

INSURANCE PROCEEDS ARE NOT ZONE BUSINESS INCOME

We wish to alert you to a judgement of the Supreme Administrative Court ("SAC") of 5 May 2016 (case no. II FSK 763/14), which deals with the taxation of insurance proceeds received by a company doing business in a special economic zone ("SEZ") for property damage caused by flood.

The case involved a company doing business in a SEZ, which insured its property against various perils. There was a flood and the company received indemnity from the insurer to cover its losses.

The company sought a private tax ruling on whether the insurance proceeds it received as compensation for its flood losses should be treated as zone income and as such exempt from CIT.

According to the company, as the insurance proceeds were associated with its SEZ business, they should be exempt from CIT.

The Finance Minister held in its ruling for the company that such approach is incorrect. The Minister's position was upheld on appeal by the Provincial Administrative Court in Wrocław ("PAC") and later also by SAC.

PAC agreed with the Finance Minister that income from any activities other than those for which the zone business franchise was issued is not subject to SEZ relief. In the case at hand, that income involved proceeds under a contract based on insurance protection extended by an insurance company. PAC made it clear that the regulations on tax exemptions may not be interpreted liberally or extensively. PAC's position was upheld by SAC, which dismissed company's appeal in cassation.

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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