

FORFEITED DEPOSIT IS SUBJECT TO VAT

We wish to alert you to a case dealt with by the Provincial Administrative Court ("PAC") in Gdańsk (case no. I SA/Gd 1601/15, judgement dated 27 January 2016) in relation to the VAT treatment of a deposit received from your customer and forfeited by the customer owing to his default.

The case involved a company engaged in retrofitting used spare parts for vehicles and machines. Parts manufacturers apply complex production processes based on an array of patents and secret know-how. According to the practice generally accepted by parts manufacturers and distributors, the company supplies parts, whether brand new or retrofitted, to its customers in exchange for their timely supplies of used parts.

To secure its customers' obligation to deliver used parts, the company requires them to provide a deposit. If a customer fails to deliver the agreed quantity of used parts within the agreed time, he forfeits the deposit (pro rata to the quantity undelivered against the agreed target).

The issue was whether such forfeited deposit is subject to VAT.

PAC held that:

- a deposit received from your customer which he forfeits due to his default is a consideration for a supply and as such is taxable for VAT purposes;
- the same deposit which is not forfeited is not a consideration for any supply of goods or services under the VAT Act and so is not subject to VAT.

If this issue pertains to your business and you are interested in our assistance, please contact your WTS&SAJA consultant or our office.

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