

PIT REMITTERS MAY RECLAIM OVERPAID TAX

The Supreme Administrative Court ("SAC") ruled on 24 June 2016 (case no. II FSK 1341/14) that, under the law in force in 2015 and before, a PIT remitter was entitled to apply for a refund of overpaid advance tax.

The case involved a company which seconded its workers abroad but continued to remit the personal income tax payments on those workers' salaries to Polish tax authorities. When a secondment period exceeded 183 days and the worker became liable to tax abroad, the company paid the foreign income tax for the entire time since the start of the secondment period and applied to the Polish tax authorities for a finding and refund of overpayment.

The authorities argued at that time that such applications can be filed solely by the workers who incurred the economic burden of the tax payments.

Ultimately, the matter reached SAC, which held differently. A written statement of reasons for the judgement has not been published yet. Verbally, the court reasoned that:

- under the law in force in 2015 and before, the employer as a PIT remitter was entitled to apply for a finding and refund of overpayment.
- the effectiveness of such an application was unaffected by the question of whether or not the remitter incurred the economic burden of the overpaid tax.

The Taxes Management Act provisions under which SAC ruled changed as of 1 January 2016. However, if a PIT remitter managed to apply before that date and its case is now pending, the discussed ruling offers a strong support for the remitter in its dispute with tax authorities.

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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