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## THE GRATUITOUS SURETY BETWEEN RELATED COMPANIES IS SUBJECT TO TAXATION

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In a judgement of 16.01.2020 (case no. II FSK 373/18) the Supreme Administrative Court (hereinafter: "SAC") **confirmed the position of the tax authorities that a surety, in order to secure a credit in exchange for an obligation to grant a surety, is – as a gratuitous benefit – subject to taxation.**

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The factual circumstances of said case involve a company which requested the issuance of an individual interpretation and stated that it joined the intragroup policy of securing credit obligations, which means that each entity, including the Company, acts both as an entity granting the surety (guarantee) and as an entity receiving the surety, i.e. a borrower obtaining funds from a lender other than the companies belonging to the group. According to the surety policy, depending on individual needs, each participant may request a surety from the companies in the group, and at the same time is obliged to grant such a surety at the request of another company in the group. According to the SAC, obtaining by the taxpayer a credit surety from one of the companies from the capital group to which the taxpayer belongs will be a legal event which on the part of this taxpayer is not associated with costs or other forms of expenditure. And this means that the taxpayer will receive a financial gain because he will not incur a fee related to the surety (guarantee) that he would have to pay in business transactions based on market prices (art. 12 sec. 6 pt. 4) of the Act on Corporate Income Tax). As a result the SAC stated that granting the taxpayer - without remuneration - by a related company a surety (guarantee) in order to secure the credit granted to the taxpayer meets the taxation requirements of this benefit as gratuitous pursuant to art. 12 sec. 1 pt. 2 of the Act on Corporate Income Tax in a situation where, in exchange for obtaining a surety, the entity obtaining it undertakes to grant a surety at every request of the company granting a surety.

Should you have further questions, we remain at your disposal.

*\* This Newsletter does not constitute legal or tax advice.*