

Provincial Administrative Court rules that tax ruling may secure a right to refund of input VAT

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In Brief

In its verdict of 20 February 2018, the Provincial Administrative Court in Warsaw confirmed that the protective power of a tax ruling issued in favour of the taxpayer may protect not only against actual payment of tax, but may also secure a right to a refund of input VAT. The case concerned the denial of an input VAT refund on the acquisition of a shopping centre (structured as an asset deal on a piecemeal basis).

Details

In the judgment of 20 February 2018 (III SA/Wa 1896/17), the Provincial Administrative Court in Warsaw repealed the decision of the tax authorities denying input VAT recovery on a real estate transaction. One of the aspects of the case was the protective power of the tax ruling in light of the no-harm rule.

The case concerned the acquisition of a shopping centre structured as an asset deal on a piecemeal basis. Classification of the object of the transaction as the sale of assets on a piecemeal basis and the recoverability of input VAT by the buyer was confirmed in advance by an individual ruling of the Polish tax authorities.

Post transaction, the tax authorities denied the input VAT refund, claiming that the transaction should be classified as an acquisition of a going concern and - as such - should not be subject to VAT. Moreover, the tax authorities claimed that the no-harm rule, which stems from the Polish Tax Ordinance, protects the taxpayer who acts in accordance with a tax ruling only against payment of tax (including penalty interest), and penal liability, but does not secure the right to input VAT recovery. The PwC team assisted in appealing against the decision.

The court in its verdict did not share the view of the tax authorities. The court reasoned that the no-harm rule contained in Polish tax law should be interpreted broadly. Accordingly, acting in accordance with a tax ruling should not trigger any negative consequences for the taxpayer, including the denial of the right to input VAT recovery.

The court did not examine whether the transaction should be classified as an enterprise deal.

Our view

As a rule, under Polish law, court verdicts are binding on the parties subject to the proceedings and do not constitute precedents or source of law. Nonetheless, it should be expected that the above court verdict should positively affect the future practice of the Polish tax authorities.

The verdict is particularly important since numerous proceedings regarding the denial of input VAT and the protective power of tax rulings are pending.

Further developments should be closely monitored, in particular whether the tax authorities appeal against the court verdict.

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