I SA / Wr 397/18 - Judgment of the Provincial Administrative Court in Wrocław

Date of judgment	2019-01-28 *the judgment is not final*
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Court	Provincial Administrative Court in Wrocław
referees	Dagmara Dominik-Ogińska Jadwiga Danuta Mróz Katarzyna Radom / chairman rapporteur /
Symbol with description	6110 Tax on goods and services
Thematic entries	Tax on goods and services
The complained body	Director of the Tax Administration Chamber
Content of the result	* The contested decision was annulled
Regulations cited	OJ 2011 No. 177 item 1054 art. 106 e paragraph 14 point 18 *Act of 11 March 2004 on tax on goods and services - consolidated text*

SENTENCE

The Provincial Administrative Court in Wrocław, composed of: Chairman WSA judge Katarzyna Radom (rapporteur) Judges WSA judge Dagmara Dominik - Ogińska WSA judge Jadwiga Danuta Mróz Protocol clerk: Senior assistant judge Katarzyna Gierczak after diagnosis in Department I at the hearing on January 7, 2019. and on January 28, 2019, cases from the complaint of "A" Sp. z o. o. in W. on the decision of the Director of the Tax Administration Chamber in W. of [...] 2018 No. [...] regarding the determination of the amount of the excess of input tax over the amount due in VAT to the bank account for April 2015: I. Annuls the contested decision, II. He awards the Director of the Tax Administration Chamber in W. the amount of PLN 15.770 (fifteen thousand seven hundred and seventy zlotys) by way of reimbursement of court costs.

SUBSTANTIATION

By the contested decision, the Director of the Tax Administration Chamber in W. (DIAS) upheld the decision of the Director of the Treasury Control Office in L. (DUKS) of [...] 2016 determining "A" sp. excess of input tax on goods and services over the one due to be refunded for April 2015.

As was apparent from the case file, during the reference period in question, the applicant was engaged in the organization of transport services for entities established outside the country in the European Union, ie "B" LTD (United Kingdom) and "C" sro (Czech Republic) . In this respect, it issued invoices in accordance with art. 106e paragraph 1 point 18 of the Act of 11 March 2004 on tax on goods and services (Journal of Laws of 2011 No. 177, item 1054 as amended, hereinafter the Act on VAT) without the tax indicated (using reverse charge). The findings made in the course of the tax proceedings conducted against the party showed that the actual place of business of the abovementioned foreign entities and the place of their seat was Poland,

These tax authorities drew conclusions, among others from documentation obtained from the British and Czech tax administration. With regard to company "B" (hereinafter also the British company), the tax authority relied on the information sent by the British tax administration. It resulted from the fact that despite formal registration in the United Kingdom, there were no signs of business activity at the place of notification. It is a place of residence used by Polish companies registered for VAT purposes. There are no major management decisions made and there are no board meetings. AJ - the company's director is a Polish citizen, he permanently lives and stays in Poland. Strategic management decisions are made in Poland, registers are stored here, payment for services is made from an account in Poland. In the opinion of the British services, "B" is a Polish taxpayer registered in the United Kingdom, declares "reverse charge" in relation to the purchase of transport charges incurred in Poland. Taxes due are not paid in the United Kingdom. Invoices with the indicated fuel and "reverse charge" information are again sent to S. to companies run by Polish citizens, while payments are made to an account in Poland, while Slovak companies use Polish account numbers. Considering that "B" was operating in Poland, the service had to be taxed at a rate of 23%, calculated by the method in a

hundred on the amounts indicated on the invoices. At the same time, the tax authority did not deny the applicant's purchase of transport services from the entities it used to carry out orders for "B".

Similar arrangements concerned the company "C" sro, which was registered in the Czech Republic. The findings of the Czech tax administration sent at the request of the tax authorities showed that the company had no business at the registered office of this company. There was a virtual office authorized to receive the company's correspondence, this correspondence was sent to GDJ - the owner of the company (single board). He is a Polish citizen residing in G .. The Czech company did not convene any meetings, does not employ employees, no decisions regarding the general management of the company are made in the place notified for business operations, this is not the place of board meetings. The company settled accounts with the party through a domestic account. According to information from the Czech tax authorities, that the Czech company did not tax the acquired services and did not submit a tax declaration in this respect. Consequently, the tax authority considered that the place of performance of services rendered to the Czech company was Poland, which required the determination of tax as for domestic sales.

The records kept by the party were found to be unreliable in some of the irregularities described.

When examining the case in the appeal proceedings, DIAS upheld the findings and conclusions of the first instance, stating that the place of providing services to both of the abovementioned companies were located in Poland. Service purchasers were only formally registered in other countries, while the applicant organized services in the country with the participation of domestic carriers for entities whose place of business was Poland. Justifying this view, the appeal body pointed to Art. 28b paragraph 1 and item 2 of the VAT Act and art. 10 and art. 11 of the EU Council Implementing Regulation No. 282/2011 of 15 March 2011 establishing implementing measures to Directive 2006/112 / EC on the common value added tax (Official Journal of the EU No. L 77/1, hereinafter EU Council Regulation No. 282 / 2011) defining the place of registered office and permanent business activity. In addition, he cited the jurisprudence of the Court of Justice of the European Union, arguing that the place of the entity's registered office is the place where the functions of the company's main management board are performed, for this purpose, the place where significant decisions regarding the management of the company are taken, the address of the registered office and place of board meetings, in case of doubt, the place where important decisions regarding the general management of the enterprise are taken. A permanent place of business, on the other hand, means a place other than the seat, which is sufficiently stable and has the appropriate personal and technical structure to enable the receipt and use of services. in which the functions of the company's management board are performed, for this purpose the place where important decisions regarding the management of the enterprise are taken, the address of the registered office and place of the board meetings, in case of doubt the place where the significant decisions regarding the general management of the enterprise are taken. A permanent place of business, on the other hand, means a place other than the seat, which is sufficiently stable and has the appropriate personal and technical structure to enable the receipt and use of services. in which the functions of the company's management board are performed, for this purpose the place where important decisions regarding the management of the enterprise are taken, the address of the registered office and place of the board meetings, in case of doubt the place where the significant decisions regarding the general management of the enterprise are taken. A permanent place of business, on the other hand, means a place other than the seat, which is sufficiently stable and has the appropriate personal and technical structure to enable the receipt and use of services. in which important decisions are made regarding the general management of the enterprise. A permanent place of business, on the other hand, means a place other than the seat, which is sufficiently stable and has the appropriate personal and technical structure to enable the receipt and use of services. in which important decisions are made regarding the general management of the enterprise. A permanent place of business, on the other hand, means a place other than the seat, which is sufficiently stable and has the appropriate personal and technical structure to enable the receipt and use of services.

Referring to those features to the applicant's contractors, the tax authority stated that the place of supply of services (the performance of these entities is Poland). To justify this view, information was provided from the tax services of the countries in which the registered offices of these companies were registered.

With regard to the British company, reference was made to information from tax services, which showed that in fact the British company, despite formal registration, does not operate at the address indicated, it is the address of the place of residence used by Polish companies for registration as VAT taxpayers. No person representing the company was found there, on request AJ came from Poland, the president of the company, who is a Polish citizen, runs a business in Poland and permanently lives there, current registers are kept in Poland. There are no significant company decisions in the UK. The company has a cooperation agreement with DW-G., which operates in Poland. Her testimony showed that she had the task of performing initial verification of documents, organizing transport, preparing orders, sales invoices, driver documentation, supplier contracts. It was also noted that transport services were carried out from Latvia, Lithuania and Germany to Poland, and the recipients were domestic entities. All payments are made from the account in the Polish bank. In Great Britain, no VAT is paid on these services.

AJ, DW - G. and LK (applicant's representative) were questioned. AJ testified that he had commissioned services for the site, but did not know who the owner of the goods (which was fuel), did not provide details about the activities of the company "B", indicating that he was summoned as a natural person. The party's representative indicated that the contractor proposed cooperation, exchanged electronic company registration documents, the cooperation agreement was signed in W., contacted by phone or email with AJ and DW-G. The witness testified that he had verified the contractor in an accessible manner, checked EU VAT registration and official registers and did not find any information disparaging the abovementioned company. He does not know and was not interested in whose deliveries were made, who was the owner of the delivered goods, there are no research tools for this. Invoices were issued in Polish and English, they were paid by bank transfer to a domestic account.

Assessing these circumstances, the tax authority pointed out that despite the formal registration in the United Kingdom, the company has no registered office and place of business there. This company provides services in Poland, here decisions regarding the company are made and documents are stored, as the sole owner and director has a permanent residence here. This is also demonstrated by the lack of employees in the place indicated as the seat, the lack of assets belonging to the company, the lack of documentation in the place indicated as the seat, the director is a Polish citizen and lives in Poland, communication with contractors takes place electronically or by telephone, the documentation is kept by DW - G. , a person residing and operating in Poland. The thesis that the company employs an employee was not confirmed, because it was negated by the British tax services, pointing to the lack of signs of doing business in the UK. Also the circumstances of cooperation with the party prove that matters related to the implementation of services took place in Poland - contract signing, payments. The goods were delivered as part of the service and passed through companies whose existence gave rise to significant doubts, they were "B" contractors (e.g. "D"), eventually the goods were delivered to companies in Poland.

As regards the Czech company - "C" sro, it was revealed that its shareholder and president was a DJ, a Polish citizen residing in Poland. The head office address was only a correspondence address (virtual office) which was directed to Poland to the DJ. Although the DJ gives the company address, correspondence to others comes from Poland. The management board is one-man, there were no board meetings at the registered office, no one is employed in the company. Contacts with the applicant are by phone or electronic, payment from the domestic bill. Information about the lack of contact with the company was obtained from the Czech tax administration, it did not file a tax declaration and did not tax the services purchased. Similarly to the British company, transport is carried out to Poland.

In the opinion of the tax authority, the applicant did not exercise due diligence in verifying contractors, did not ascertain as to the place of supply of services, the adopted tax settlement contradicted the way of establishing cooperation, communication with the contractor, payment from the contractors' domestic account and the recipient's country of goods. These circumstances should raise doubts as to the place of supply of services. Obtaining this document or information about the actual registration to contractors. The applicant, with due diligence, could conclude that the place of supply of services was not located abroad, this is due to the fact that the shareholders and presidents of the companies were Polish citizens residing in Poland, communicating with the website from Polish telephone numbers, transport was always carried out to Poland, payment was made from Polish banks.

Finally, referring to the grounds of appeal, the tax authority indicated that no procedural law had been infringed as regards issuing the decision and the date of tax refund, the subject of the ruling was the tax amount, not the extension of the refund deadline, the party was notified of each failure to meet the deadline. He indicated that the decision was served on 20 February 2017 in connection with the admissibility of the appeal being inadmissible, which was due to errors in the initial notification of the decision. This fact does not affect the outcome of the case, as the decision has been properly served. Referring to the allegation of not hearing TD, the tax authority pointed out that the party did not formulate such applications, and the information from the UK tax services showed that the company did not employ employees, nor was it confirmed by AJ.

In the complaint, the party demanded the annulment of the contested decision and alleged a violation of Art. 207 § 2 of the Act of August 29, 1997 Tax Code (Journal of Laws of 2017, item 201, as amended, hereinafter Op), in conjunction from art. 211 and art. 212 in connection from art. 140 § 1 and § 2 Op, in connection from art. 87 paragraph 6 and paragraph 7 of the VAT Act and art. 233 § 1 item 1 of the Op, by maintaining in force the decision of the authority of the first instance, which did not enter into legal circulation within the time of ongoing tax proceedings, in the absence of its extension and, as a consequence, faulty recognition of the legal effects of the issued and undelivered decision. She also alleged a violation of Art. 99 clause 12 in connection from art. 86 section 1 and item 2 point 1 lit. a, in connection from art. 87 paragraph 1, paragraph 2 and paragraph 6 of the VAT Act, by not applying them and breaching the principle of proportionality, neutrality and the applicant's right to deduct input tax paid at an earlier stage of turnover. She pointed to the violation of Art. 99 clause 12 in connection from art. 86 section 1 and item 2 point 1 lit. a, in connection from art. 87 paragraph 1, paragraph 2 and paragraph 6 in relation from art. 28b paragraph 1 and item 2 of the VAT Act, art. 44 Council Directive 2006/112 / EC of November 28, 2006 on a common system of value added tax (Official Journal of the EU L 2006.247.1, hereinafter Directive 112), in conjunction from art. 5 paragraph 1 point 1, art. 19a paragraph 1, art. 8 clause 1, art. 17 clause 1 point 4 lit. a and b, art. 28a point 1 lit. a and b, art. 15 paragraph 1, art. 99 clause 12 of the VAT Act, in connection from art. 21 § 3 and art. 207 Op, art. 106e paragraph 1 point 18, point 5, point 3, in connection with from art. 28b paragraph 1 and item 2 of the VAT Act and art. 44 of Directive 112, in conjunction from point 21, point 18, recital 14 and art. 11 and art. 18 clause 1 of EU Council Regulation No. 282/2011, Art. 21 § 3a Op in connection from art. 24 paragraph 1 point 1 letter and the Act of 28 September 1991 on fiscal control (Journal of Laws of 2016, item 720 as amended) in conjunction from art. 207, art. 210 § 1 point 6 and § 4 233 § 1 point 1 Op and art. 2a Op, art. 6 clause 1 of the Act of July 2, 2004 on freedom of economic activity, art. 41 section 1 in relation from art. 109 section 3 of the VAT Act in connection with from art. 193 § 4 Op, by maintaining in force the decision of the authority of the first instance determining the amount of tax to be refunded in an amount lower than that resulting from the applicant's declaration, the lack of legal justification relating to the applicant's actions or possible omissions (in respect of alleged tax fraud charges against the party) when the applicant's managers were not charged with any criminal charges, no liability was imposed, no attempt was made to initiate an investigation in this respect), and not to other entities operating at a later stage, which were suspected of acting in the chain of entities employing reverse charges. The applicant did not know and had no reason to believe that there could be entities involved in VAT frauds at a later stage of trading. The party paid input VAT at an earlier stage, the

determination of the surplus in a lower amount means that the decision is inconsistent, contradictory and prevents the party from defending its rights. Pointing to the above the provisions also exceeded the free assessment of evidence and the free determination that the party acted consciously in the chain of entities using reverse charge, and at the same time, that she was an unconscious participant and did not exercise due diligence in the verification of the contractor. She alleged that factual findings were made in a manner inconsistent with the evidence gathered in the case, selective treatment of evidence, omission of favorable for the parties indicating the lack of conscious participation in tax fraud, manipulation of evidence, inexplicable explanation of all the facts of the case, in particular in the absence of a pattern of business activity, omission of evidence reported by the party, requiring the party to not be able to verify contractors, also alleged procedural errors in collecting and assessing evidence. In further allegations, the party alleged the erroneous assumption that the legal entity does not have its registered office and the place of business for it is a permanent place of residence, in a situation where the party acted in good faith and with due diligence providing services to verified active taxpayers, with the registered office of the tax authorities. She also alleged incorrect recognition of the unreliability of the records and an imbalance of public and private interest in assessing the notion of unjustified tax benefit, hoaxing allegations of tax fraud.

In the justification, she indicated that the decision of the first instance authority was delivered to her after 7 months to the date of the end of the tax audit, without extending the time limit for settling the case. The tax authority did not recognize her case within the time limit set for completing the inspection.

By issuing the decision, official documents confirming the registration of the party's contractors as foreign entities were ignored, which also violates the provisions of procedural law as regards the assessment of evidence. Describing the nature and evidential value of official documents, the party indicated that they ordered to accept that the entities indicated therein were based outside the country. Failure to recognize the content of these documents is a violation of Art. 191 Op This objection concerns certificates confirming the registration of contractors in other countries, issuing NIP, certificates downloaded from the European Commission, confirmation of identification of entities made by the Head of the Tax Office in C. and the Tax Information Exchange Office of the Tax Chamber in P., bank statements of VAT declarations contractor and VAT registers. The presumption of the truthfulness of this data protects the site, which acted in good faith, as confirmed by its case-law of the Court of Justice of the European Union (CJEU). Such theses also result from EU Council Regulation No. 282/2011 (Article 18 (1)). The applicant could not therefore fail to respect the provisions under Article 106e paragraph 1 point 18 of the VAT Act. It is untrue that the party did not take any action to verify the contractor, because it demanded the abovementioned documents confirming their tax status. that the party did not take any action to verify the contractor, because it requested the abovementioned documents confirming their tax status. that the party did not take any action to verify the contractor, because it requested the abovementioned documents confirming their tax status.

Referring to specific provisions of the decision, the party indicated that first of all the seat of the entity was important, and only in case of doubt in this regard it was necessary to determine the place of business, which is confirmed by national and EU regulations and the case law of the CJEU widely cited by the party. The tax authority treats the exception as a rule. Regardless, the party's opinion did not indicate any facts or specific location of the new seat of business or permanent place of business in Poland. The applicant emphasized that a large technical base is not needed to provide transport, forwarding and logistics services, a computer and a telephone with Internet access are sufficient. She further pointed out that the findings of the tax authorities lasted 2 years, and they had much broader resources than the party, therefore, it cannot be accused of a lack of diligence and taking actions impossible to carry out or punishable by a criminal sanction as unlawful. Unable to handle tax authorities, all responsibility and verification activities of business entities are transferred to their contractors, and these tasks belong to tax authorities. Such conduct violates Art. 120 Op and art. 7 of the Polish Constitution, in support of its arguments, the party referred to the case law of administrative courts. The party further argued that if there is a charge of knowingly participating in a tax fraud, the tax authorities are

required to notify law enforcement authorities, which has not been done in the case. On the other hand, the applicant reported to the competent law enforcement authorities irregularities in the scope of her inspections.

The party indicated that the decision of the second instance duplicated the position of the tax authority of the first instance and contained false information as to the party's knowledge of unreliability in trade in fuel. It is disregarded that the place of business of a British company abroad was confirmed in the control report by the Head of the Tax Office W., also indicating that the applicant verifies its contractors with due diligence, deducing the correctness of the party's qualification in accordance with art. 28b of the VAT Act. Therefore, the allegation of lack of due diligence is excluded. She further pointed out that national regulations did not set a pattern of behavior as to how to examine the status of a contractor. In this respect, the party referred to art. 17 and art. 18 of EU Council Regulation No. 282/2011, where it is sufficient to have a VAT number issued by the relevant tax authorities, as the party agreed. She also alleged that the appeal body did not properly verify the decision of the first instance because he had made false statements in the content of the decision, e.g. that the party's representative had testified that the orders had been given to him by AJ and DW, while he testified that it was only AJ. The information that contractors communicated with Polish numbers, while those were British, is also incorrect, which also results from the findings of the British tax authorities. She further pointed out errors in the tax authorities' reasoning regarding the place of business of the contractor. This proves that facts are manipulated. Recalling specific documents provided by the British tax administration, the party pointed to its contradictions, that the company is not based in the United Kingdom, although it has a British telephone number, conflicting information as to where the records are kept, which is described in detail on pages 25/26 of the complaint. She also pointed out that these arrangements relate to other periods and contractors of a British company.

She also pointed out that the party employee was not T. but KD and it is not true that the British tax administration stated that the company did not employ an employee, as it concerned employees in Poland. It is also not true that AJ did not claim to employ employees, which is contradicted by his testimony in which he pointed to KD.

Referring to the arrangements for the Czech company, the party emphasized that in the absence of completing the register confirming the composition of the management board and the lack of payment from this contractor, it ceased transactions with this entity, so during the period which was verified by the Czech tax services it no longer cooperated with this company. These circumstances are ignored by the tax authority, which violates the rules of evidence. She further pointed out that the findings of the tax authorities could not support the presumptions, the tax authorities did not show that the parties' contractors were operating in Poland.

In response to the complaint, the tax authority requested that it be dismissed, maintaining its previous position in the case.

In the pleadings of 6 August 2018, the applicant alleged a breach of the principle of trust in tax authorities and repeated her complaint about the failure to indicate the specific place of business of the party's contractors in the country. She attached to the letter a request to the tax authorities to carry out the evidence indicated therein in matters relating to settlements for further periods.

On 2 January 2019, another procedural letter was received containing pages of evidence (k-358 court files) in the form of letters to the competent authorities to indicate whether its contractor has its registered office in Poland together with the negative response of those authorities, the applicant's inspection report carried out by the Head of the Tax Office W. of December 22, 2015, counterparty VAT records of the party confirming the booking of services purchased, application of a British company for a tax refund, AJ's statement of November 8, 2018 that an employee of the company lives permanently in the United Kingdom and that the company's records were kept in the "E" company office in L ..

In addition, in this letter, the party alleged that there were no arrangements regarding: the place of establishment or business of the British company, whether it had an employee, the place of storing documents in Poland, what actions should be taken by the party for proper verification of contractors, challenging the thesis that the party had deliberately acted in the chain of entities aimed at tax evasion.

In another procedural letter of January 22, 2019, the party submitted a request for admission of evidence from an email copy of January 8, 2019, due to the fact that DW did not have accounting rights and could not keep records of the British company, the books were kept in the United Kingdom, the company employed an employee and British telephone numbers were used. It also expanded the statement of reasons for the objections raised in the complaint and previous pleadings, referring to the case law of administrative courts and the CJEU.

The Provincial Administrative Court in Wrocław considered as follows:

The complaint is well founded, although the General Court does not share all the allegations contained in it.

The dispute in the present case amounts to assessing whether the tax authorities had sufficient grounds to conclude that the applicant had underestimated the tax base in the value added tax for April 2015 as a result of the non-payment of tax due on forwarding services provided to companies: "B "Ltd with registered office in Great Britain and" C "sro with its registered office in the Czech Republic, due to incorrect classification of the place of providing services.

As is clear from the file, the reason for contesting the VAT declaration submitted by the applicant is the VAT records in the field of services rendered for the abovementioned contractors were the statement that despite the notification of business activity and registration in other Member States, these companies actually did business in Poland. This is confirmed by the findings from foreign tax services, which showed that in both cases in the place reported as the headquarters of these companies there were no signs of conducting business activity, no tax books were stored, the companies did not employ employees. The entities managing them are Polish citizens permanently residing in the country. Therefore, in places reported abroad, no board meetings are held, and decisions relevant to these entities are not taken, which precludes recognition of their registered office at the place officially notified to the registers. Lack of technical and personal facilities, and storage of tax books makes it impossible to assume that there is a permanent place of business. The applicant, which should verify its contractors in order to establish the actual place of supply of services, failed to exercise due diligence in that regard. She ignored the fact that the entities were managed by Polish citizens, that payments were made from domestic bank accounts, the contract was signed in Poland, the contacts were by e-mail or telephone from national telephone numbers, and ultimately the services were performed in Poland. As a result, the tax authorities took the view that the services provided by the applicant should be qualified as being provided to a domestic entity,

In disputing those findings, the applicant's lawyer raised in the application both procedural and breach of substantive law. He pointed out the shortcomings in the scope of establishing the seat of contractors, highlighting contradictions and deficiencies in the documentation sent by the British tax authorities, errors in the findings made by the tax authorities conducting the proceedings, omitting favorable explanations for the site regarding the storage of tax books and an employee of a British company and the possession and use by its representatives from foreign (English) numbers. No indication what activities or actions should be taken to verify contractors in order to determine the place of rendering services,

Referring to the issues in dispute in this case, it should be noted that the applicant's settlement and invoicing based on art. 106e paragraph 1 point 18 of the VAT Act requires that, among others that the place of supply of services is outside the country. According to the content of art. 28b para. 1 of the VAT Act, in the version applicable in April 2015, the place of providing services in the case of services rendered to the taxpayer is the place where the taxable person being the recipient of the service has its registered office, subject to paragraph

2-4 and art. 28e, art. 28f paragraph 1 and 1a, art. 28g paragraph 1, art. 28i, art. 28j paragraph 1 and 2 and art. 28n. On the other hand, paragraph 2 of this provision provides that where services are provided for a permanent place of business of a taxable person,

The cited provision is an implementation of Art. 44 of Directive 112.

It follows from the provisions cited that the rule is that the place of rendering services is the place where the recipient has his business establishment. The Act stipulates that this rule does not apply when the services are provided for the permanent place of business of the recipient. In this case, the place of supply of services is a permanent place of business. These regulations seek to tax the service provided in the place of actual use, i.e. its consumption by the recipient: at his registered office, place of residence, permanent place of business or place where he usually conducts business or in which he has his habitual residence. The rule is then the tax settlement by the buyer under the so-called reverse charge mechanism

The notion of the place of business of the taxpayer is defined in art. 10 of EU Council Regulation No. 282/2011. Pursuant to the content of this provision, this is the place where the functions of the company's management board are performed (paragraph 1). As stated in paragraph 2 of this provision: in determining this place, account shall be taken of the place where important decisions regarding general management of the enterprise are taken, the address of the registered office of the enterprise and the place of meetings of the management board of the enterprise. If these criteria do not allow to determine with absolute certainty the place of business of the taxpayer, the decisive criterion is the place where important decisions regarding the general management of the enterprise are made. In addition, it is indicated (paragraph 3 Article 10), that the postal address alone cannot be considered as the place of business of the taxpayer. Pursuant to the ruling of the CJEU of June 28, 2007, reference number Act C-73/06 (Planzer Luxembourg S§rl v Bundeszentralamt für Steuern, ECLI: EU: C: 2007: 397), the seat for the purpose of conducting business activities of a company is the place where important decisions regarding the general management of that company are taken and in which its central administrative tasks are performed.

This regulation also contains in art. 11 paragraph 1 legal definition of "permanent establishment". Pursuant to this provision, 'for the purposes of applying Article 44 of Directive 2006/112 / EC, the place of business is any place - other than the place of business of the taxable person referred to in Article 10 of this Regulation - which is sufficiently stable and an appropriate structure in terms of personnel and technical facilities to enable it to receive and use the services provided for its own needs in this permanent establishment. " It follows from the CJEU case-law that a certain minimum scale of activity is necessary to determine the place of permanent establishment, which is an external sign that activity in this place is ongoing (see judgment of the ECJ of 2 May 1996 in case reference number C-231/94 Faaborg-gelting Linien a / s v. Finanzamt Flensburg ECLI: EU: C: 1996: 184). To recognize that a particular place of business is permanent - it is necessary to have there technical infrastructure (if it is necessary to perform services) and human staff. Such a personal - substantive structure in a permanent place of business should appear in a permanent way, i.e. repetitive and lasting (as per ECJ ruling on July 4, 1985, reference number 168/84 - Gunter Berkholz v. Finanzamt Hamburg-Mitte-Aitstadt ECLI: EU: C: 1985: 299). On the other hand, however, the case law of the CJEU notes that whether the forces and resources at a given location are adequate for the establishment of a permanent place of activity, should be assessed each time in the context of specific services or supplies. In the judgment of the CJEU of October 16, 2014, reference number act C - 605/12**Welmory** v. Director of the Tax Chamber in Gdańsk ECLI: EU: C: 2014: 2298, the Court reminded that in view of the multitude and diversity of facts of the case, the assessment of whether we are dealing with a permanent place of business is rather a matter of fact, which is why this assessment it should be taken mainly by national authorities and national courts, not by the Court.

Therefore, when determining the place of supply of services, it is necessary to make an assessment, based on the circumstances of the specific case, where the recipient of this service is established or the place of permanent establishment. The tax authority is right that the mere indication of a postal address is not sufficient

to designate a registered office, just as the fact of having a VAT identification number is not in itself sufficient to conclude that a taxpayer has a permanent establishment, it is necessary to make arrangements about which referred to in the provisions of EU Council Regulation No. 282/2011.

In this regard, relevant tax authorities interpret both national and EU regulations. However, the Court's objections are raised by factual findings and the assessment derived therefrom. In this respect, it must be stated that the taking of evidence in tax matters is not an end in itself, but is intended to establish the actual facts in the context of a specific norm of substantive law. Based on Article. 121 Op tax proceedings should be conducted in a way that inspires confidence in tax authorities, and pursuant to art. 122 Op, in the course of proceedings, the tax authorities take all necessary actions to thoroughly clarify the facts and settle the matter in tax proceedings, guided by the principle of finding material truth. Expressed in art. 122 Op the principle of material truth has been specified in art. 187 § 1 Op, which imposes on the tax authority the obligation to collect and exhaustively examine all evidence, and then in accordance with art. 191 Op to assess, on the basis of all evidence gathered, whether the circumstance has been proved. In this regard, tax authorities should make use of their knowledge, experience and logic principles in a convincing way to assess the probative value of individual means of evidence, indicating which evidence and for what reasons they refused credibility, they considered individual evidence not only each individually but also in mutual communication . and then in accordance with art. 191 Op to assess, on the basis of all evidence gathered, whether the circumstance has been proved. In this regard, tax authorities should make use of their knowledge, experience and logic principles in a convincing way to assess the probative value of individual means of evidence, indicating which evidence and for what reasons they refused credibility, they considered individual evidence not only each individually but also in mutual communication . and then in accordance with art. 191 Op to assess, on the basis of all evidence gathered, whether the circumstance has been proved. In this regard, tax authorities should make use of their knowledge, experience and logic principles in a convincing way to assess the probative value of individual means of evidence, indicating which evidence and for what reasons they refused credibility, they considered individual evidence not only each individually but also in mutual communication .

These rules were violated by the tax authorities on the basis of evidence that was not unambiguous and consistent, omitted significant contradictions arising from the compilation of individual pieces of evidence, therefore the facts were not correctly determined, which abrogates the possibility of its correct assessment. In the opinion of the Court, there are significant reservations regarding the assessment of evidence obtained from British tax services. In the context of the case under consideration, they have significant evidentiary significance, but this does not mean a special evidentiary status, which indicates that they are subject to the same assessment as any other evidence in tax proceedings. In the Court's opinion, the conclusions described in the contested decision, together with the content of the abovementioned evidence, prove that they have not been subjected to any analysis necessary for correct inference that meets the requirements arising from Article. 191 Op. The content of the decisions of the bodies of both instances argues that the findings (and sometimes also the conclusions) of the British tax authorities have been fully and uncritically duplicated despite the fact that, in the Court's opinion, their content raises objections, which strengthens their pledge with other evidence gathered in the case. The information provided in them is not clear-cut, they give rise to doubts as to the facts and how to read them, as well as, as indicated, contain an assessment of the facts, which was referred to in the content of the decision, and what is reserved for the tax authority competent to issue to the party to the decision. It should be emphasized here that the fact of being included in the abovementioned such assessment information, but its uncritical (and literal) duplication by the tax authorities deciding the case. In the Court's opinion, as the applicant also argued, there is no clear and unambiguous information regarding the place of business of the British company, which is a fundamental and important factor in this case. From the SCAC information of 13 August 2015, which is a response to the query regarding the settlement of the abovementioned entity for March 2015, it does not appear when the tax authorities of a Member State visited the company. Doubts in this respect arise from further analysis of the abovementioned information, further letters from the British tax services regarding the abovementioned company and case file, in particular the

letter of the British company of September 7, 2015 omitted by the appeal body. It results from it, that employees of British tax services were in this company only once in September 2014. The above calls into question whether in the date of the transaction with the party, and therefore 8 months later, the facts were the same as in September 2014. This doubt does not they dispel further SCAC information, because dated August 19, 2015 does not contain any data as to the description of the company's headquarters, but contains an assessment of its activities and information that registers were forwarded upon further request and what results from them. Another information from December 23, 2015 indicates that the taxpayer (company) was re-audited and its director questioned. However, there is no data as to whether the interview took place at the headquarters of this company or the headquarters of the tax authority, no description of the place of business,

The tax authority did not resolve any doubts regarding these issues, merely claiming that the British tax services stated that there was no economic activity in the place reported as the seat of the company and that it was the place of residence where Polish companies were registered for VAT purposes (information from 13 August 2015). There is no indication as to what this claim is based on, which is important given the nature of the company's operations. From the testimony of its director AJ it appeared that she deals with the agency. This type of activity does not require any special structure in terms of personnel and technical facilities. Such services can be organized from anywhere in the world using Internet access and the simplest technical means, such as a laptop and a mobile phone. Contact with the customer, as the example of this case indicates, can only take place in electronic or telephone form. Hence, even if the place of business (business) is located in a flat, activity can be carried out and only this circumstance cannot prejudge the lack of place of business. Hence, given the specificity of operations, specific factual findings are important. In this case, the evidence provided does not allow for the explicit exclusion that in the place notified by the company it could not conduct business activity. Such an assessment cannot be based on the claim that there are no signs of activity, as it is not known what this statement is based on, at what time and whether any arrangements were made in this respect (whether the place of business of the company was examined), because apart from the thesis itself, which seems to be an assessment, there is no further information. Meanwhile, determining this circumstance has important consequences for the case being examined.

Further evidence (AJ's testimony given on September 11, 2015 to the Tax Control Office in P.) shows that the company in England rents a separate premises where there are no other companies and there is an employee employed who administers all documentation. In these circumstances, denying the testimony of the abovementioned witness, the tax authorities should provide evidence on the basis of which the statements of the witness they consider to be false. In this regard, the doubts described abrogate the possibility of supporting the evidence from the British tax authorities due to their deficiencies in matters relevant to the case.

A similar assessment concerns the issue of the existence of an employee of the company, who permanently resides in the UK and administers all company documentation, omitted by the tax authorities. The lack of indication in the SCAC information whether in the audited period the company carried out an inspection consisting in a visual inspection of the place of activity and the lack of other evidence in this respect excludes the possibility of omitting the testimony of the abovementioned witness of employment in the company of an employee. The more that this thesis is confirmed in the testimony of another witness DW-G .. These doubts are not explained by information from the British tax services citing DW-G.'s explanations, because there is no information when that person made such an explanation and questioned in On November 5, 2015 Poland - as indicated - testified that the company employs an employee - Mr. K. - permanently resident in England, but she does not know in what capacity. Inconsistencies and deficiencies in the factual findings exclude the possibility of considering that the facts were established correctly, especially since in the content of the decision the tax authorities denied that the witness AJ testified that the company employed an employee, which is not true.

Further inconsistencies arising from the evidence sent by the British tax authorities relate to the issue of retaining tax books, although in the Court's opinion this issue does not in itself prejudge the assessment of the

place of business or place of establishment, it may constitute an element that may outweigh the assessment of this circumstance. Listened as a witness, the director of a British company testified that the company's accounting is kept by the British company "D", this is confirmed by the declarations of DW - G. of 5 November 2015. However, reading information from the British services on which the tax authority supported least incoherent. It follows (information from 13 August 2015) that the applicant's main place of business is run by "D", the company director was not present,

On this basis, the tax authorities came to the conclusion that registers are not stored at the headquarters of a British company and that they are kept in Poland. On the plea of the party, alleging the groundlessness of these claims and the inconsistency of the findings of the British tax authorities, the tax authority stated that there were no records and that they were produced only after the summons. In the Court's opinion, however, this assessment is arbitrary because it is based on a presumption. It may well be assumed that the head office inspection was carried out in September 2014, the registers were then collected, as the representative of DW-G. was present, and in subsequent periods only documents were requested, which were presented on request. This course of events is also a presumption, as there is no specific evidence to support it. And it's more likely

The arguments put forward prove that the evidence carried out in the case are inconclusive and may lead to divergent conclusions, which precludes their adoption as a basis of factual findings. Undoubtedly, they require supplementing with facts which have been indicated by the Court and which will contribute to clarifying the issues relevant to the case.

As a side note, it is only necessary to point out that it has not been clarified and, strangely enough, it did not arouse the interest of tax authorities that the British tax services indicated the name K. as the person who provided explanations regarding the British company. Therefore, it is not known what role it played, the SCAC information does not explain it, and perhaps it will bring relevant information to the case. In the circumstances of this case, a party cannot pay attention to its participation and role in the proceedings, as it concerns a person associated with its contractor. These issues should be clarified by the tax authority, which has not made any arrangements in this respect.

Recognized procedural irregularities consisting in violation of the provisions of art. 122, art. 187 § 1 and art. 191 Op, to the extent that affects the outcome of this case, gave rise to annulment of the contested decision in order to supplement the evidentiary proceedings in the indicated scope.

In this regard, it will be necessary to determine whether, at the date of the disputed transactions, the company's counterparty had its headquarters or permanent place of business in the United Kingdom. The choice of means of proof is left to the tax authorities, which may ask for additional explanations, sending reports or further information regarding e.g. the fact of hiring an employee at that time and evidence of this circumstance, costs incurred for business activities, e.g. office or media supplies.

In the re-pending proceedings, it is also worth determining whether and on what terms tax settled persons who performed management functions in the companies being the applicant's contractors, since these facts can be deduced or stayed in the country and here they made decisions important for the company. Or they were abroad, they settled income tax there and there is evidence confirming the costs associated with their travel to the place of residence of these companies.

If these findings prove that the companies did not have a registered office and a permanent place of business abroad (this circumstance in relation to a Czech company is proved - as there is no permanent place of business) - it is necessary - in order to derive the effects of the contested decision - firstly, it will be determined according to the same rules whether these entities have their registered office or permanent establishment in Poland. Only this circumstance, demonstrated as you do in the absence of signs of business and registered office abroad, will give grounds to assume that these services were provided in Poland.

In the Court's opinion, the tax authorities did not make such determinations, and without them it is not possible to determine whether the applicant's contractors had their registered office or permanent establishment in Poland (as indicated herein, only the British company concerns). Deficiencies in factual findings prove violations also in this respect of Art. 122, art. 187 § 1 and art. 191 Op and this issue will require re-examination.

Secondly, if as a result of these tests it is clearly established that the abovementioned the entities have neither the registered office or the place of permanent operation abroad, but have them in Poland, this circumstance will not give rise to correction of the applicant's tax settlement. However, in the context of the obligations arising from art. 20, art. 21 and art. 22 of Council Regulation No. 282/2011 since the introduction of the reverse charge for services, it is the service provider's responsibility to correctly determine the place of supply of services. It is in the Court's opinion that in these circumstances it is necessary to indicate what information the service provider must have in order to assume where the place of business is located (within the meaning of Article 10 of the abovementioned Regulation) or where the place of business is permanent (Article 11 of the Regulation).

In the proceeding covered by the Court's audit, the tax authorities found it justified to determine whether the applicant had exercised due diligence in verifying the contractor, considering that it had not. Without denying this action and the legitimacy of examining the applicant's "good faith" test in the present case, it must be stated, however, that the analysis carried out by the tax authorities in the context of the principles arising from the case-law of the Court of Justice of the European Union was not sufficient. In the jurisprudence regarding due diligence, the CJEU has repeatedly emphasized the need to refer to the circumstances of the case. He stipulated that if the economic operator had taken all the actions that could reasonably be expected of him to ensure that the transactions in which he participates, they do not involve a crime, be it in the field of VAT or in another field, he may presume the legality of these transactions without losing the right to deduct input VAT. The taxpayer could be denied the right to deduct only if it is proved on the basis of objective evidence that he knew or should have known that the transactions underlying the right of deduction are connected with an offense committed by a supplier or another entity operating at an earlier stage of trading. Determining the actions that can be reasonably expected from a taxpayer who intends to exercise his right to deduct VAT in a particular case to ensure that his transactions do not involve an offense by an entity operating at an earlier stage of trading, depends primarily on the circumstances of the case. If there are premises to suspect irregularities or violation of law, the prudent entrepreneur should, depending on the circumstances of the particular case, obtain information about the entity from which he intends to purchase goods or services in order to ensure its credibility. However, tax authorities cannot generally require a taxable person intending to exercise his right to deduct VAT to check whether the issuer of the invoice for the goods or services to be deducted is a taxable person, whether he has the goods subject to the transaction and is able to supply them and whether he fulfills the obligation to submit a declaration and pay VAT to ensure that entities operating at earlier stages of turnover do not commit irregularities or crimes, or that this taxpayer has documents confirming this. Thus, by imposing such obligations on taxpayers under the threat of refusing the right to deduct, tax authorities would pass on their taxpayers, in a manner contrary to the provisions indicated, their own control tasks.

Therefore, in the Court's opinion, the key is to establish a certain pattern of taxpayer behavior, according to which the disputed transactions will be examined. This pattern should be derived from the overall activities of the entity, and if all transactions are negated, it is reasonable to look for patterns of behavior of other entities whose transactions are not negated. In this context, the reference by tax authorities to the fact that a party should suspect that the place of establishment is not located abroad but in Poland, because the managing entities are Poles, companies have accounts in Poland and services are ultimately provided here, according to the court little. The applicant is right that she obtained the necessary documents confirming the registration of these entities abroad, giving them the correct EU VAT numbers, verification of the bank. They gave her the

basis to believe that they are entities based abroad. In order to undermine these facts and assume that the party did not exercise due diligence in the verification of contractors, it should be indicated how this fact should be verified. The lack of diligence must be referred to a certain pattern or an indication that with these specific transactions the applicant departed from the usual diligence, omitted something, settled transactions differently than usual, set prices, or deviated from the market, did not, for example, insure them, as usually does in relations with other contractors. Also, the party's behavior in relation to other entities operating in this industry is laid-back and carries the signs of negligence, which may translate into the thesis about the lack of diligence in verification of contractors. These findings were lacking,

Referring to the objections of the complaint, the court complied with the comments regarding the violation of the indicated provisions of procedural law. At this point, it is also necessary to point out the accuracy of the claims raising the omission of circumstances relevant to the website, such as the use of British telephone numbers by the contractors of the website. This is confirmed by both AJ and DW - G., and the tax authority claims, without indicating the reasons for negating these testimonies, that Polish telephone numbers were used.

As regards further allegations alleging the failure to take into account documents using the presumption of authenticity concerning the applicant's contractors, it should be pointed out, as has already been stated, that merely having a VAT identification number (registration of a registered office) may, in the circumstances of a specific case, prove insufficient to determine whether the entity is resident in country and the concept of additional activities will be needed. Therefore, this complaint - formulated in the same way as in the complaint - cannot be considered as well founded. In each case, it is necessary to examine whether there were grounds for the taxpayer not to stop at just the content of the abovementioned documents, but has further verified, and even withdrew from the transaction if it turns out to be too risky for him due to the environment of the case giving rise to the presumption that the seat of the contractor (place of permanent business) is different than what results from the official documentation. In view of doubts as to the facts arising from the abovementioned documents, the tax authority reasonably initiated the proceedings by not merely content. Hence the mere fact that the applicant had the abovementioned documents can't protect her. In this context, the evidence submitted by the party at the procedural letter of 2 January 2019 (admitted by the Court as evidence in the proceedings), and regarding the indication whether its contractor has its registered office in Poland, is not significant for the direction of the decision. The evidence indicated by the party in the form of an inspection report carried out by the Head of the Tax Office of W. of 22 December 2015 also does not change the view on the case, because its content shows that the findings of the tax authority do not include information obtained from the United Kingdom. Issues related to the place of storage of registers have already been discussed in previous considerations and resulted from other evidence, as well as the findings regarding the employee, so this evidence may be relied on by the party in the next proceeding, as well as the contractor's VAT registers, the pages confirming the booking of purchased services and the evidence indicated in pleading of 22 January 2019. that the tax authority's findings do not include information obtained from the United Kingdom. Issues related to the place of storage of registers have already been discussed in previous considerations and resulted from other evidence, as well as the findings regarding the employee, so this evidence may be relied on by the party in the next proceeding, as well as the contractor's VAT registers, the pages confirming the booking of purchased services and evidence indicated in pleading of 22 January 2019. that the tax authority's findings do not include information obtained from the United Kingdom. Issues related to the place of storage of registers have already been discussed in previous considerations and resulted from other evidence, as well as the findings regarding the employee, so this evidence may be relied on by the party in the next proceeding, as well as the contractor's VAT registers, the pages confirming the booking of purchased services and the evidence indicated in pleading of 22 January 2019.

As a side note, it should only be added that from the point of view of certainty of economic turnover, the issue of updating the data contained in official registers should be treated as a priority. The realities of this case prove that, despite the knowledge in this area, no actions have been taken to remove (or confirm the correct

registration) of the party's contractors from the abovementioned registers, although the first information providing grounds for such verification activities comes from 2014. Undoubtedly, the diligence of the contractor's audit should be included in the business activity scheme, however, cannot be the sole means of investigating and verifying the activities of entities abusing rights or evading payment of due tax liabilities and transferring all responsibility to other entrepreneurs.

The party's allegations, partly discussed, regarding the lack of correct verification of the decision of the first instance body by the appeal body are correct. The aforementioned issues of telephones or the employee and people who communicated with the site (this was only AJ, and not as the tax authority DW - GW claims), an error on behalf of the employee. All this indicates the carelessness of the appeal body when analyzing the evidence, in addition to the assessment of information from the British tax authorities and the evidence described on that occasion.

Regarding the allegation of service of the decision after the statutory deadlines, the party is of course right. However, the explanations of the tax authority and the case file show that this was justified by an erroneous assessment of the effects of service of the decision, which was rectified by the appeal body. This fact lengthened the proceedings, however, it does not affect the outcome of the case.

On the other hand, the Court does not share the allegation of internal contradiction of the decision and thesis about the party's deliberate participation in activities aimed at tax fraud while examining its good faith. Such contradictions in the content of the contested decision were not found by the Court, and the fact that in the course of the proceedings various threads and theses were examined, which were not reflected in the content of the decision, is not significant for its assessment.

The deficiencies found exclude the possibility of analyzing the merits of the substantive provisions applied, hence the complaint alleging breach of the principle of proportionality or neutrality must be assessed as premature.

Considering that the contested decision violates the said provisions of procedural law, the Court acting pursuant to art. 145 § 1 point 1 lit. c of the Act of 30 August 2002 Law on proceedings before administrative courts (Journal of Laws of 2018, item 1302, hereinafter ppsa) set aside the contested decision. Costs were decided on the basis of art. 200 in from art. 205 § 2 above Act.

In the re-conducted proceeding, the tax authority should supplement the evidence with elements indicated in the content of the Court's considerations regarding the place of registered office or permanent place of business, or the issue of the applicant maintaining due diligence in selecting a contractor and concluding disputed transactions. In this regard, it is important to analyze the circumstances of the transactions concluded between the applicant and its suppliers, to determine the pattern of party behavior in the context of other non-negated transactions or market conditions. These circumstances should constitute a reference point when assessing whether, in carrying out the disputed transactions, the applicant behaved in a way that differed from the standards adopted in relations with other contractors, or whether it went beyond the limits adopted in the realities of a given market. So it may be important to determine