

ECJ RULES ON REDUCED VAT RATE ON PHARMACEUTICAL PRODUCTS AND MEDICAL EQUIPMENT

We would like to alert you to the recent decision of the Court of Justice of the European Union („ECJ”) in Polish case number C-678/13 (decision dated 4 June 2015).

The case was commenced by an action brought by the European Commission against certain regulations of the Polish VAT Act which allow the application of a reduced rate of VAT to supplies of pharmaceutical products and medical equipment (items 81-87, 90-92, 97, 100 and 103-105 of Annex 3 to VAT Act). Commission claimed that the VAT Directive requires such products to be subject to the standard VAT rate.

ECJ held the Commission’s action had merit as regards only three out of the fifteen categories of goods, that is with respect to goods in items 82, 92 and 103 of Appendix 3 to VAT Act (these being organic sulphur compounds and other organic-non-organic compounds, hygienic or pharmaceutical products made of rubber other than ebonite, contact lenses, glass lenses for glasses and other materials). **ECJ held that Poland may not apply a reduced rate of VAT to those supplies unless the products are considered indicated in the VAT Directive. It is only to this extent that Poland must amend its VAT Act to conform to the VAT Directive, and hence must raise the VAT rate for those goods.**

Other than that, the action was dismissed, including in relation to medical devices. According to ECJ, the Commission did not make a sufficient showing how Polish VAT Act infringes VAT Directive here. Thus, ECJ did not require Poland to amend its VAT Act with respect to the other pharmaceutical products or medical equipment mentioned in Commission’s action.

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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