

FIXED ESTABLISHMENT EVEN IF OWN HUMAN OR TECHNICAL RESOURCES ARE NOT PRESENT

This is to inform you of a private tax ruling made by Director of Warsaw Tax Chamber on 23 June 2014 (ref. **IPPP3/443-215/14-4/LK**) and of Warsaw Provincial Administrative Court's ruling of 15 June 2015 (case no. **III SA/Wa 3332/14**). Both are in respect of the same case and address the conditions required under the VAT Act for the existence of a fixed establishment.

The case concerns a boat manufacturing company from Finland. The Company intends to sell boats made in Poland. To do that, it plans to contract boat production to a Polish contractor ("Polish manufacturer"). Production will use components owned by the Company and bought by it in Poland and abroad, and components that are owned by the Polish contract manufacturer. The Polish manufacturer will be providing staff and necessary boat-making equipment.

When ready, Company-owned boats will be stored by the Polish manufacturer in its own yard.

The Company will not have any permanent resources in Poland, such are buildings, plant and machinery or staff, and all of such resources will be owned by its Polish business contacts. The Company has no specific plans on how long the Polish operations will continue (this depends on such business factors as, for example, relationships with the Company's major business contacts).

All strategic decisions about manufacturing or sales will be made by the Company's Management Board and its authorised personnel in Finland.

Against this background, the Company requested the Finance Minister ("MF") to confirm it will not have a fixed establishment in Poland. However, the MF decided that **the Company will have a fixed establishment in Poland even if it did not have its own human and technical resources in Poland.**

The Company appealed to the Provincial Administrative Court ("PAC"). The PAC sided with the MF and held that for a fixed establishment under Article 44 VAT Directive to exist there is no need for engaging one's own technical and human resources and the use of resources of another entity is sufficient (PAC judgment is not final and definitive).

This is another in a line of similar rulings that have been made recently.

If this issue pertains to your business and you are interested in our assistance, please contact your WTS&SAJA consultant or our office.

Doradztwo Podatkowe WTS&SAJA Sp. z o.o.

Delta Building, 4th floor
ul. Towarowa 35
61-896 Poznań
tel. (+48) 61 643 45 50
fax. (+48) 61 643 45 51

Warsaw Office

CENTRAL Tower, 22nd floor
Al. Jerozolimskie 81
02-001 Warszawa

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