

DOUBTS WILL SERVE TAXPAYERS

We wish to draw your attention to a public tax ruling issued by Finance Minister ("FM") on 29 December 2015 (ref. **PK4.8022.44.2015**) to ensure uniform application by the tax authorities of the *in dubio pro tributario* principle, which says that doubts about the law should be interpreted in favour of the taxpayer. This rule, which has been in force as of 1 January 2016, was introduced to the Taxes Management Act (TMA) under amending legislation dated 5 August 2015.

In its ruling, FM explained that the new principle is applicable where, having duly construed a relevant tax regulation, the authority continues to harbour doubts about the interpretation of the regulation as it applies to a specific factual configuration presented by the taxpayer. In such a case, the authority must resolve its doubts in favour of the taxpayer, i.e. must adopt that construction of tax law which is more favourable for him. FM writes that *"a solution is favourable for the taxpayer when it is the optimum solution for him out of those which came to light during the statutory construction process. And which solution is more favourable for the taxpayer must be indicated by the taxpayer himself."*

However, FM restricted the applicability of the new rule to only those situations where tax authorities have doubts as to interpretation of law. It will not apply where doubts arise from an incomplete description of facts by the taxpayer. FM also explained that, although this is not explicitly stated in TMA, the *in dubio pro tributario* principle will be used not only in relation to taxpayers, but also to remitting agents, collectors, successors in title and other such third parties assuming somebody else's liabilities.

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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