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Recovery of unduly paid VAT on receipts

Tax Alert

Dear Readers,

A taxpayer, using inflated VAT rates when selling services to consumers, which has been documented by a receipt, may revise the VAT amount – this arises from the judgment of the Provincial Administrative Court in Łódź of 12 July 2017, file ref. No. I SA/Łd 444/17.

The case concerned a company which carries out business activities in the form of a comprehensive amusement park, including a playground, a rope park and many other entertainment options for children. The biggest attraction of this park is reconstructions of dinosaurs and other extinct animals. To enter the amusement park, a fee was charged. At the beginning, the company used to charge a fee for the entrance ticket applying the 23% VAT rate. Due to a positive tax interpretation, which suggested that the company is allowed to apply a reduced VAT rate of 8%, the company decided to correct and recover the tax overpaid in the previous years.

The right to adjust the VAT amount based on the cash register receipts issued to customers became the basis for a dispute with the tax authorities. According to the Tax Chamber, in such a situation the company should identify the amusement park clients and return them the difference in the VAT amount for the purchased services. Obviously, it was not practically possible.

The Director of the Tax Chamber in Łódź raised the above-mentioned argument, as well as claimed that the consumers had borne the burden of the VAT, so the VAT for the company was neutral. According to the tax authority, such a tax return would lead to the unjust enrichment of the company.

However, the Provincial Administrative Court in Łódź did not agree with the opinion of the tax authority. According to the PAC, in the provisions of the VAT Act and its related regulations, there are no rules stipulated that would govern the method of documentation and the date of the sale adjustments using the cash register if the VAT rate has been overvalued.

According to the PAC, cases of product returns, recognized complaints and obvious mistakes listed in the Regulation of the Minister of Finance on cash registers do not cover all events that may constitute a reason for the adjustment. The court stated that **this does not mean, however, that the correction in other situations should not take place. The possibility and even the necessity of making the correction arises directly from the provisions of the VAT Act defining the tax base and the level of tax.** Nevertheless, since the construction of the cash register does not offer technical possibilities to correct the information stored in its memory, such correction requires a different method of documentation. Therefore, it may be sufficient to keep separate records and have evidence of the cause and amount of the adjustment. In turn, the lack of an original receipt issued to the purchaser does not preclude the adjustment.

In the opinion of the court, it may be sufficient for taxpayers to keep separate records and have evidence of the cause and amount of the adjustment to adjust the VAT amount.

Although the ruling of the PAC is favourable to taxpayers, the argumentative power of its justification is poor. The arguments are not based on tax regulations directly. In addition, the judgement of the PAC does not refer directly to the arguments of the tax authority and sometimes leads to the expanded conclusions on the interpretation of the tax laws.

Most probably, in this case, the tax authorities have not laid down their arms yet, and the judgment will be appealed to the Supreme Administrative Court. Therefore, taxpayers will have to wait for the final decision on the issue. Meanwhile, it is uncertain whether the favourable judgment for taxpayers of the PAC in Łódź will convince other provincial administrative courts to issue the same judgements in similar cases before the final decision of the Supreme Administrative Court is made.

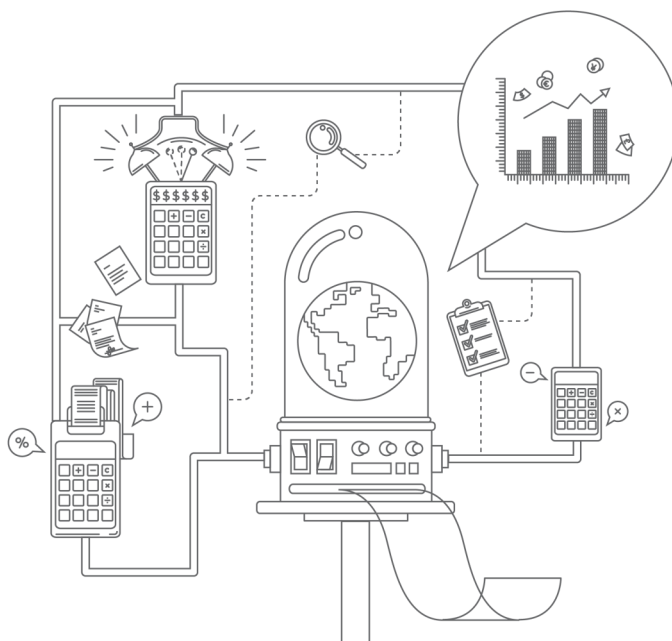
However, let's hope that this judgment will be the initiation of a series of favourable decisions of administrative courts towards taxpayers.

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

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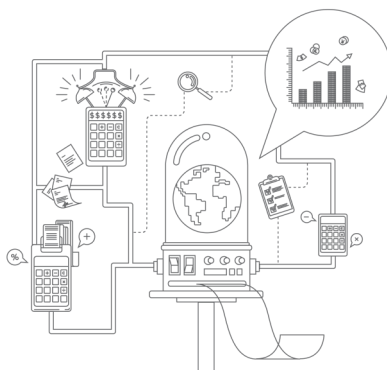
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