

TAX AUTHORITY EMPOWERED TO CONFIRM IF PKWiU CLASSIFICATION PROPERLY APPLIED

We wish to alert you to a case before the Provincial Administrative Court ("PAC") in Kraków (case no. I SA/Kr 71/17, judgment of 11 April 2017), where it was held that it is the Director of National Revenue Information (formerly: the Minister for Finance, "Authority") and not statistical authorities that should, by a private tax ruling, determine the particular PKWiU class that is appropriate for the applicant's goods.

PAC stated that statistical classifications are part of the legal rule that determines the application of VAT and, as such, they are subject to construal by the Authority by means of the tax ruling process. According to PAC, if there is a specific law that refers to a specific statistical classification as a test for a particular application of VAT, then the Authority may not choose not to confirm if the applicant's statistical classification (such as PKWiU) of its goods or services is appropriate. However, such a ruling may only be obtained from the Authority if the applicant ensures that its application specifically describes the product features that are relevant for its appropriate PKWiU classification.

While the past case law on this issue was inconsistent, recent court decisions give hope that the taxpayer-friendly approach may solidify itself. Thanks to PAC's April judgment, the way to obtaining an official confirmation of individual PKWiU classifications is now open particularly to businesses in the construction industry who, in the wake of introducing the reverse charge mechanism, have been facing increasing doubts as to the correct classification of their services.

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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