

Revolutionary judgment of the European Court of Justice regarding Polish regulations imposing restrictions on input VAT deduction with regard to fuel for cars

Consequences of the judgment for taxpayers

On 22 December 2008, the European Court of Justice (ECJ) issued a judgment in case C-414/07 Magoora Sp. z o.o. versus the Director of the Tax Chamber in Cracow, in which it declared that Polish VAT law regulating the right to deduct input VAT incurred with regard to the purchase of fuel for motor cars, in force since 1 May 2004, breaches the provisions of the Sixth Council Directive.

It should be noted that Polish domestic law regarding tax deduction of VAT on fuel for passenger cars has been modified twice since the accession of Poland to the EU (starting from the introduction of the new VAT Act of 11 March 2004, through to the amendment adopted in April 2005). The regulations in question were formulated as follows:

- by 30 April 2004, the taxpayer was entitled to deduct input VAT on:
 - vehicles other than passenger cars with an authorized carrying capacity exceeding 500 kg (so called "cars with grids"),
 - fuel purchased to power the abovementioned vehicles;

- from 1 May 2004 to 21 August 2005, the taxpayer had the right to deduct input VAT incurred with regard to:
 - vehicles compliant with the so-called *Lisak formula*,
 - fuel purchased for vehicles meeting the requirements of the *Lisak formula*;
- since 22 August 2005 input VAT deduction was possible:
 - with reference to vehicles which meet the technical parameters stipulated in the VAT Act and motor vehicles with a total authorized weight exceeding 3.5 tonnes
 - fuel acquired to power the abovementioned vehicles.

According to the ECJ, the provisions of Article 17 section 6 of the Sixth Council Directive do not allow Member Countries, upon their accession to the EU and implementation of the Directive into national law, to introduce more restrictive exceptions concerning the deductibility of input VAT (except for specific cases listed in the Directive).

Additionally, the ECJ explicitly determined that, also subsequently, Member States cannot amend the provisions of its national law in force since EU accession in a way that would extend the scope of restrictions concerning the deduction of input tax.

In our opinion, the above judgment means that at least:

- taxpayers are entitled to deduct input VAT incurred on fuel acquired to power so-called *cars with grids*, on purchase of the abovementioned vehicles and on lease payments relating to the use of these vehicles, as well as
- they have right to deduct input VAT borne in relation to acquisition of fuel to vehicles compliant with so-called *Lisak formula* and VAT on purchase of motor vehicles that meet the requirements of *Lisak formula* and on lease payments made for the use of the above vehicles.

In order to take advantage of the deduction of input VAT, the taxpayer should submit to the tax office an application for confirming an overpayment together with the correction of the VAT return.

Additionally, please note that since the deadline for correction of VAT returns relating 2004 has already expired, the deduction may be applied only to VAT incurred after 1 January 2005.

Our assistance

In view of the abovementioned judgment, we are pleased to offer you the following services, which would enable you to benefit from the right to deduct input VAT relating to acquisition of *cars with grids* as well as the vehicles that fulfill the requirements of *Lisak formula*:

- assistance in preparation and submission of the corrections of VAT returns together with the necessary explanations,
- preparation of applications for confirmation of overpayment,
- contacts with the tax authorities.

If you are interested in more detailed information concerning the issues presented above please do not hesitate to contact us.

Contact details

Tomasz Grunwald

Partner

Tel.: + 48 (22) 528 11 78

Fax: + 48 (22) 528 11 59

tgrunwald@kpmg.pl

Andrzej Bernatek

Partner

Tel.: + 48 (22) 528 11 96

Fax: + 48 (22) 528 11 59

abernatek@kpmg.pl

Tomasz Beldyga

Director

Tel.: + 48 (22) 528 11 98

Fax: + 48 (22) 528 11 59

tbeldyga@kpmg.pl

Piotr Żurowski

Director

Tel.: + 48 (22) 528 10 13

Fax: + 48 (22) 528 11 59

pzurowski@kpmg.pl

KPMG Offices

Warsaw Office

ul. Chłodna 51

00-867 Warszawa

Tel.: +48 (22) 528 11 65-71

Fax: +48 (22) 528 11 59

tax@kpmg.pl

Cracow Office

al. Armii Krajowej 18

30-150 Kraków

Tel.: +48 (12) 424 94 00

Fax: +48 (12) 424 94 01

tax.krakow@kpmg.pl

Poznan Office

ul. Roosevelta 18

60-829 Poznań

Tel.: +48 (61) 845 46 00

Fax: +48 (61) 845 46 01

tax.poznan@kpmg.pl

Wroclaw Office

ul. Bema 2

50-265 Wrocław

Tel.: +48 (71) 370 49 00

Fax: +48 (71) 370 49 01

tax.wroclaw@kpmg.pl

Gdansk Office

ul. Piwna 28-31

80-831 Gdańsk

Tel.: +48 (58) 321 96 00

Fax: +48 (58) 321 96 01

tax.gdansk@kpmg.pl

Katowice Office

ul. Powstańców 43

40-024 Katowice

Tel.: +48 (32) 200 65 05

Fax: +48 (32) 200 65 10

tax.katowice@kpmg.pl

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