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## ***Provincial Administrative Court confirms that tax ruling should secure a right to the refund of input VAT***

19 April 2018

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### ***In brief***

In its verdict of 18 April 2018 Provincial Administrative Court in Warsaw **once again** confirmed **that the protective power of tax ruling issued for the taxpayer should protect not only against the actual payment of tax, but may also secure a right to refund of input VAT**. The case concerned denial of the input VAT refund on acquisition of shopping malls (structured as an asset deal on a piecemeal basis).

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### ***Details***

In the judgment of 18 April 2018 (no. III SA/Wa 2329/17) the Provincial Administrative Court in Warsaw repealed the decisions of the tax authorities denying input VAT recovery on the real estate transaction. The main aspects of the case included the protective power of the tax ruling in the light of a non-harm rule and the criteria for classifying a transaction as an enterprise deal.

The case in question concerned acquisition of a number of shopping malls structured as an asset deal on a piecemeal basis. Classification of the object of the transaction as sale of assets on a piecemeal basis and the recoverability of input VAT by the buyer was confirmed in advance with a tax ruling of the Polish tax authorities.

Post transaction, the tax authorities denied the input VAT refund, claiming that the transaction should be classified as an acquisition of a going concern and – as such – should not be subject to VAT. Moreover, the tax authorities claimed that the non-harm rule, which stems from Polish Tax Ordinance, protects the taxpayer acting in accordance with the obtained tax ruling only against the payment of tax (including penalty interest) and the fiscal penal liability, but does not secure the right to input VAT recovery.

The reasoning presented in today's verdict once again overturned the opinion expressed by the tax authorities. The court claimed that the non-harm rule contained in Polish law should not exclude the right to input VAT recovery. In fact, the scope of a tax ruling should include other liabilities treated

equally to tax arrears, e.g. tax refunds and tax overpayment.

Due to procedural aspects of the case, the court did not examine whether the transaction should be classified as an enterprise deal.

### ***Our view***

In the discussed verdict, Provincial Administrative Court in Warsaw again acknowledged the protecting power of the tax ruling should be interpreted broadly. The same reasoning was also presented by the court in the precedent case conducted by PwC, in a verdict of 20 February 2018 (no. III SA/Wa 1896/17)

Though binding only on the parties subject to the proceedings, the verdict explicitly shows that an unanimous standpoint is being formed in the jurisprudence.

## Let's talk

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