

TAXABLE PERSON MUST FIND OUT ABOUT HIS TRANSACTION

We wish to draw your attention to recent case law of administrative courts, according to which taxable persons are under an absolute duty to analyse the course of their transactions, including especially those supplies which meet the definition of chain supplies (see, e.g., judgement of Supreme Administrative Court in case I FSK 188/14 on 5 March 2015, judgement of Białystok Provincial Administrative Court in case no. I SA/Bk 310/15 on 30 September 2015).

According to the above courts, in relation to a transaction between two parties, if there are additional accompanying documents which suggest that there is at least one other party involved, the taxable person must find out the precise details of the transaction between all the parties involved. The additional documents meant can include, for example, goods receipt notes, Polish or foreign transport documents, destination documents, etc. Such documents may indicate that the person takes part in what for VAT purposes should in fact be treated as a chain supply. After such an analysis, it may turn out that, instead of making an intra-Community supply or an export supply (zero rate) as he assumed, the person has actually made a domestic supply which is taxed in Poland.

The case law requires a taxable person to make every effort to find out in detail about the course of the entire supply. The person should then establish whether it was a chain supply and whether his part of the supply is a domestic supply, an intra-Community supply or an export supply.

If the person knew or could have known that there were more parties involved in the supply but failed to precisely establish the course of the transaction, he will not be immune to VAT arrears claims even if he has formal proof of the goods having been moved out of Poland (e.g. CMR or IE599 export documents).

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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