

**ASSEMBLY OF A PRODUCTION LINE IS NOT A SERVICE CONNECTED  
WITH IMMOVABLE PROPERTY**

We wish to draw your attention to a judgement of the Supreme Administrative Court ("SAC") dated 21 April 2015 (case no. I FSK 131/14), related to the place of taxation under VAT Act of a service involving the assembly of control equipment and wiring for a production line.

The case involved a Polish taxable person ("Company") which supplied and assembled control equipment and wiring for certain machines which made up a production line. This service was provided in Poland to a customer who is a German taxable person that does not have a fixed establishment in Poland.

The Company was in dispute with Finance Minister ("MF") before SAC as to whether the services are connected with immovable property for the purposes of Article 28e VAT Act.

According to the Company, the services are not connected with immovable property and as such are taxable under Article 28b.1 VAT Act, which says that services supplied to a taxable person shall be deemed to be taxable in the country in which that person is established (in this case it was Germany). MF claimed the services are connected with immovable property and as such should be taxed in the country in which the property is located (which is Poland, see Article 28e VAT Act). According to MF, the services are connected with immovable property because the process line for which the control equipment and wiring was assembled is affixed directly to the floor of the property.

SAC agreed with the Company and held that its services are not connected with immovable property. In SAC's view, for a supply of services to be connected with a specific immovable property, that property must be a constituent element of the supply, in that it constitutes a central and essential element thereof. That was not true in the case at hand because the process line that was a constituent element of the supply of services is not immovable property. Its connection with immovable property lies merely in the fact that it must be assembled in a building/room to be properly operational but the machines may be disassembled and moved to some other place without prejudicing their functionality.

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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