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TAX LEGAL CONSULTING

PROCEEDS RECOGNISED IN CIT-8 ADJUSTMENT DO NOT CONSTITUTE INCOME AT THE TIME WHEN THE FUNDS ARE RECEIVED

We wish to draw your attention to a case decided by the Provincial Administrative Court (PAC) in Warsaw on 14 April 2016 (case no. **III A/Wa 581/16)** on remand from the Supreme Administrative Court (SAC) after SAC allowed the cassation appeal filed against previous judgement of the PAC.

The case involved a company which sold its beneficial ownership of certain trademarks to a Swiss-based affiliate in 2005. The price was determined on the basis of an independent valuation and the proceeds of the sale were reported by the company in its CIT-8 return for 2005.

In 2010, the tax authorities (*UKS*) held an inspection of the company's taxes for 2005. The authorities questioned certain assumptions and inputs of the valuation and proposed a different approach, with the result that the trademark sale price was revised by over PLN 19 million. In June 2011, the company filed an adjustment to its 2015 CIT-8 form and paid the overdue tax with interest.

The Swiss-based affiliated wanted to make an additional payment to the company equal to the amount the company reported in its adjusted form CIT-8. The company asked the Finance Minister for a tax ruling to confirm that this additional payment would not qualify as an extra income that would be taxable on receipt of the funds. The company argued that this income had already been taxed when the company filed its adjusted CIT-8 for 2005.

The tax authority ruled that the company's argument was incorrect because the funds it received had not been part of the sale price originally agreed between the parties and, as such, were not income due. Therefore, the company would receive another economic benefit and the extra payment from the Swiss company must be treated as taxable income. The company petitioned for judicial review of that ruling, but the PAC upheld it (judgement of 25 April 2013, case no. III SA/Wa 2811/12).

The company filed a cassation appeal to the SAC, which heard it in December 2015 (case no. II FSK 2263/13). SAC rejected the lower court's approach; it reversed PAC's judgement in full and remanded the case for reconsideration. SAC held that the extra payment received by the company from its affiliate is a continuation of the original trademark sale and as such does not constitute a separate source of income. The extra payment had already been taxed when the company filed its adjusted CIT-8 return.

Interestingly, the tax inspectors critically reviewed the trademark valuation supporting the sale price and questioned some of its underlying economic assumptions and inputs.

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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