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Bad debt relief also two years after the invoice is issued

Tax Alert

Dear Readers,

According to the latest judgment of the Regional Administrative Court in Gliwice on bad debts relief, taxpayers may adjust the tax due (in reference to unrecoverable debts) even when two years have passed from the end of the year in which the invoice was issued.

The Regional Administrative Court in Gliwice, in the judgment dated 23 March 2017, file ref. No. III SA/GI 1411/16 (invalid ruling), stated that Polish legal regulations governing so-called "bad debts relief" are incompatible with the provisions of Directive 2006/112/EC (on the common system of value added tax). The court referred to the previous judgements of the Court of Justice of the European Union (case C-337/13 and C-588/10), and to the judgment of the Regional Administrative Court in Wrocław of 22 April 2015, file ref. No. I SA/Wr 2484/14 (legally valid ruling).

Based on Article 89a of the Act on tax on goods and services (hereinafter: ATGS), the taxpayer may claim a refund of the tax due from invoices for which payment has not been received if the taxpayer has fulfilled the conditions specified in the Act. According to Article 89a Section 2 Item 5 of the ATGS, the taxpayer may correct the settlement when less than two years have passed from the end of the year in which the invoice was issued.

The conditions for lowering the taxable amount in the event of not receiving the total or partial payment should fall within the limits stipulated in Article 90 Section 1 in relation to Article 273 of Directive 2006/112/EC. According to those regulations, Member States implementing the "bad debt relief" may impose obligations they deem necessary to ensure the proper collection of VAT and prevent tax evasion.

In the opinion of the court, the two-year limitation of the right to use "bad debt relief" is in breach of EU regulations. The shortened period for correcting the settlement does not support either proper VAT collection or tax evasion prevention. On the contrary, it is associated with excessive formalism and violates the principle of neutrality.

In the judicature, a different opinion can be found as well, according to which Article 90 of Directive 2006/112/EC grants Member States a margin of discretion, in particular as regards to the conditions which taxpayers must comply with in relation to the tax authorities of those states in order to reduce the taxable amount accordingly in the event of the non-payment of VAT by the taxpayer (for example: the judgment of the Regional Administrative Court in Warsaw of 14 September 2016, file ref. No. III SA/Wa 2118/15 – a legally binding ruling).

Undoubtedly, the judgment of the Regional Administrative Court in Gliwice extends the scope of "bad debts relief" to include the oldest unpaid receivables. At the same time, taking into account the pro-fiscal approach of tax authorities and the inconsistent jurisprudence of administrative courts, there is a high risk of questioning the right to the relief. As practice shows, tax recovery will involve litigation, and the final interpretation of legislation will be only clarified in the future rulings of the Supreme Administrative Court.

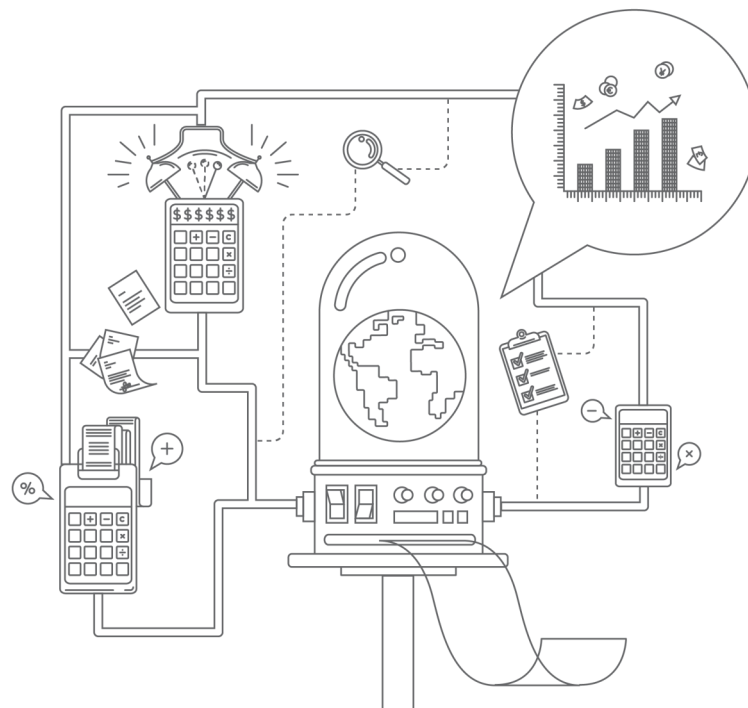
It is worth emphasizing, however, that the administrative courts increasingly often interpret the VAT legislation in the perspective of the purpose of its implementation and taking into account the principle of the tax neutrality.

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Should you wish to discuss the above mentioned amendments in detail, feel free to contact us:

Tomasz BEGER

Tax Partner

Tax advisor (10197)

E: tomasz.beger@rsmpland.pl

M: + 48 606 118 277

RSM Poland

Droga Dębińska 3b

61-555 Poznań, Poland

www.rsmpland.pl

office@rsmpland.pl

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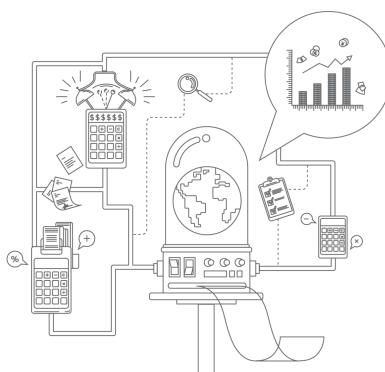
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