

NO WITHHOLDING TAX ON TICKETS PURCHASED FROM TRAVEL AGENCY

We wish to alert you to a taxpayer-friendly judgement of the Provincial Administrative Court in Rzeszów (PAC) dated 28 January 2016 (case no. **I SA/Rz 1162/15**). According to the court, a company which pays Polish-based agents for foreign air tickets does not have to withhold tax at source on those purchases.

The case involved a company whose international air tickets for business travel purposes are purchased from Polish-based agents. Some of the agents' ticket invoices carry a note to the effect that the agent acts as such in the name and on behalf of foreign carrier(s). So the company requested the Finance Minister ("FM") to confirm that the company is not required to withhold or remit income tax at source on the monies it pays to Polish agents for such tickets.

FM did not confirm the company's position and held that what the company pays is remuneration under Article 21.1.4 CIT Act, so it must withhold the tax at source on those payments.

The matter was brought before PAC, which held for the company. The court noted that the company's payment is not remuneration under Article 21.1.4 CIT Act, it is merely a payment made in connection with such remuneration. Direct payments to the foreign carriers are made by the agent and it is the agent, being a professional intermediary which has lasting relationships with foreign carriers, that should act as a withholding tax remitter for Polish CIT purposes.

Please note that, despite that taxpayer-friendly judgement from PAC, FM continues to issue private tax rulings where he consistently claims that the purchase of a foreign air ticket (issued by a carrier that does not have its registered office or branch in Poland) from a Polish agent means having to withhold tax at source on the monies paid to the agent.

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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