wide range of entities that may be affected by the restriction on depreciation for tax purposes, more Provincial Administrative Courts rulings can be expected in the near future. It should be expected, however, that the issue will ultimately be decided by the Supreme Administrative Court.

## What are the effects of positive decisions of the Provincial Administrative Court for real estate companies?

Favorable judgments of the Provincial Administrative Courts give hope for a favorable ruling of the Provincial Administrative Courts, and then a positive decision for taxpayers before the Supreme Administrative Court.

Accordingly, real estate companies that did not depreciate buildings for tax purposes in 2022 can expect a favorable ruling before the Provincial Administrative Court in their own case.

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