

THE PROBLEMATIC DEFINITION OF INDUSTRIAL EQUIPMENT

On 15 November 2017, the Director of National Revenue Information ("Authority") issued a private tax ruling in relation to a case of withholding tax on rental of industrial equipment (ref. 0111-KDIB1-1.4011.173.2017.3.BK).

The ruling was issued for a company which is engaged in the construction business in Germany. Various items of property, including building waste containers, forklifts, cranes, scaffolding, vehicles (collectively, "Property"), are rented by the company from local businesses.

The company inquired in its application if the Property is "industrial equipment" (*urządzenia przemysłowe*) for the purposes of Article 29(1)(1) PIT Act, and as such subject to royalties withholding tax. The PIT Act does not define "industrial equipment". The company thus relied on dictionary definitions of *urządzenie* (equipment) and *przemysłowy* (industrial) to argue that the Property is not industrial equipment because it is not engaged in industrial production.

The Authority held that:

- the company's use of the dictionary definitions was uncritically slavish and leads to a conclusion that the same equipment will receive different tax treatments depending on the kind of business the taxpayer is engaged in;
- the term "industrial equipment" should be understood broadly to include such property as transportation or construction equipment;
- the company is required to withhold income tax at source on its rental payments to the foreign parties.

It is critical for Polish companies doing business abroad to determine if a piece of equipment is "industrial equipment" for the purposes of Polish tax law. A wrong determination may lead to arrears of Polish tax due to failure to withhold tax at source. For that reason, the matter should be approached on a case-by-case basis.

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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