

AFTER-SALE SERVICE SUPPORT IS NOT PART OF COMPOSITE SUPPLY

We wish to draw your attention to the judgement of the Supreme Administrative Court ("SAC") dated 13 January 2015 in case no. **I FSK 1913/13**, where SAC focused on VAT treatment of a composite supply of equipment with related after-sale services.

The case involved a foreign company to which a Polish entity sold part of an access control system with installation and a three-year after-sale service support that included, among other things, on-going system maintenance, defect/fault removal, software reinstallation and quarterly reviews. The foreign company received an invoice with VAT, which itemised the particular elements of the overall supply and also stated a price of the after-sale support as a separate item. The foreign company was in doubt if it was entitled to deduct the tax from that invoice by reference to the entire composite supply (equipment plus service support).

SAC held that the after-sale service support is a supply separate from the supply of equipment itself. Therefore, the supply of equipment and the supply of after-sale services cannot be treated as one composite supply for VAT purposes. SAC reasoned that because the after-sale services will be provided after the supply of the system (when all the related risks will have passed to the foreign company), the link between these services and the principal supply is not sufficient to consider them an element of the composite supply. In consequence, SAC ruled that these services are not subject to Polish VAT as they would if they constituted a composite supply together with the supply of the equipment. In this way, SAC denied the foreign company a right to deduct VAT charged in the Polish entity's invoice to the extent the VAT refers to the supply of after-sale service support.

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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