I SA / Bd 909/18 - Judgment of the Provincial Administrative Court in Bydgoszcz

Date of judgment	2019-02-27 *final judgment*
Date of receipt	2018-12-05
Court	Voivodship Administrative Court in Bydgoszcz
referees	Halina Adamczewska-Wasilewicz / chairman rapporteur / Urszula Wiśniewska Zdzisław Pietrasik
Symbol with description	6110 Tax on goods and services
Thematic entries	Tax on goods and services
The complained body	Director of the Tax Chamber
Content of the result	complaint dismissed
Regulations cited	OJ 2011 No. 177 item 1054 art. 28 b paragraph 2 *Act of 11 March 2004 on tax on goods and services - consolidated text*

SENTENCE

The Voivodship Administrative Court in Bydgoszcz, composed of the following: Chairman: judge of the Provincial Administrative Court Halina Adamczewska-Wasilewicz (pr.) Judges: judge of the Supreme Administrative Court Zdzisław Pietrasik judge of the Administrative Court Urszula Wiśniewska Protector: senior court secretary Anna Krenz-Winiecka after being heard at the hearing on February 27, 2019. cases from MJ's complaint against the decision of the Director of the Tax Administration Chamber in B. of [...] No. [...] regarding tax on goods and services for March, April, May, June 2016. dismisses the complaint

SUBSTANTIATION

By decision of [...] July 2018. The head of the Tax Office in I. ruled for the Trade and Service and Transport Company "A." MJ (Applicant Party) on the tax on goods and services for March, April, May

and June 2016, specifying the amount of tax liability, including tax. The decision was based on the authority's findings that during the period under consideration the applicant had incorrectly applied the reverse charge mechanism by placing the information "reverse charge" on invoices issued to OHL without showing VAT on them. The applicant accepted that the place of supply of services to the Cypriot taxpayer was the place where that taxpayer had its registered office, i.e. [...]. In the opinion of the authority, the analysis of the evidence gathered shows that the Cypriot entity has [...] a permanent place of business. In connection with the above, pursuant to art. 28b paragraph 2 of the Act of 11 March 2004. on tax on goods and services (Journal of Laws of 2011, item 1054) hereinafter: "the VAT Act", the place of taxation for these services is the territory [...]. Therefore, according to the authority, the applicant should tax these services at the domestic rate set out in Article 41 section 1 of the VAT Act, i.e. at a rate of 23%.

By its appeal, the applicant requested that the contested decision be set aside

in full, or possibly to set aside the contested decision and refer the case back to the first instance authority for alleging a breach of substantive law, i.e. 28b paragraph 1 and 2 of the VAT Act in connection with from art. 11 of Council Implementing Regulation (EU) No 282/2011 of 15 March 2011, by misinterpreting them resulting in the recognition that OHL's forwarding activity has the hallmark of having a permanent place of business in [...], and therefore the sale of transport services during from March to June 2016 should be taxed with a 23% VAT rate when OHL's registered office and permanent place of business are [...] and the relationship and nature of cooperation between the Cypriot company and T.-T. do not support a clear statement, that the permanent place of business is in [...], as well as a violation of the provisions of tax proceedings, i.e. art. 122 and art. 191 in relation from art. 187 § 1 of the Act of August 29, 1997. Tax Code (Journal of Laws of 2018, item 800) - hereinafter referred to as "Op", by exceeding the limits of the free assessment of evidence.

By decision of [...] October 2018. Director of the Tax Administration Chamber

in B. he upheld the contested decision of the first-instance authority. According to the Director, the first instance authority reasonably decided that the case was subject to the provisions of art. 28b paragraph 2 of the VAT Act, and the applicant should tax the services rendered to the Cypriot Company at the national rate referred to in Art. 41 section 1 of the VAT Act, i.e. 23%.

The authority said that the Cypriot company OHL is conducting business in the field of forwarding services for European Union customers. The company's head office is located at [...]. The company employs employees. It has technical facilities in the form of rooms intended for business, technical equipment, and an internet telephone line. It is a forwarding company, therefore it does not have fuel bases and means of transport. She engaged employees of the Polish company T.-T in her business activity. Sp. z o. o. Sp.k., and also used its technical facilities to search for potential carriers,

including sending orders, conducting telephone conversations, as well as receiving, full verification and sending correspondence. All these activities took place

at the headquarters of T.-T. Sp. z o. o. sp.k. in SP. The applicant, on the other hand, agreed and carried out all transport-related activities

based on orders and guidelines received exclusively from T.-T. Sp. z o. o. Sp.k.

In the opinion of the Director of the Tax Administration Chamber, collected material

and the established circumstances leave no doubt that the applicant's economic activity during the period considered operated according to a predetermined scheme. According to the authority, the applicant since the commencement of her economic activity, i.e. from [...] March 2014. provided transport services consisting of the transport of diesel oil from [...] to [...] at the request of the Polish company T.-T. Sp. z o. o. Sp.k.,

and invoices issued for the abovementioned the entity for the transport services provided included the tax rate of 23%. [...] however, as noted by the authority, it provided the same services consisting of transporting diesel fuel from [...] to [...] from [...] April 2015. to the Cypriot entity, still directly cooperating with the company T.-T., and the type and scope of services performed has not changed. However, considering that the place of supply of services was [...], the applicant did not charge tax on the goods and services provided.

In the light of the above, it incorrectly settled the value added tax on the services it provided. The authority emphasized that, although the service contract was concluded by the applicant with an OHL entity established on [...], it incorrectly determined the place of their provision. In the authority's assessment, art. 28b paragraph 2 of the VAT Act, according to which

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 performance of these services is the permanent place of business.

The authority found unfounded the allegations of any and selective assessment of the testimony given by the applicant and AB and information regarding OHL obtained from the tax administration from [...]. The director pointed out the contradictions in the testimony given by the Party on [...] November 2015, [...] March 2017. and [...] May 2017 - in the manner of establishing cooperation

from OHL, as well as its course. The authority considered the first testimonies submitted by the Party to be the key to resolving the matter in question, since they were not burdened with any procedural tactics that are drawn in subsequent testimonies that are mutually exclusive and inconsistent.

The authority noted that all the circumstances surrounding the transaction concluded by the applicant with OHL indicated that the actual organizer and participant was the entity having its registered office in [...], i.e.

T.-T. Sp. z o. o. Sp.k. According to the authority, this indicates, among others the fact that the applicant made a transaction with OHL on the basis of an agreement concluded between OHL and the Polish company T.-T., which was and is an agent of OHL in [...] (was obliged to permanently mediate and represent when concluding all contracts for OHL); one of the tasks T.-T. was required to perform. was to find entities providing transport services in [...] the operational activities of OHL. The organization of the delivery and transport orders for the applicant were in the hands of the Polish company T.-T .. In addition, T.-T. was obliged to conduct and organize marketing, advertising and promotional activities, researching the markets for goods and services provided by OHL, acquiring suppliers and business partners for OHL, analyzing the market for services that are the subject of OHL's activities, as well as other additional activities, in particular on the organization and negotiation of matters not listed above. It is also apparent from the applicant's testimony that she received transport orders from the forwarding company T.-T., which acts on behalf of the Cyprus company OHL and organized transports, and to which documents were sent after the service was performed. All talks were conducted with T.-T., and all matters related to transport were organized by an employee of T.-T .. Payments for services rendered were made by OHL by transfer from a bank account created in [...] The actual recipient of the services was the domestic entity K. Ś. Sp.j., not an entity having its registered office in another European Union country. T.-T. Sp. z o. o. Sp.k. undertook in the field of business of its enterprise to comprehensively arrange the collection and dispatch of goods belonging to OHL, in particular for collection

and storage of goods in the territory of [...], arranging the transport of goods to entities indicated by OHL, preparation of goods for transport, handling payments, preparation of transport documentation, insurance of goods at the express order of OHL and to receive all correspondence addressed to it and immediately forward it Cypriot company, including all information on deliveries, reports on ongoing debt collection activities. From the content of the power of attorney granted to AB

on [...] January 2015 by OHL it follows that he was the representative of OHL (e.g. to open, close and service bank accounts, dispose of funds accumulated on OHL bank accounts), authorized in particular to sign all letters, notifications and other documents related to relations on behalf of OHL with the bank, signing specimen signature cards, electronic banking services for all OHL accounts, managing assets on OHL accounts, including making transfers. The evidence collected does not suggest that the applicant had ever directly contacted OHL. All conversations and arrangements were made only with T.-T .. employees.

Based on the facts so determined, the authority concluded that T.-T. was a permanent place of business for the Cypriot entity. This company meets the criteria required to recognize its headquarters as a permanent place of business, such as equipping with adequate personnel and technical facilities and sufficient stability to enable it to receive or deliver goods / services.

In her complaint to the Court, the applicant requested that the contested decision be set aside in its entirety and that the decision of the first instance authority be set aside, alleging infringement:

1) provisions of substantive law, i.e. art. 28b paragraph 1 and 2 of the Act on tax on goods

and services in connection from art. 11 of Council Implementing Regulation (EU) No 282/2011 of March 15, 2011, by misinterpreting them resulting in the recognition that OHL's forwarding activity has the characteristics of having a permanent place of business in [...], and therefore the sale of transport services by The applicant in the period from December 2015. until February 2016 should be taxed with a 23% VAT rate when OHL's registered office and permanent place of business are [...] and the relationship and nature of cooperation between the Cypriot company and T.-T. do not support the unequivocal statement that the place of business is in any way related to the company T.-T .;

2) provisions of tax proceedings, i.e. art. 122 in connection from art. 187 in relation

from art. 191 Op, through:

- consideration of collected evidence, in particular information provided on [...] January 2016. and [...] February 2016. by the administration competent for OHL [...] in a non-exhaustive manner, and then assessing them, without taking into account all the conclusions derived from them, which resulted in the omission of the circumstances regarding where the decision-making center of that company is located, that the company has sufficient and own technical background

and personnel, and that all transported goods were controlled by the above-mentioned company, which in consequence resulted in incorrect determination of the facts of the case;

- consideration of the collected evidence, in particular the testimony of witness AB and the power of attorney granted to that witness by OHL, in a non-exhaustive manner, and then their evaluation without taking into account all the conclusions drawn from this evidence, which resulted in the omission of circumstances regarding the failure to pay by T.-T. sp. z o. o. for transport services and the lack of personal and capital connections between these companies as well as unjustified "extension" of the power of attorney to T.-T. due to the fact that the above-mentioned witness is the President of this company, which in consequence caused an erroneous determination of the facts of the case.

In its justification, the applicant alleged that the authorities had in no way addressed the objection as to the scope of AB's authorization by OHL regarding the possibility of conducting banking transactions

and the resources of the Cypriot company. According to the applicant, the authorities wrongly considered that OHL had [...] adequate personnel and technical facilities over which it had indirect control over T.-T., comparable to control over its own resources.

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

The Provincial Administrative Court considered as follows:

I. The action cannot be upheld, since the contested decision does not infringe the law. In accordance with art. 1 § 1 and § 2 of the Act of July 25, 2002. - Law on the structure of administrative courts (Journal of Laws of 2017, item 2188), administrative courts control the correctness of challenged administrative acts, including final decisions, taking into account the criterion of their legality. The decision is revoked if the court finds a violation of substantive law to an extent affecting the outcome of the case, a violation of law giving rise to resumption of proceedings or other violation of law that may have a significant impact on the outcome of the case (Article 145 § 1 point 1 letter ac of the Act of August 30, 2002 - Law on proceedings before administrative courts - Journal of Laws of 2018, item 1302, hereinafter: "Ppsa"

In examining the present case according to the criteria presented, the Court did not find such a violation of law.

The dispute in the case concerns the place of supply of transport services by the applicant to the Cypriot entity [...] Holdings Limit and the legitimacy of the authority challenging the reverse charge principle applied by the Taxpayer.

First, the PAC considered that the facts adopted in the contested decision were correct and did not raise the doubts of the Court. First of all, it should be stated that the evidentiary proceedings in tax matters are aimed at establishing the actual facts in the context of a specific norm of substantive tax law. The principle of completeness of evidence from art. 187 § 1 of the Act of August 29, 1997. - Tax Code (i.e. Journal of Laws of 2018, item 800 as amended) - hereinafter: "Op", does not mean that evidence should be taken even when all the circumstances disclosed in the case are sufficient to make a decision. The submission of evidence by a party does not automatically result in their having to be taken into account and carried out. Tax authorities are not obliged to admit any evidence proposed by a party, if other evidence is adequate and sufficient for the correct determination of the facts (cf. judgment of the Supreme Administrative Court of January 20, 2010, II FSK 1313/08 and of November 5, 2011, I FSK 1892/09). Evidence in tax matters is not an end in itself, but is

a search for an answer, whether in a given factual situation the taxpayer's situation falls under or does not fall under the hypothesis (and consequently, the disposition) of a specific norm of substantive tax law.

II. Referring to the disputed issue, it should be stated that this issue was the subject of assessment by the Provincial Administrative Court in Bydgoszcz in similar cases in which the applicant's complaints were dismissed by judgments of 11 December 2018. ref. files I SA / Bd 560/18 and I SA / Bd 561/18 (final). Tut. The court shares the position presented in the abovementioned judgments and will also use the arguments contained in them as adequate in the present case.

The complaint amounts to questioning the completeness of the evidence, in the absence of reference to the scope of AB's authorization by OHL in terms of its ability to carry out banking transactions and dispose of the funds of the Cypriot company. The complaint also alleged an erroneous assessment of the evidence in finding that OHL had [...] adequate personnel and technical facilities over which it had indirect control in T.-T. limited liability company limited partnership, comparable to control over own resources.

In the case, it concerned the application of art. 28b paragraph 1 and 2 of the VAT Act, according to which the place of supply of 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. If the services are provided for a permanent place of business of the taxpayer, which is located in a place other than his registered office, the place of supply of these services is the permanent place of business.

As the authority assumed in the contested decision, "the place of performance of a given activity is the place of its performance and, consequently, its taxation. The Act creates certain legal fictions indicating the place of performance, which often has nothing to do with the physical place of performance of a given activity. This results others due to the fact that for many operations it is impossible to determine the actual place of their performance. All Member States of the European Union have similar regulations regarding the place of performance (taxation). This is to prevent double taxation of the same transaction,

as well as situations in which the transaction would not be taxed in any country. Place of performance within the meaning of the Goods Tax Act

and services means the place of taxation of the activity. In the current legal status, it has become a rule to determine the place of providing services based on the place where the recipient has its registered office or permanent place of business, or permanent residence or usual place of residence. (...) The regulations regarding the determination of the place of supply of services seek to tax the service provided in the place of its actual use, i.e. its consumption by the recipient - at his business premises, permanent place of business or permanent place of residence or stay. The rule is then the tax settlement by the buyer under the so-called reverse charge mechanism - the customer automatically calculates and deducts VAT in the declaration submitted in the country of his registered office of business or place of business. The seat of the taxpayer is the place where the business is registered. It is not disputed in the present case that OHL's headquarters are in [...]. [...] however, the provision of art. 28b paragraph 2 of the Act on tax on goods and services introduces an exception to this rule - namely, when the services are provided for a permanent place of business of the taxpayer, located in a different place from his seat, the place of rendering these services will be the permanent place of business. Settlement of tax on goods and services takes place then It is not disputed in the present case that OHL's headquarters are in [...]. [...] however, the provision of art. 28b paragraph 2 of the Act on tax on goods and services introduces an exception to this rule - namely, when the services are provided for a permanent place of business of the taxpayer, located in a different place from his seat, the place of rendering these services will be the permanent place of business. Settlement of tax on goods and services takes place then It is not disputed in the present case that OHL's headquarters are in [...]. [...] however, the provision of art. 28b paragraph 2 of the Act on tax on goods and services introduces an exception to this rule - namely, when

the services are provided for a permanent place of business of the taxpayer, located in a different place from his seat, the place of rendering these services will be the permanent place of business. Settlement of tax on goods and services takes place then the place of providing these services will be a permanent place of business. Settlement of tax on goods and services takes place then the place of providing these services will be a permanent place of business. Settlement of tax on goods and services takes place then

in the country of permanent establishment. "

In the Court's view, that interpretation was correct and was not effectively contested by the applicant. The authority is right in pointing out that pursuant to art. 44 Council Directive 2006/112 / EC of November 28, 2006. on the common system of value added tax (Official Journal EU L No. 347 p. 1 as amended), the place of rendering services to a taxable person acting as such is the place,

in which the taxpayer has his business establishment. However, if these services are provided to a permanent place of business of a taxable person who is in a place other than his place of business, the place of performance of these services is the permanent place of business. In the absence of such a registered office or permanent establishment, the place of supply of services is the place where the taxable person who is the recipient of the service has a permanent place of residence or habitual residence.

It has been correctly cited that the provisions of the Goods Tax Act

and services, implementing provisions for this Act, and Council Directive 2006/112 / EC

of November 28, 2006 on the common system of value added tax (Official Journal EU L No. 347 p. 1 as amended) do not define the concept of "permanent establishment". From the content of art. 11 of Council Implementing Regulation (EU) No 282/2011

of March 15, 2011 laying down implementing measures for Directive 2006/112 / EC on the common system of value added tax (OJ EU L 2011 77 p. 1), it follows that a "permanent establishment" is any place other than the place of establishment economic taxpayer, 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. It follows from the provisions of the Regulation that the fact of having a VAT identification number is not sufficient in itself to consider that a taxable person has a permanent place of business.

Undoubtedly, the permanent place of business of a taxpayer is taken into account only if it is characterized by sufficient stability and an appropriate structure in terms of personnel and technical facilities to enable it to supply goods or provide services in which it participates.

The authority aptly referred to the fact that the Court of Justice of the European Union in its judgments in cases C-168/84 (Gunter Berkholz), C-190/95 (ARO Lease), C-260/95 (DFDS A / S) - recognized between others that we have a permanent place of business (other than the taxpayer's place of business) in cases where minimum human and technical resources are always present in that place, which allow us to perform the services in an independent manner. On the other hand, in judgments C-260/95 DFDS and C-605/12 **Welmory** , the Court of Justice of the European Union considered whether another entity could constitute a permanent place of business for the taxpayer.

As a rule, there is no dispute that a foreign entity has a permanent place of business in the territory of a given country, if, using infrastructure and personnel on its territory, it conducts activities in an organized and continuous manner, under which it carries out activities subject to value added tax or as part of which he receives and uses the services rendered and goods delivered to him. There is also no dispute and it is right to state that a permanent place of business may arise in a situation where another entity provides the taxpayer

with his own personal and technical resources, but in such a situation the taxpayer must have control over the personal and technical resources of another entity comparable to control over his own resources.

within the meaning of the Act on tax on goods and services.

In national case law, it is worth paying attention to the decision of the Provincial Administrative Court in Wrocław, which on June 6, 2018. referred the following questions for a preliminary ruling to the Court of Justice of the European Union regarding the interpretation of EU law: 1. Can the existence of a permanent place of business in Poland within the meaning of Art. . 44 of Council Directive 2006/112 / EC of November 28, 2006. on the common system of value added tax (EU Official Journal of 11 December 2006 No. L 347, p. 1 et seq.) and Art. 11 paragraph 1 of Implementing Regulation (EU) No. 282/2011 of March 15, 2011. laying down implementing measures for Directive 2006/112 / EC on the common system of value added tax (recast; Official Journal of the EU of 23 March 2011, No. L 77, p. 1 and following)? 2. If the answer to the first question is in the negative, is the third party obliged to analyze the contractual relations between a company with its registered office outside the territory of the European Union and a subsidiary in order to determine whether there is a permanent place of business in Poland by the first company? (v. reference number I SA / Wr 286/18). The decision contains a review of case-law and conclusions on the interpretation of the concept of "permanent establishment", consistent with those adopted by the authority If the answer to the first question is in the negative, is the third party obliged to analyze contractual relations between a company with its registered office outside the European Union and a subsidiary in order to determine whether there is a permanent place of business in Poland by the first company? (v. reference number I SA / Wr 286/18). The decision contains a review of case-law and conclusions on the interpretation of the concept of "permanent establishment", consistent with those adopted by the authority If the answer to the first question is in the negative, is the third party obliged to analyze the contractual relations between a company with its registered office outside the European Union and a subsidiary to determine whether there is a permanent place of business in Poland by the first company? (v. reference number I SA / Wr 286/18). The decision contains a review of case-law and conclusions on the interpretation of the concept of "permanent establishment", consistent with those adopted by the authority

in the contested decision and now accepted by the Court.

In its judgment of September 14, 2018, I FSK 1776/16, the Supreme Administrative Court also stated that in art. 11 paragraph 1, in turn, the definition of "permanent establishment" was included. 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. " Provincial Administrative Court in Poznań in the judgment of November 23, 2017, I SA / Po 351/17, analyzing the jurisprudence of the CJEU regarding a permanent place of business in the country, he noted an evolution in the approach to assessing the use of services and supplies by foreign entities by foreign entities by domestic entities. According to the Court, it can be concluded that the use of services of other entities or persons (in the realities of analogous facts) under joint business arrangements by a foreign taxpayer allows the creation of an economic platform in a country characterized by elements of permanence, which leads to the creation of a place of business within the meaning provisions of the VAT Act.

It is worth noting that the Provincial Administrative Court in Bydgoszcz assessed the situation of another contractor in the same Cypriot company and came to the same conviction as currently adopted in this judgment (see judgment of 25 September 2018, I SA / Bd 441/18).

Thus, the court here shares the view that, when determining whether a given entity has a permanent place of business in a given country, it is necessary to consider whether it meets the following criteria jointly: stability

and independence of conducted activity, permanent presence of human resources (existence of personnel base for conducting business)

and technical (existence of technical facilities for conducting business, e.g. buildings, warehouses, equipment). The entity has a permanent place of business in the territory of the country, if using on the territory of that country,

in an organized and continuous manner, conducts activities under which it carries out activities subject to value added tax. It should be assumed that the technical infrastructure must be closely related to the performance of activities subject to value added tax.

In the opinion of the Provincial Administrative Court, the arrangements in this respect were made

in all evidence (Article 191 Op), collected and examined

exhaustively (Article 187 § 1 Op). The body considered the individual evidence separately as well as in mutual communication and addressed differences

in the collected evidence. He could be guided not only by knowledge, but also by life experience and his reasoning was consistent with logic. The authorities examined all documents, referred to the findings of the Cypriot authorities and questioned all persons whose data appeared at the stage of the proceedings, and their knowledge could prove relevant to the case.

There can be no doubt that the transport services in question concerned routes outside [...], namely the delivery of goods from another Member State to [...]. It is apparent from the documents submitted and the testimonies of witnesses that as part of the applicant's business activity diesel fuel was transported, which was loaded on [...] / N. , while the place of receipt of excise goods / destination was in [...].

The applicant was an entity providing services organized by T.-T. based in [...]. In response to the authority's inquiry given on [...] February 2016, the administration competent for OHL informed [...] that the information it collected came from accountants. It was confirmed that the transactions between the applicant and OHL had taken place. Agreements were made between the O. company and the Polish T.-T. company that was

and is the company's representative [...] in [...]. One of the tasks that T.-T. undertook to perform was to find entities providing transport services in [...] for the activities of OHL. Separate agreements / contracts were concluded with the applicant and her company. It was pointed out that OHL is a forwarding company, not a transport company, which provides intangible services. The owner of the above the company is CC, and the shareholders are AML

and AIL. Transactions were carried out by T.-T. acting as a representative of the company [...]. OHL's entire business is conducted at [...] where the company's main office is located

important decisions are made in it. OHL has its own employees and technical base, i.e. rooms intended for business, technical equipment, telephone and internet lines. It is a forwarding company, not a transport company, so it is not required to have fuel bases or similar equipment. [...] the company T.-T. she organized the deliveries and transport orders for the applicant, who acted only as a collaborator

with OHL under the concluded contract, whereas OHL could have a significant impact at any time on services rendered, goods transported, etc. All transported goods were controlled by [...], whereas T.-T. it was only a company that cares about everything in [...]. T.-T. uses its facilities and employees in [...] to meet its contractual obligations.

In addition, in response to [...] January 2018. the Cypriot tax administration said it had been informed by accountants that they had lost contact with the OHL client and did not have any documents. The OHL entity

has been deregistered from the VAT register on [...] on [...] December 2016. Contrary to the complaint, the authority referred to the information provided by the Cypriot tax administration on pp. 5-6 of the contested decision.

It should be emphasized that the applicant operated on the Polish market in cooperation

with T.-T .. Initially directly with this company, later via, which, however, did not change the rules of cooperation, because it cooperated with the same people (T.-T. employees) both before and after the introduction of the Cypriot company. The only change was the new contractor appearing on the documentation (contract, invoices, bank account). The applicant had no contact with the Cypriot company. As she testified

on [...] November 2015 received orders from the forwarding company T.-T., which acts on behalf of the Cyprus company OHL and organizes transports. After the applicant carried out the transport, VAT invoices are sent to T.-T .. There is no knowledge as to T.-T. and the Cypriot company keep in touch. Cooperation

she established with OHL through T.-T. Sp. z o. o. Sp.k., since the beginning of its operation, it cooperated only with the company whose president is AB. The applicant's husband had previously driven as a driver and it was he who found out about this company, and thanks to him she made contact with the company T.-T .. AB called and announced that there would be changes in his company and suggested that she start cooperation with the Cypriot company OHL . Since then,

i.e. from May 2015 provides services exclusively to OHL. From T.-T. received a cooperation agreement with a Cypriot entity. She signed her

at home and sent by post to the SP. She understood what she was signing because the contract was bilingual, at the same time indicating that she knew English well enough to communicate, but not enough to understand the content of the contract in English. She was not [...], she did not meet any representative of the Cypriot company, she does not know who the representative is there, how many people work there and how big the company is. All conversations are with T.-T. and she still organizes her transport. Invoices and originals of CMR documents and service orders signed by her were sent to T.-T .. All matters related to transports were organized by T.-T .. employees in the Bank [...] in which she has an account it was explained to her that money for services rendered comes from the company [...] which has a bank account created in the bank [...].

It should also be noted that T.-T. employees confirmed that there was no other contact with the Cypriot company than the formal one and that the complainant had not changed after exchanging T.-T. on a Cyprus company. PT, heard as a witness on [...] December 2015, testified that all documents created in T.-T. were issued on behalf of OHL (e.g. orders, notifications, invoices for clients [...], while companies providing transport services sent invoices issued to [...] to T.-T., which then sent all documents to [. ..]. Only the president contacted the Cypriot OHL company on behalf of T.-T. He contacted the applicant by phone and email, and sent the notification to the email address provided by AB to the principals [...]. The cooperation with the applicant lasted from the beginning of the company's existence, and her nature of cooperation did not change. Only the company on behalf of which she was commissioned to perform transport services changed. Previously, the same activities were commissioned on behalf of T.-T., while from May 2015. PT acted on behalf of OHL. Previously, after the transport had been carried out, the applicant issued invoices for performing the transport service for T.-T. she had already issued them for OHL.

ER, heard as a witness on [...] December 2015, testified that from around May 2015. T.-T. provides an office service for OHL. As a rule, she issued invoices to OHL for office services, while the amounts to be included on them were received from the president. She also indicated that OHL is the only company for which it has issued invoices for performing office services. With the Cypriot company OHL on behalf of T.-T. only the president contacted. Earlier, when T.-T. she acted as a freight forwarder, commissioned the complainant to provide transport services on the basis of notifications, and after the services were received by post, documents

from the complainant's company together with issued to T.-T. an invoice for the transport service provided. In turn, later - when they provided an office service to OHL - then ER

with CMR documents and orders. At the time of termination of cooperation with T.-T., Firma Handlowo-Usługowo-Transportowa "A." MJ started cooperation with OHL.

EP heard as a witness on [...] December 2015. she testified that after completing the documents, she handed them over to the president for sending. [...] after receiving data from the president, she issued an invoice for an office service for OHL. With the Cypriot company OHL on behalf of T.-T. only the boss contacted and has no knowledge of the circumstances of receiving T.-T. orders from OHL.

According to the Court, the above testimonies are consistent and logical. In addition, AB's testimony becomes crucial, as the findings show that he was the only person who had contact with a Cypriot business company in the field of transport services examined. What's more, he is the only person who could highlight what specific activities were performed on [...] these services. Contrary to the claims of the complaint, the authority broadly referred to their content and referred to them on pp. 10-12 of the contested decision. His testimony clearly shows that the conclusion of the tax authority that the Cypriot company organized its forwarding activity in [...] entirely within human resources and the facilities of T.-T .. is well founded.

It is clear from AB's testimony that the applicant has no direct contact with the Cypriot company - she only contacts the company T.-T .. Firma T.-T. provides OHL with office services, checks documents, provides assistance in establishing direct contact with subcontractors. Detailed terms of cooperation are specified in the contract. The unbelievable translation is that AB was looking for an alternative, because T.-T. she stopped providing forwarding services and among friends (probably it was a law firm) someone recommended this company. As AB testified, the first contact with OHL was made by phone, later he went to [...] without remembering where the contract was signed. During the meeting, he communicated in Polish and English. He did not remember who the OHL representative was, although he pointed out that he was definitely a foreigner. He did not know how big the company is, how many people work there. Talks took place in the office building in the conference room with one person,

in the presence of an interpreter. To his knowledge, OHL deals with freight forwarding, but he did not know whether he had his own rolling stock or had branches

in other countries and whether anyone [...] cooperates with her. Thus, his behavior falls within the framework of self-reliance, also while securing a profit. AB informed that he is authorized to the bank account of the OHL company, he has access to it and he sometimes makes transfers, among others for carriers, although he did not remember whether or not specifically for the applicant he made transfers. The complete set of documents is sent to [...] and transfers are made only after the documents have been accepted by OHL's accounting office located on [...]. He also added that from the account of T.-T. no payments are made for transport services on behalf of OHL.

Such independence, but also the continuity of operations on the Polish market is confirmed by the wide spectrum of authorizations that T.-T has at its disposal. The quoted content of the agreements attached by AB (pp. 10-12 decisions) leaves no doubt that the Cypriot company organized human resources and facilities activity in [...], had an objectively permanent place of business in the territory of the country. In the territory [...] - with the use of infrastructure and personnel - in an organized and continuous manner she carried out activities under which she carried out activities subject to tax on goods and services or under which she received and used services rendered to her. There can be no doubt that the transport service concerned a route beyond [...], moreover, it was about delivering goods from another Member State to [...].

It is apparent from the material collected in the case that the applicant was an entity providing services organized by T.-T. based

in [...]. The applicant operated on the Polish market in cooperation with T.-T., which even when this entity began to introduce itself as an intermediary, nothing changed except formal provisions. The applicant had no contact with the Cypriot company. This is a Polish company T.-T. she was involved in organizing deliveries and transport orders for the complainant, who only acted as a collaborator with OHL under the concluded contract, while OHL could have had a significant impact at all times on services rendered, goods transported, etc. All transported goods were controlled by [...] , while T.-T. it was only a company that "keeps" everything in custody in [...]. T.-T. used its facilities and employees in [...] to meet its contractual obligations. WSA notes that de facto T.-T. before and after contact with the contractor with [...], she did exactly the same to the applicant. T.-T. employees confirmed that there was no other contact with the Cypriot company than the formal one and that the complainant had not changed after exchanging T.-T. on a Cyprus company. The court did not find any contradiction of this position with the other evidence: testimonies of drivers (DJ, KU, RP) who confirmed the route of the goods and the testimony of the applicant of [...] May 2017, when she could not provide any specific information about her contacts with the company on [...].

This cannot be altered by the payments made in the complaint for transport services and the lack of personal and capital connections between the companies. The authorities cited the applicant's statement that at the Bank [...],

in which she has an account it was explained to her that the money for services rendered comes from a company [...] which has a bank account created in the bank [...]. In turn, AB informed that he is authorized to the bank account of the OHL company, he has access to it and he sometimes makes transfers, among others for carriers. The complete set of documents is sent to [...] and transfers are made only after the documents have been accepted by OHL's accounting office located on [...]. He also added that from the account of T.-T. no payments are made for transport services on behalf of OHL.

The above means that only transfers were controlled [...] and bank accounts were opened to a Cypriot company, which, however, does not contradict the established independence

and continuity of providing forwarding services under T.-T. resources, controlled through the provisions of contracts that created an economic platform in the country with such elements of stability that determine the place of business. This was enough to recognize [...] as the place of supply of services,

under art. 28b paragraph 1 and 2 of the VAT Act. Therefore, it does not matter in what character AB performed, because whether he acted as the president of T.-T. cannot affect the correct assessment that the activity was organized in [...]. It is unjustified to refer to the lack of personal and capital relations between companies, as it is not necessary for the application of this provision. The appeal body correctly responded to all grounds of appeal.

The Voivodship Administrative Court took into account that a certain danger for taxpayers may be the inability to recognize [...] as a place of business when the contractor's headquarters is outside the country. In the aforementioned decision of the Provincial Administrative Court in Wrocław from [...] June 2018, reference number I SA / Wr 286/18, it was noted that in exceptional cases it may even occur that the direct presence of a taxpayer on a given market is difficult to distinguish from the presence of this entrepreneur through another entity (as a separate VAT taxpayer). However, the court in question came to the conclusion that in the present case the applicant had reason to at least raise doubts and further clarify this issue.

The material of the case shows that her services were in no way performed on [...], she continued invariably the same activities with the sole change of the forwarder's name. She herself did not act in the direction of his change and did not contact any specific entity that could indicate this. The facilities of T.-T were definitely sufficient for her activity. The authorities are right in saying that in this matter her testimony from May 2017. are not specific and contradict the previous ones.

As a consequence of the findings cited and the evidence provided, it must be concluded that the complaints regarding the applications of the authorities as to the place of supply of services are ineligible.

The other provisions of the Tax Code have not been violated. The tax authority collected sufficient evidence to make the decision, which it submitted to an exhaustive assessment. When considering this material, no relevant evidence was omitted. By means of a logical argument, supported by the circumstances of the case, the authority demonstrated the groundlessness of the party's claims. The fact that the assessment of evidence gathered in a case is unfavorable for a taxable person does not mean that the decision complained of is incorrect. The allegation of exceeding the limits of the free assessment of evidence raised by the applicant would be justified if the authority actually omitted the relevant evidence for the resolution of the case, included undisclosed evidence in the determination basis, violated the rules of correct logical reasoning, has failed to give knowledge or experience in life. According to the Court, the authority has not failed to comply with any rules or indications in this respect. The assessment of evidence does not go beyond the limits of the free assessment of evidence. The authority also pointed out the reason for the different assessment of the evidence gathered from the Taxpayer,

and this assessment was made in conjunction with the other evidence. In addition, the Director of the Tax Administration Chamber, in the justification of the decision, cited both the legal provisions applied and, pointing to their content, referred to specific elements of the facts of the case.

IV. Bearing in mind that the authority did not violate the provisions of law indicated in the complaint, pursuant to art. 151 ppsa, the court dismissed the complaint in its entirety