

CHARGE-FREE SUPPLIES OF FUEL TO EMPLOYEES MUST BE RECORDED IN VAT CASH REGISTERS

We wish to alert you to an unfavourable judgement of the Provincial Administrative Court in Wrocław ("PAC") in case no. I SA/Wr 303/16, concerning the duty to make sure that charge-free supplies of fuel to employees for private rides using company cars are recorded by means of VAT cash registers.

The case involved a company which planned to offer company cars to its employees to be used for both company and private purposes. Fuel for the employees' private rides will generally be taken by the employees themselves. The Company will also permit them to use the company cars (and fuel) for their private purposes when they are on company business (e.g. to leave a child at school en route to work). In such cases, the Company will not charge the employees for the fuel because these situations will be rare and marginal and, at any rate, it will not be possible to determine which part of the fuel is used for private purposes and which for company purposes.

However, the Company was in doubt whether such use of company fuel for employees' personal purposes triggers the duty to make sure that the charge-free supplies of the fuel are recorded using a VAT cash register. The Company applied to the Finance Minister ("FM") for a tax ruling to confirm that the supplies need not be so recorded.

The FM stated (ruling ref. ILPP2/4512-1-734/15-4/MN) that, according to Article 7.2.1 VAT Act, where fuel that belongs to a taxable person is supplied to the person's employees for no consideration, this should for VAT purposes be treated as a supply of goods for a consideration (sale). What is more, by Article 4.1(m) of the FM regulation on exemptions from recordkeeping obligations involving VAT cash registers, sales (supplies) of fuel to employees must be recorded in VAT cash registers, starting with the first such transaction.

The Company disagreed with FM and appealed to PAC. However, PAC went along with FM and confirmed that sales of fuel to employees (where it is used for private purposes) must be recorded using VAT cash registers.

A written statement of reasons for PAC's decision is yet to be published.

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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