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PODATKOWE

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Bad debt relief in VAT after the judgment of the Court of Justice of the European Union

On October 15th, 2020 the Court of Justice of the European Union ruled in the case C 335/19 (E. sp. z o.o. sp. k.) that Polish provisions considering the so-called "Bad debt relief" (art. 89a of the Polish VAT Act) impose unlawful requirements on taxpayers in order to recover VAT from unpaid (in whole or in part) receivables. As a consequence, the requirements introduced by the Polish legislator stating that:

- i. on the day of delivery of goods or provision of services and on the day preceding that on which the adjusted tax return seeking that reduction is filed, the debtor is registered as a taxable person for the purposes of VAT and is not the subject of insolvency or winding-up proceedings,
- ii. on the day preceding the date of filing of the adjusted tax return, the creditor is itself still registered as a taxable person for the purposes of VAT,

should be considered unacceptable.

Thus, in order to be eligible for the right of VAT reduction, it is sufficient to prove that the debt has not been settled or assigned in any form whatsoever within 90 days of the expiry of the period for payment indicated in the contract or on the invoice (by the end of 2018 this period was 150 days). In our opinion, it also follows from the judgment that the condition according to which the debtor is not in the process of restructuring shall also be considered as inconsistent with the proportionality principle and therefore does not have to be fulfilled by taxpayers.

Thus, taxpayers who have not applied for the bad debt relief so far:

- i. in the field of transactions with other taxpayers (**B2B relations**), due to the lack of fulfillment of the formal conditions, in particular those whose contractors were subject to insolvency or liquidation proceedings, now can:
 - a. submit corrections of tax returns together with an application for the reimbursement of overpayment for periods in which they were entitled to reduction of VAT amount – with regard to periods for which no decision in which the amount of tax obligation is determined, was issued;
 - b. apply for a refund of the VAT amounts by resuming tax proceedings - with regard to periods for which the final decisions in which the amount of tax obligation is determined were issued.
- ii. in the field of transactions with consumers (**B2C relations**) who have not paid their debts, they can also request for a VAT refund. In our opinion, the Court's judgment entitles to VAT recovery in the case of sales to consumers (natural persons).



As a consequence, it is reasonable for taxpayers to review their outstanding receivables for which the VAT amount has not been recovered for the last 5 years (the deadline for the adjustments of VAT settlements for the period from December 2014 to November 2015 expires at the end of 2020).

MDDP advisers offer their support in the preparation of applications and recovery of VAT amounts with regards bad debt relief provisions.

If you are interested in obtaining further information, or would like to discuss the impact of the above on your business activity please contact:

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