

CARS LEASED TO EMPLOYEES ENJOY FULL VAT DEDUCTION

We wish to alert you to a taxpayer-friendly judgement of Provincial Administrative Court ("PAC") in Poznań dated 16 July 2015 (case no. I SA/Po 1203/14) in relation to VAT charged in connection with expenses on passenger cars.

The case involved a company whose employees use company cars. The company wished to apply the full VAT refund for expenses incurred to purchase and operate the cars. To this end, it entered into specific contracts with its employees which required them to maintain car mileage logs. Moreover, company's cars can be rented, including to its employees, on arm's length terms according to relevant company policy.

The company requested the Finance Minister ("MF") to confirm that, under the facts, the company may deduct all the VAT charged to it in connection with those cars. The company argued that the fact that a car is rented to an employee on arm's length terms does not change the fact that the company uses the car solely for its business purposes.

MF ruled that the company was wrong. MF claimed that renting cars on arm's length terms is admittedly a business activity but, in this particular case, it is not a core business of the company. Therefore, according to MF, the company's passenger cars cannot be held to be used solely for its business purposes and, as such, cannot enjoy full VAT deduction.

The company applied to PAC for judicial review. PAC reversed MF's ruling, saying that the business use requirement means that full VAT deduction for car purchase or operating expenses is available if the way the car is used by the given person, especially as this way appears from formal policies adopted by the person, prevents use of the car for any non-business purposes.

In this way, PAC confirmed that full VAT deduction is available in connection with company cars even if the cars are rented to employees for their private purposes in return for a charge, provided that the charge is at arm's length and the company has a relevant car policy in place.

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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