

ARM'S LENGTH PRICE APPLICABLE ALSO TO TRANSACTIONS WITH EMPLOYEES – CHANGE OF APPROACH BY FINANCE MINISTER

This is to signal an important but unfavourable development as a private tax ruling was issued by the Finance Minister ("FM") on 25 April 2016 (ref. **PT8.8101.92.2016/PBD**) which changes the position on whether or not supplies made for a consideration to employees should be priced at arm's length. This is the second change in this regard within the last two months, possibly indicating a turnaround in FM's line of authority.

The case involved a company which supplied services to its employees for a consideration. The price equalled part of the costs the company incurred to purchase the services. The company applied VAT to the price. In 2010, FM ruled in accordance with the company's approach, saying that the company was not required to apply the arm's length principle to those services. According to FM, the restrictions which Article 32 VAT Act provides for parties that are related, including where the relationship arises from employment, do not apply to your own employees as FM did not treat employees and employers as related parties under Article 32. This gave employers a freedom of pricing their supplies to their employees and preferential pricing of such supplies has in many cases been part of employer's social policy.

Now FM says that both a linguistic and a purpose-driven construal of Article 32 VAT Act indicate that it does apply to sales to employees. Accordingly, employers should make sure their supplies to their employees are priced at arm's length (if the supplies are for a consideration in the first place). Otherwise, employers will be at risk of having a turnover and VAT assessed on these transactions.

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

Doradztwo Podatkowe WTS&SAJA Sp. z o.o.

Delta Building, 4th floor
ul. Towarowa 35
61-896 Poznań
tel. (+48) 61 643 45 50
fax. (+48) 61 643 45 51

Warsaw Office

CENTRAL Tower, 22nd floor
Al. Jerozolimskie 81
02-001 Warszawa

This Newsletter provides general information and is designed to keep you up-to-date with changes in tax law, tax rulings and interpretations, case law development and interesting commentaries.

Doradztwo Podatkowe WTS&SAJA shall not be held legally liable for any acts or omissions that follow from the contents hereof.