III SA / Gl 954/18 - Judgment of the Provincial Administrative Court in Gliwice

Date of judgment	2019-02-08 *final judgment*
Date of receipt	2018-08-28
Court	Provincial Administrative Court in Gliwice
referees	Barbara Brandys-Kmiecik / chairman rapporteur /
Symbol with description	6110 Tax on goods and services 6560
Thematic entries	Tax on goods and services
The complained body	Director of the National Treasury Information
Content of the result	Complaint dismissed
Regulations cited	OJ 2017 item 1221 art. 28b paragraph 1 and 2 *The Act of 11 March 2004 on tax on goods and services - consolidated text* Journal of Laws of the European Union 2011 No. 77 item 1 art. 11 paragraph 1 *Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112 / EC on the common system of value added tax*

SENTENCE

Provincial Administrative Court in Gliwice in the following composition: Chairman Judge of the Provincial Administrative Court Barbara Brandys-Kmiecik (trial), Judge of the Provincial Administrative Court Małgorzata Herman, Judge of the Provincial Administrative Court Magdalena Jankiewicz, Protocol clerk Senior clerk Małgorzata Wasik, after hearing at the hearing on January 23, 2019, cases from A GmbH's complaint against the individual interpretation of the Director of National Tax Information of [...] No. [...] regarding tax on goods and services dismisses the complaint.

SUBSTANTIATION

The contested individual interpretation of [...], No. [...], Director of the National Tax Information Office, after examining the application 'A' in K. (hereinafter: the Applicant, the Company, the applicant) for an individual written interpretation regarding tax on goods and services in determining whether the Applicant has a permanent place of business in Poland (question No. 1) and determining the place of taxation of a logistics service and the obligation to issue an invoice containing the phrase "reverse charge" (question No. 2) - stated that the Company's positions are incorrect.

The applicant presented the following facts in the application.

The applicant is a company with headquarters in Germany whose main activity is the sale of jewelry and clothing accessories. The company sells its accessories to various customers in Europe. The applicant has concluded a contract with the Contractor - a limited liability company with its registered office in Poland; active VAT taxpayer; providing services as part of its operations logistics service, which consists of repackaging, wrapping, storage and delivery to appropriate places of goods belonging to customers of contractors, indicated by the contractor. The agreement which the Applicant has concluded with the Contractor is a contract for permanent logistic service (Agreement), under which the Contractor acts as the so-called the Applicant's distribution center (the Contractor's service is limited to a logistics service - the Contractor does not act as an intermediary in Poland, i.e. as part of his functions he will not look for clients for the Applicant). The logistics service provided under the Contract by the Contractor also includes a storage service, in addition to repackaging, wrapping and preparation of the Applicant's goods for shipment to warehouses designated by the Applicant on the territory of Germany, or a distribution center. Transport of goods to designated places is organized by the Contractor and performed by his subcontractors. The storage service is provided by the Contractor based on the warehouses that the Contractor rents from a third party (who is not the Applicant). The applicant is not entitled to dispose of the warehouse as owner or tenant. The applicant and his representatives do not have access to the warehouses used by the Contractor. As part of the storage service, the Contractor has no right to manage the area in which the Contractor's goods are and will be stored and to decide

on the method and place for storing goods on this surface. In connection with the conclusion of the Agreement with the Contractor, the Applicant will not employ employees on Polish territory, nor will he delegate his employees to perform tasks on Polish territory. The logistics service will be performed by the Contractor and his staff. The applicant is a taxable person within the meaning of art. 28a point 1 of the VAT Act. The applicant and his representatives do not have access to the warehouses used by the Contractor. As part of the storage service, the Contractor has no right to manage the area in which the Contractor's goods are and will be stored and to decide on the method and place for storing goods on this surface. In connection with the conclusion of the Agreement with the Contractor, the Applicant will not employ employees on Polish territory, nor will he delegate his employees to perform tasks on Polish territory. The logistics service will be performed by the Contractor and his staff. The applicant is a taxable person within the meaning of art. 28a point 1 of the VAT Act. The applicant and his representatives do not have access to the warehouses used by the Contractor. As part of the storage service, the Contractor has no right to manage the area in which the Contractor's goods are and will be stored and to decide on the method and place for storing goods on this surface. In connection with the conclusion of the Agreement with the Contractor, the Applicant will not employ employees on Polish territory, nor will he delegate his employees to perform tasks on Polish territory. The logistics service will be performed by the Contractor and his staff. The applicant is a taxable person within the meaning of art. 28a point 1 of the VAT Act. in which the Contractor's goods are and will be stored and to decide on the method and place of storage of goods on this surface. In connection with the conclusion of the Agreement with the Contractor, the Applicant will not employ employees on Polish territory, nor will he delegate his employees to perform tasks on Polish territory. The logistics service will be performed by the Contractor and his staff. The applicant is a taxable person within the meaning of art. 28a point 1 of the VAT Act. in which the Contractor's goods are and will be stored and to decide on the method and place of storage of goods on this surface. In connection with the conclusion of the Agreement with the Contractor, the Applicant will not employ employees on Polish territory, nor will he delegate his employees to perform tasks on Polish territory. The logistics service will be performed by the Contractor and his staff. The applicant is a taxable person within the meaning of art. 28a point 1 of the VAT Act. The logistics service will be performed by the Contractor and his staff. The applicant is a taxable person within the meaning of art. 28a point 1 of the VAT Act. The logistics service will be performed by the Contractor and his staff. The applicant is a taxable person within the meaning of art. 28a point 1 of the VAT Act.

In addition to the application, the Applicant indicated that in Poland the Company sells goods, including to various types of stores, e.g. clothing, cosmetics, shopping malls, where it displays its goods on so-called sales stands. In this case, the Applicant is the owner of the goods until the goods are purchased by the final customer in the store (at the same time the Applicant sells the goods to his client, i.e. the store, and the goods are sold by the client to the final customer). The company also sells its products to "B", i.e. an entity from the group [...] that deals with further sales to end customers in brand stores [...]. The company purchases goods mainly from the territory of Asia. Some goods go from Asia directly to Poland, i.e. to the Contractor to handle packages in accordance with the Logistics Service Agreement. Part goes directly to Germany - to K., where the Applicant's headquarters is located, and then is sent to Poland to the Contractor to handle parcels in accordance with the Agreement. The goods delivered to the Contractor are then handled in accordance with the Agreement and then sent to warehouses on the territory of Germany (currently goods are also sent on the territory of Germany, which in the future are to be delivered to stands / stores on the territory of Poland). Then the goods are sent to the Applicant's contractors. The applicant does not sell goods to end customers on Polish territory. Goods are sold by the Applicant to end customers only on the Amazon platform (in Germany, Great Britain). Contractors in Poland are business entities, i.e. conducting economic activity within the meaning of the VAT Act (commercial companies, natural persons conducting economic activity). The logistics service agreement was concluded for a period of up to [...] with the option of extending its duration if the conditions indicated in the Agreement are met. The contract may, depending on the case, be extended until [...], [...] or [...]. Goods in Poland are stored depending on the products and their further use from 1 day to about 6 months. The contractor acts as the Applicant's distribution center (the Contractor's service is limited to a logistics service).

The logistics service provided under the Contract by the Contractor includes the main logistics service, which includes transport to the warehouse (from the headquarters [...] in K.), unloading with a warehouse trolley, labeling products with price labels, replacing cards / tags in products, packaging products after wrapping them in bulk cartons, loading goods, transport to Germany (to K.). In addition, the Contractor provides the service of returns and sales (acceptance of the return of off-season goods, the owner of which is 'A', sorting returned products in terms of quality and product category, packing in bulk cartons, storage, issuing cartons with products sorted from shipment to K. to the Applicant's headquarters), service of components for sales stands (receipt of goods, storage, collection of products in accordance with the order, packaging of orders, delivery of goods to the transport or courier company, or transfer to the Applicant's headquarters in K.) and the service of handling packaging materials (purchase of packaging materials, cartons) by the Contractor, delivery of materials to the warehouse in W., labeling of cartons, storage of cartons, loading of cartons in accordance with the Applicant's order, issuing an invoice - sale of cartons by the Contractor to the Applicant. The activities of a permanent logistics service are closely related. The storage service included in the logistics service is ancillary. The applicant purchases packaging materials from the Contractor. The applicant does not carry out activities subject to VAT. issuing an invoice - sale of cartons by the Contractor to the Applicant. The activities of a permanent logistics service are closely related. The storage service included in the logistics service is ancillary. The applicant purchases packaging materials from the Contractor. The applicant does not carry out activities subject to VAT. issuing an invoice - sale of cartons by the Contractor to the Applicant. The activities of a permanent logistics service are closely related. The storage service included in the logistics service is ancillary. The applicant purchases packaging materials from the Contractor. The applicant does not carry out activities subject to VAT.

In connection with the above description, the following questions were asked:

1. Is it correct that the conclusion of the Contractor's Agreement with the Applicant will not lead to the establishment of a permanent place of business of the Applicant in Poland?

2. Will the place of providing the logistic service performed by the Contractor under the Agreement concluded with the Applicant be, pursuant to art. 28b of the VAT Act, the place where the Applicant (as the purchaser of the service) has its registered office and thus the logistics service will not be subject to VAT on the territory of Poland and the Contractor will be obliged to issue an invoice containing the phrase "reverse charge"?

The applicant expressed the view to question No. 1 stating that the conclusion of the Agreement for permanent logistics service will not lead to the establishment of a permanent place of business in Poland by the Applicant (the fact of concluding the Agreement for permanent logistics service will not affect the establishment of a permanent place of business in Poland by applicant).

However, regarding the position to question 2, he expressed the view that the place of providing logistics services under the Agreement will be, in accordance with art. 28b paragraph 1 of the VAT Act, the place where the Applicant has its seat - and therefore the service will not be subject to VAT in Poland. Thus, the Counterparty will be obliged to issue an invoice to the Counterparty with the annotation "reverse charge".

In support of his position, the applicant referred to a number of individual interpretations of the Director of the Tax Chamber in similar matters and the case law of the CJEU. He emphasized that in the future event described in the application, the Applicant would not have an adequate structure in Poland in terms of human resources necessary for establishing a permanent place of business; the condition of having an adequate technical infrastructure structure in Poland is also not met. The applicant will not have infrastructure in Poland, for its sole use, necessary to operate in Poland; concluding the Agreement, he will not set up an office or any other permanent establishment in Poland; warehouses on the basis of which the logistics service will be provided by the Contractor will also not be the property of the Applicant, nor the subject of the lease contract concluded by him or another contract under which the Applicant could use warehouses. The right to use the warehouses based on the lease agreement concluded by the Applicant with a third party will be vested only in

the Contractor who will provide the logistics service. Conclusion of the Agreement with the Contractor will not have any impact on the current place of management of the Applicant's enterprise. The Applicant's activities will continue to be managed from the seat of the Applicant; key actions from the Applicant's point of view will also be taken there, such as concluding contracts for the purchase and sale of goods, placing orders for the delivery of goods, taking orders from customers, etc. As a result of the conclusion of the contract, the applicant will also not have any structure in Poland that could participate in making management decisions or the process of negotiating and concluding contracts. therefore, the condition for having an adequate structure in terms of personnel facilities will not be met, which precludes the establishment of a permanent place of business in Poland by the Applicant.

The interpretative body did not share the Applicant's position and considered it incorrect in the individual interpretation issued on 19 June 2018. He referred to the provisions of the Act of 11 March 2004 on tax on goods and services (i.e., Journal of Laws of 2017, item 1221, as amended, hereinafter: the VAT Act). In particular, he pointed out that pursuant to art. 5 paragraph 1 point 1 of the VAT Act, payable supply of goods and payable services within the territory of the country are subject to VAT. According to art. 8 clause 1 of this Act, by rendering services referred to in art. 5 paragraph 1 point 1, shall mean any performance for a natural person, legal person or an organizational unit without legal personality that does not constitute a supply of goods within the meaning of Art. 7 (...). Pursuant to art. 15 paragraph 1 of the VAT Act, taxpayers are legal persons, organizational units without legal personality and natural persons who independently carry out economic activities referred to in paragraph 2, regardless of the purpose or result of this activity.

The authority explained the concept of "permanent establishment" by referring to the definition in art. 11 paragraph 1 of Council Regulation (EU) No. 282/2011, rulings of the CJEU and national court and administrative rulings. He pointed out that pursuant to art. 11 paragraph 1 of the Regulation, for the purposes of applying Art. 44 of Directive 2006/112 / EC "permanent place of business" means any place other than the place of business of the taxpayer referred to in Art. 10 of this Regulation - which is characterized by sufficient stability and appropriate structure in terms of personnel and technical resources to enable it to receive and use services provided for its own needs in this permanent place of business.

He further stated that an entity has a permanent place of business in the territory of the country, if, using infrastructure and personnel in its territory, it conducts activities in an organized and continuous manner, under which it carries out activities subject to value added tax. It should therefore be assumed that technical infrastructure and personal involvement must be closely related to the performance of taxable activities. Therefore, it is necessary for the permanent establishment that this place not only uses goods and services, but also could itself carry out taxable activities in accordance with art. 5 paragraph 1 of the Act. At the same time, it is not necessary to recognize the entity's operations as a permanent place of business in Poland, that the entity itself provides services or supplies of goods with sufficient funds. It is also important that the created business structure of the entity should be able to receive and use services provided for its own needs.

At the same time, it is not necessary to have your own personal and technical base to adopt a permanent place of business in a given country, but the taxpayer must have - based on the requirement of sufficient stability of the place of business - comparable control over the personnel and technical base.

Therefore, as a result of the analysis of the facts and future events presented in the application in the context of the legal regulations referred to, the authority came to the conclusion that the Applicant in connection with the business conducted in Poland will have a permanent place of business in the territory of the country. This is indicated by the circumstances of the case described above, which show that the criteria will be met: having a minimum size of activity characterized by a certain level of stability, in which there is a continuous presence of human resources necessary to conduct the taxpayer's business, as well as the presence of the necessary technical resources, i.e. . technical infrastructure enabling this activity. Therefore,

For a permanent establishment in a given country it is not necessary for the taxpayer to have the personnel he employs and the technical facilities which he owns. It is enough that the entity uses both the personnel and technical facilities of other entities in such a way that it enables it to receive and use the services provided for its own needs in this permanent place of business. Only the organizational structure necessary to conduct a given type of activity is necessary, while the human resources necessary to perform it can be obtained from external resources. Also, technical resources do not have to belong to the taxpayer (i.e. be his property). It is sufficient to rent them or provide them in another way.

The authority referred to administrative court rulings and CJEU judgments stating that in the present case the criteria for having a minimum size of activity characterized by a certain level of stability, in which the presence of human and technical resources necessary for conducting the taxable person's business would be met. Thus, the use of technical infrastructure and staff owned in Poland to perform part of the Company's business operations, in an organized and continuous manner, qualifies the applicant's planned activity on the territory of the country as a permanent place of business in Poland.

Thus, the Applicant's position regarding determining whether the Applicant has a permanent place of business in Poland was considered incorrect.

Regarding the second question, the authority stated that in the analyzed case, the logistics service provided in the application under a permanent logistics service contract has no direct connection with the property within the meaning of Art. 28e of the VAT Act. He reminded that according to art. 28e of the Act - a place of providing services related to real estate, including services provided by appraisers, real estate agents, accommodation services in hotels or facilities with similar functions, such as holiday centers or places intended for use as camping, the use and use of real estate and services preparation and coordination of construction works, such as services of architects and building supervision, is the location of the property.

It was emphasized that in this case the logistics service provided by the Contractor consists of repackaging, wrapping, storage and delivery of goods to appropriate places. As pointed out by the Applicant, the storage service is provided by the Contractor based on the warehouses that the Contractor rents from a third party (who is not the Applicant). The applicant has not been granted the right to dispose of the warehouse as owner or tenant. The applicant and his representatives do not have access to the warehouses used by the Contractor. Permanent logistics services are closely related. The storage service included in the logistics service is ancillary. So it must be said that in the present case the service provided under the contract for permanent logistics services provided by the Contractor to the Applicant is not a service related to real estate. Consequently, to the service in question, art. 28e of the VAT Act does not apply. Therefore, in the analyzed case, the place of providing the logistics service to the Applicant will be in accordance with art. 28b paragraph 2 of the Act, the territory of Poland. In this case, the Applicant has its registered office in Germany. At the same time, as stated above, the Applicant has a permanent place of business in Poland, and art. 28e of the Act. In addition, specific rules for determining the place of providing services arising from art. 281f paragraph 1 and 1a, art. 28g paragraph 1, art. 28i. Art. 28j paragraph 1 and 2 and art. 28n of the Act. Therefore, in the analyzed case, the place of providing the logistics service is the Applicant's permanent place of business, i.e. the territory of Poland pursuant to art. 28b paragraph 2 of the Act. Thus, the service in question will be subject to tax on goods and services in Poland, and the Applicant's position regarding the determination of the place of taxation of the logistics service and the obligation to issue an invoice containing the phrase "reverse charge" should be considered incorrect. Art. 28j paragraph 1 and 2 and art. 28n of the Act. Therefore, in the analyzed case, the place of providing the logistics service is the Applicant's permanent place of business, i.e. the territory of Poland pursuant to art. 28b paragraph 2 of the Act. Thus, the service in question will be subject to tax on goods and services in Poland, and the Applicant's position regarding the determination of the place of taxation of the logistics service and the obligation to issue an invoice containing the phrase "reverse charge" should be considered incorrect. Art. 28j paragraph 1 and 2 and art. 28n of the Act. Therefore, in the analyzed case, the place of providing the logistics service is the Applicant's permanent place of business, i.e. the

territory of Poland pursuant to art. 28b paragraph 2 of the Act. Thus, the service in question will be subject to tax on goods and services in Poland, and the Applicant's position regarding the determination of the place of taxation of the logistics service and the obligation to issue an invoice containing the phrase "reverse charge" should be considered incorrect.

In his complaint to the Provincial Administrative Court in Gliwice, the Applicant, acting through a proxy, requested the annulment of the contested interpretation and the award of costs.

The interpretation alleged a violation of:

- art. 28b paragraph 1 and 2 of the VAT Act in connection with from art. 11 paragraph 1 of Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 establishing implementing measures for Directive 2006/112 / EC on the common system of value added tax (hereinafter: the Implementing Regulation);

- art. 14h in connection with art. 121 § 1 of the Act by issuing an interpretation without the rule of conducting proceedings in a manner that raises trust in tax authorities.

In the opinion of the applicant Company, the Director of the National Tax Information Office misinterpreted the provisions of art. 28b of the VAT Act in connection from art. 11 paragraph 1 of the Implementing Regulation, by recognizing that, in the light of the facts and future events presented, the conclusion of the Agreement by the applicant with the Contractor will lead to the establishment of the applicant's permanent place of business in Poland.

According to the applicant, the authority arbitrarily decided that the applicant would have actual power over technical and personnel facilities by using them in the sale of goods (jewelery and clothing accessories). According to the authority, the contractor's technical infrastructure and personal involvement, as well as the infrastructure located in the stores in which the Applicant displays its goods on so-called sales stands used by the Applicant will be closely related to the performance of his taxable activities. According to the applicant, this view is erroneous and consists in an attempt to convince the applicant that in the circumstances presented in the facts and in the future, there will be personnel and technical resources,

In its defense, the authority requested that it be dismissed, maintaining in full the arguments contained in the contested interpretation.

The Provincial Administrative Court in Gliwice considered the following:

The complaint turned out to be unfounded.

In accordance with art. 1 § 1 and 2 of the Act of July 25, 2002 - Law on the structure of administrative courts (i.e., Journal of Laws of 2017, item 2188), administrative courts administer justice through control of public administration activities in terms of compliance with the law . Pursuant to art. 3 § 2 point 4a of the Act of 30 August 2002 Law on proceedings before administrative courts (Journal of Laws of 2018, item 1302, as amended - hereinafter abbreviated: ppsa), the control exercised by administrative courts also includes adjudicating on complaints regarding written interpretations of tax law issued in individual cases. This means that the court examines the legality of the contested interpretation, i.e. its compliance with the substantive law determining the rights and obligations of the parties and procedural law governing proceedings before public administration bodies. Based on Article. 57a ppsa, the administrative court is bound by the charges of the complaint and the legal basis invoked. It should be noted that the specificity of the proceedings regarding the issue of a written interpretation is, inter alia, that the tax authority examines the case only within the framework of the facts presented by the Applicant and the legal assessment expressed by him.

The dispute in this case boils down to determining whether the conclusion of the Contractor's Agreement with the Applicant will not lead to the establishment of a permanent place of business of the Applicant in Poland

and whether the place of providing the logistic service provided by the Contractor under the Agreement concluded with the Applicant will be, pursuant to art. 28b of the VAT Act, the place where the Applicant (as the purchaser of the service) has its registered office and thus the logistics service will not be subject to VAT on the territory of Poland and the Contractor will be obliged to issue an invoice containing the phrase "reverse charge"?

Therefore, the subject of the dispute is the interpretation of the provisions of the VAT Act regarding the establishment of the place of business of the Company.

The applicant states that the fact of concluding the Agreement for permanent logistic service did not lead to the establishment of a permanent place of business in Poland; place of providing logistics service under the Agreement will be, in accordance with art. 28b paragraph 1 of the VAT Act, the place where the Applicant has its registered office - and therefore the service will not be subject to VAT in Poland and thus, the Contractor shall be obliged to issue to the Contractor an invoice with the note "reverse charge".

The authority, however, concluded that the use of technical infrastructure and personnel by the Company in Poland under the aforementioned Agreement to perform part of its business activities in an organized and continuous manner, qualifies the planned activity of the Applicant on the territory of the country as a permanent place of business in Poland with the obligation to make appropriate tax settlements.

In this dispute, the court in the adjudicating panel approves the authority.

The VAT Act does not define the concept of "the business establishment of the taxpayer". This definition is contained in the directly applicable Council Implementing Regulation No. 282/2011 of 15 March 2011 establishing implementing measures to Directive 2006/112 / EC on the common system of tax added value (Dz. U. E. L. 2011.77.1) In art. 10 of this regulation, it was decided that the place of business of the taxpayer is the place where the functions of the company's main management board are performed. It is common ground that the applicant is established in K.

The VAT Act also does not define the concept of "permanent establishment." According to art. 11 paragraph 1 above Council Regulation No. 282/2011 "a permanent place of business means any place - other than the place of business of the taxpayer, referred to in Article 10 of the abovementioned Regulation, which is characterized by sufficient stability and an appropriate structure in terms of personnel and technical facilities, to enable him to receive and use the services provided for his own needs of this permanent place of business "and such criteria are also met in the present case in relation to the Company Poland.

The applicant accuses the authority of incorrectly considering that the Company has a permanent place of business in Poland, which has committed an infringement of Art. 28b paragraph 1 and 2 of the VAT Act in connection with from art. 11 of the EU Council Implementing Regulation No. 282/2011 of 15 March 2011 establishing implementing measures for Directive 2006/112 / EC on the common system of value added tax. In the circumstances of the facts presented - in the Court's view - this allegation is totally misguided.

It should be noted that the issue of determining the conditions for recognizing what should be understood as a permanent place of business has been the subject of many judgments of the Court of Justice.

The Supreme Administrative Court, by decision of October 25, 2012, reference number Act I FSK 1993/11 asked the Court of Justice of the EU a question regarding the interpretation of EU law in this matter. The NSA asked TS: "Is the taxation of services provided by company A with its registered office in Poland to company B with its registered office in another EU Member State, when company B conducts business activity using company A's infrastructure, a permanent place of business in within the meaning of Article 44 of the Council Directive 2006/112 / EC of 28 November 2006 on the common system of value added tax (Journal of Laws of the European Union L.06.347.1 as amended), the place where the company is based AND?"

In the judgment of 16 October 2014 in case C - 605/12 **Welmory**sp. z o.o. against the Director of the Tax Chamber in Gdańsk The Court of Justice of the European Union has ruled that a taxpayer established in one Member State who uses services provided by another taxpayer based in another Member State should be considered as having in another a "permanent establishment" within the meaning of the provisions of the VAT Directive, if that permanent establishment has sufficient stability and an appropriate structure in terms of personnel and technical resources to enable it to receive services and use them for the purposes of its business. As indicated by the CJEU, the provisions of the Regulation implementing the VAT Directive provide that a permanent place of business means any place - other than the place of business of the taxpayer - characterized by sufficient stability and an appropriate structure in terms of personnel and technical resources to enable him to receive and use the services provided for his own needs of this permanent place of business. It is worth emphasizing that the fact that to recognize the existence of a permanent establishment in a given country it is not necessary for the taxpayer to have the personnel who is employed by him and the technical facilities which he owns, to be emphasized. Therefore, your own personnel and technical facilities are not necessary, as long as the availability of other facilities is comparable to the availability of your own facilities. However, this entity should exercise control over this personnel, both personnel and technical. In addition, according to the CJEU, it is also crucial that the place of business should be able to receive and use the services purchased for its own needs. As pointed out by the CJEU, it will be the sole competence of the national court to carefully examine the facts in terms of verifying whether the entity has the necessary personnel and technical resources in Poland to enable the receipt of services provided by a Polish company and whether the acquired services were used to carry out the principal's business activity. that the place of business has the opportunity to receive and use the purchased services for their own needs. As pointed out by the CJEU, it will be the sole competence of the national court to carefully examine the facts in terms of verifying whether the entity has the necessary personnel and technical resources in Poland to enable the receipt of services provided by a Polish company and whether the acquired services were used to carry out the principal's business activity. that the place of business has the opportunity to receive and use the purchased services for their own needs. As pointed out by the CJEU, it will be the sole competence of the national court to carefully examine the facts in terms of verifying whether the entity has the necessary personnel and technical resources in Poland to enable the receipt of services provided by a Polish company and whether the acquired services were used to carry out the principal's business activity.

The abovementioned judgment of the CJEU, despite the transfer to the national court of the right to assess the actual state of affairs, contains important guidelines for defining the concept of a permanent place of business.

It is also worth emphasizing that the CJEU in previous judgments also emphasized that a certain minimum scale of activity is necessary to determine the place of permanent establishment, which is an external hallmark that activity in this place is carried out constantly. Yes CJEU in judgment C-231/94 (Faaborg-Gelting Linien a / s v. Finanzamt Flensburg).

In addition, 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 manner, i.e. Repetitive and lasting (CJEU in judgment 168/84 - Gunter Berkholz v. Finanzamt Hamburg-mitte-aitstadt).

Having regard to the provisions of art. 15 paragraph 2 of the VAT Act, and art. 11 paragraph 1 of Regulation No. 282/2011 and in the jurisprudence of the CJEU criteria, one should agree with the interpretative body that an entity has a permanent place of business in the territory of the country, if it uses its infrastructure in an organized and continuous manner in the territory of that country, it conducts activities under which carries out activities subject to value added tax. It should therefore be assumed that technical infrastructure must be closely related to the performance of activities subject to value added tax.

It should also be noted that in the judgment of 28 June 2007 in the case Plan zer Luxembourg Sari v Bundeszentralamt fur Steuern (file reference number C-73/06), the CJEU stated that: "According to established case-law in the field of VAT, a permanent enterprise requires minimal sustainability, by accumulating permanent human and technical resources necessary for the provision of specific services (...) This minimum sustainability therefore means a sufficient degree of sustainability and a structure that, from the point of view of human and technical resources, is capable of providing the services in question independent. " In the context of the above, reference should also be made to the judgment of the CJEU judgment C-260/95 in the case Commissioners of Customs and Excise v DFDS A / S.

In art. 28b paragraph 1 of the VAT Act, a general rule is stipulated that 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. However, there are several exceptions to this rule.

In particular and in art. 28 b paragraph 2 of the VAT Act, it was stated that if the services are provided for a permanent place of business of the taxpayer, which is located in a different place than the seat of his business, the place of rendering these services is the permanent place of business.

As the facts of the case, the Company indicated in its application the scope of activity in Poland. She presented a detailed scope of activities and operations included in the so-called logistics service provided on the basis of a Contract with a Contractor.

Therefore, when examining the facts in question, the interpretative body aptly assumed that the scope of the services commissioned by the applicant makes it possible to conclude that the Company has its headquarters in K., but located its permanent place of business in Poland, where it established a distribution center with technical and personal infrastructure.

In the opinion of the Court, the applicant has sufficient technical and personnel facilities in Poland (by renting warehouse space and necessary contractor employees under the concluded Agreement) to conclude that she has a permanent place of business in that country. In this regard, the position of the authority that the applicant deciding to create in Poland the so-called the disposition center, set up to carry out all activities in its commercial operations, has created a place of business in Poland. From the comparison of the activities constituting the commercial activity of the Company, almost all of them are carried out on Polish territory - storage, distribution, returns, complaints and sales.

As regards the role of external staff as well as the contractor's company acting on behalf of the Complainant - the court found that the staff and external entities are subject to the same control and supervision as employees working for the Complainant itself - they only perform actions resulting from the findings and guidelines imposed by the Company (who, where, how much, what commodity, etc.). In addition, the whole range of complaint and sales activities, exchange of goods, etc. is carried out in Poland.

In the opinion of the Court, one should agree with the CJEU's views that such a situation is similar to economic realities in the scope of using by domestic entities the services of outsourcing companies in the country (also providing appropriate staff and providing various services that may exclude the need to employ their own employees), that the assumption that the applicant did not have a place of permanent establishment due to the lack of her own (employed by her) employees, in the realities presented in the application, would be erroneous and could violate the principle of competitiveness on the economic market.

As a consequence, for the purposes of the commercial operation of the Company, which is based on the purchase of a specific good and its further distribution, the Court considered that the resources available to the applicant allow it to be assumed that the Company de facto conducts business activity in Poland on a permanent basis, with using - as indicated in the application - the infrastructure of a separate contractor and his employees and other entities providing services directly related to his business activity to him.

Consequently, the Court considered that the applicant was responsible for settling VAT in the case of deliveries carried out in the country, as he was in the present case as a VAT taxpayer within the meaning of Art. 15 of the VAT Act, having a permanent place of business in Poland.

Thus, the Court shared the position of the interpretative body regarding the place of supply of services rendered to the applicant.

According to art. 28b paragraph 1 of the VAT Act, 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 lila, art. 28g paragraph 1, art. 28i. Art. 28j and art. 28n Act. In turn, in paragraph 2 of this article states that if the services are provided for a permanent place of business of the taxpayer, which is located in a different place from his place of business, the place of supply of these services is a permanent place of business.

Summing up the above conditions, the court considered that the applicant purchasing services from a contractor had a permanent place of business in Poland, because she purchased these services for the purposes of her business. Therefore, the place of supply for such services is the territory of Poland. Therefore, in the applicant's case, the Company's registered office in K. is not at the same time a permanent place of business located in Poland, as evidenced above all by the disproportion between activities performed in K. (only formal and banking activities), and the scope of activity created in Poland, based on the Agreement with the Contractor distribution center, covering all the actual activities enabling the actual, correct delivery of goods to the customer.

Consequently, in the opinion of the Court, the interpretative body correctly interpreted the provisions of law which are the subject of interpretation in the facts of the case.

It should also be noted that in the judgment reference number act III SA / Gl 955/18, the subject of the court's ruling was a similar issue initiated by the applicant company's request for a written interpretation of tax law provisions, i.e. tax on goods and services as to whether the conclusion of the Agreement with the Contractor by the Company did not lead to the establishment in Poland permanent place of business of the Applicant, to which art. 28 section 2 of the VAT Act and the same place of providing logistic services performed by the Contractor on the basis of the Agreement concluded with the Applicant is, pursuant to art. 28b of the VAT Act, the place where the Applicant (as the purchaser of the service) has its registered office and thus the logistics service is not subject to VAT on the territory of Poland, as a result, the Applicant will not be entitled to deduct VAT from the invoice documenting the provision of the logistics service. Also in the above case, the authority stated that the Company's position - presenting a similar argument to that presented in the present case - was incorrect, and the adjudication panel on February 7, 2019 shared the authority's view dismissing the complaint.

Having the above in mind, the Court, pursuant to art. 151 ppsa, dismissed the complaint