



AG: loan sub-participation not subject to VAT exemption

The rules on charging VAT on risk participation arrangements generate controversy. The key issue is whether such services should benefit from VAT exemption (as financing) or should they be charged with output VAT at a standard 23% rate. The Polish Supreme Administrative Court referred the question to the CJEU for a preliminary ruling.

The Advocate General in its opinion of May 12, 2022 (case no. C-250/21) stated that services provided under the sub-participation agreement are something different than granting, negotiation and management of credit. As a result, sub-participation cannot benefit from VAT exemption.

If the CJEU follows the AG's opinion (which is very likely), then Polish VAT payers may face a material tax risk. Polish grantors (service recipients responsible for self-charging VAT using the reverse charge mechanism / imports of services) and Polish service providers (participants) may be liable for output VAT for the last 5 years. We recommend analyzing risk participation agreements.

First post-VAT grouping tax ruling on VAT on transactions between a branch and its headquarters

From July 2022 (though it will be probably postponed until January 2023) Poland introduces VAT grouping rules. The amendments are set to apply also to situations involving a branch — they stipulate that when a branch or the head office is part of a VAT group, all transactions between them will be considered for VAT purposes and cannot be disregarded. So far, Polish tax authorities seem not to have followed the judgment of CJEU in the Danske Bank case (C-812/19). The Polish Director of the National Tax Information has issued specific tax rulings presenting the view that a Polish branch should not recognise any import of services purchased from the headquarters (even if the headquarters are part of a VAT group).

However, this has changed once the law on VAT grouping was enacted (though it is not yet effective). The Director of the National Tax Information in the ruling of May 10, 2022 (no. 0114-KDIP1-2.4012.546.2021.1.RD) stated that:

- transactions between a branch and the head office being part of a VAT group – are subject to VAT as if provided between separate taxable persons,
- transactions between a branch and other branches of the head office (those other branches not being a member of any VAT group) – are still outside the scope of VAT.

The VAT ruling may impact the VAT charged on Polish branches of financial institutions. We recommend analysing the impact of the change on your business.



State of COVID-19 epidemic replaced with a state of epidemic threat: impact on tax matters

On May 16, 2022, the Polish government lifted the state of epidemic, which had been in force for two years, and announced its milder form — a state of epidemic threat. This change impacts some tax issues, i.a.:

- from June 2022, Polish taxpayers are again obliged to declare the so-called minimum income tax on commercial real estate,
- from June 2022, tax relief for some COVID-19 donations will be cancelled.

Other tax matters (e.g. suspension of MDR / DAC6 reporting of domestic taxable arrangements, transfer pricing and tax residency certificate simplification measures) should be unaffected as long as the state of epidemic threat is in place.



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