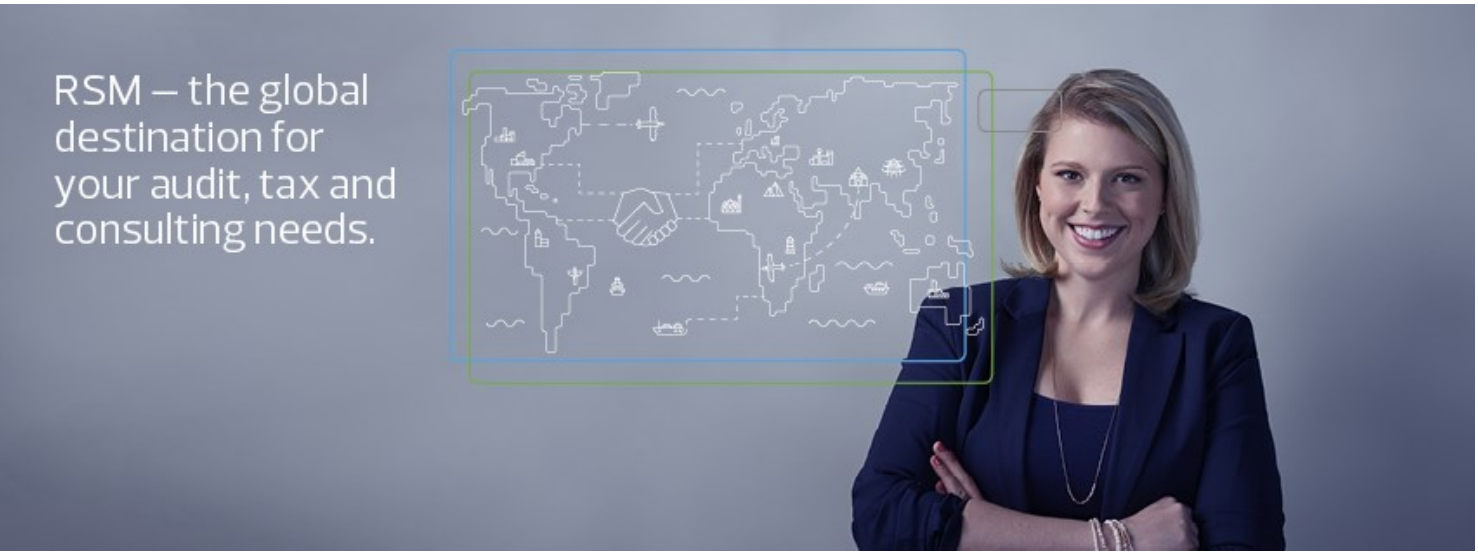

Reprographic fees without VAT

Tax Alert

Dear Readers,

Recently, there has been an important judgement concerning the taxation of fees charged by organisations for the collective management of copyright or related rights. According to the Court of Justice, the payments constitute compensation, not a service, therefore, they are not subject to VAT.

The judgement of CJEU of 17 January 2017, **file No. C-37/16** is the first ruling of this institution in the field of taxation of the so-called reprographic fees. A party to the dispute − the Polish Musical Performing Artists' Society (SAWP) is one of the many organisations established for the management and protection of copyrights entrusted to them.

Copyright law in Poland allows for the reproduction of works for personal use without permission subject to compensation on this account. Fees are collected on behalf of artists, performers and writers by institutions such as SAWP, also known as organisations for the collective management of copyright and related rights (hereinafter: OCM). These entities charge fees on behalf of artists, performers and writers from manufacturers and importers on account of sales of reprographic equipment, e.g. photocopiers, tape recorders, which after deduction of remuneration for their services, provide the remaining amount to the people they represent. The amount charged is a form of compensation for damage incurred as a result of copying works without their consent. Copyright law regulates the detailed rules for charging the fees, indicating the entities obliged to pay and determining the amount of the fees.

The present dispute concerned the validity of VAT on reprographic fees collected by the institution. To answer this question, SAWP applied for an individual interpretation. According to SAWP, this transaction should not be subject to VAT, but the tax authorities thought otherwise. According to SAWP, the association was obliged to increase the fees by the amount of tax. Ultimately the issue was examined by the Court of Justice (the CJEU) and the dispute came down to the question whether the collection of fees by SAWP from manufacturers and importers of reprographic equipment on behalf of artists is the provision of services by performers, artists, etc. to producers and importers of equipment.

To answer this question, the CJEU examined the conditions to be fulfilled by taxable services. The court found that in this case there was no legal relationship between artists and performers and producers, and importers of equipment. In addition, the Court took into account the mandatory nature of the fee under national law. According to the Court, in the case of mandatory fees we cannot talk about the provision of services between the parties. Another argument was the nature of the transaction. The payment at issue is compensation for artists in exchange for any damage arising from copying their works without their consent. This meant that the Court upheld the position of SAWP and did not consider the fee as remuneration for the provision of services.

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The ruling of the CJEU may be useful in assessing the tax consequences for fees charged by other organisations managing copyrights. This decision will be crucial for other institutions in Poland with a similar profile, but also for those operating in other EU countries, as many of them apply similar regulations.

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

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