I SA / Wr 574/18 - Judgment of the Provincial Administrative Court in Wrocław

Date of judgment	2019-03-07 *final judgment*
Date of receipt	2018-06-11
Court	Provincial Administrative Court in Wrocław
referees	Anetta Makowska-Hrycyk / rapporteur / Dagmara Dominik-Ogińska Maria Tkacz-Rutkowska / chairman /
Symbol with description	6110 Tax on goods and services
Thematic entries	Tax on goods and services
The complained body	Director of the Tax Administration Chamber
Content of the result	* Decision of the first and second instance was revoked
Regulations cited	OJ 2017 item 201 art. 188, art. 121 par. 1, art. 123 par. 1, art. 187 parish 1, art. 191 *Act of 29 August 1997 Tax Code - consolidated text*

SENTENCE

The Provincial Administrative Court in Wrocław, composed of the following: Chairman Judge of the Provincial Administrative Court Maria Tkacz-Rutkowska, Judges: Judge of the Provincial Administrative Court Dagmara Dominik-Ogińska, Judge of the Provincial Administrative Court Anetta Makowska-Hrycyk (rapporteur), Protocol clerk: Senior Court Secretary Anna Terlecka, after recognition in Department I hearing on March 7, 2019, a complaint from A sro based in K. (Slovakia) on the decision of the Director of the Tax Administration Chamber in W. of [...] April 2018 No. [...] regarding tax from goods and services for the months of October, November and December 2012. I. repeals the contested decision and the preceding decision of the Director of the Treasury Control Office in W. of [...] January 2016 No. [...], II. awards the Director of the Tax Administration Chamber in W. to A sro with its registered office in K.

SUBSTANTIATION

The subject of complaint A sro with its registered office: K., Slovakia (hereinafter: the Company, the Applicant) is the decision of the Director of the Tax Administration Chamber in W. (hereinafter: the appeal body, IAS Director) of [...] April 2018 No. [.. .]. By this decision, the appeal body overruled in part and partly upheld the decision of the Director of the Treasury Control Office in W. (hereinafter: the authority of the first instance) of [...] January 2016 No. [...]. Based on, among others Art. 233 § 1 item 2 letter a) in connection with art. 234 of the Act of August 29, 1997 Tax Code (i.e. Journal of Laws of 2017, item 201, as amended; hereinafter: op) the IAS Director revoked the decision of the authority of the first instance in the part specifying the excess of input VAT on tax due to be carried forward to the next accounting period for the months of October, November and December 2012. and determined for October and December 2012 - the amount of the liability in the value added tax in the amount of PLN 0, and for November 2012 - the excess of input tax on goods and services over the tax due to be carried forward to the next accounting period in the amount of 0 zł. And based on art. 233 § 1 item 1 op maintained this decision in force in the remaining part, i.e. determining the amount of tax to be paid pursuant to art. 108 section 1 of the Act of March 11, 2004 on value added tax (i.e. And based on art. 233 § 1 item 1 op maintained this decision in force in the remaining part, i.e. determining the amount of tax to be paid pursuant to art. 108 section 1 of the Act of 11 March 2004 on value added tax (i.e. And based on art. 233 § 1 item 1 op maintained this decision in force in the remaining part, i.e. determining the amount of tax to be paid pursuant to art. 108 section 1 of the Act of 11 March 2004 on value added tax (i.e.

This decision was issued in the following circumstances of the case.

The tax authorities established that the applicant is a company and taxpayer of value added tax (hereinafter also: VAT) in the country of establishment, ie K. ul. K. [...] in Slovakia, identified for the purposes of this tax under [...]. The company applied to the Head of the Tax Office W. for registration as a VAT taxpayer on Polish

territory. In a statement of February 15, 2012, its IT president announced that he is interested in doing business in the territory of the Republic of Poland "and for the reasons of improving the quality of logistics and reducing costs (transport, storage) we request VAT registration in the Republic of Poland. Our company conducts wholesale trade in metals colored (aluminum, copper, lead, zinc) and scrap materials throughout Europe. " On March 21, 2012, he further explained that the Company has been operating since 2003, its turnover in 2011 amounted to EUR [...] million, and the main Polish partners are producers of metals and their alloys, i.e. B in K. (with a branch in O.), C SA, D SA, E SA, F sp. J. And G sp. Z o. O. He also pointed out that activities related to operations in Poland will be carried out by the Company in an office in the premises of C SA in W. at G. [...]. Activities will be supervised personally by the IT president and technical director of MJ and depending on the frequency of deliveries, they will be in office once a week or once every two weeks. Due to high expenditures on transport and logistics, the Company wants to directly purchase and sell in Poland and settle VAT in Poland. He indicated KK as a person dealing with documentation and logistics at the Company's headquarters in Slovakia In the VAT-R registration application, however, in Part C, the Company stated that it has its registered office outside the country, it is not entitled to tax exemption from art. 113 section 1 or paragraph 9 uptu, VAT-7 declarations will be submitted from March 2012 and will make or make intra-Community supply of goods or services, including supplies or services to which Art. 100 paragraph 1 point 3 or 4 point respectively, as well as will purchase or provide services to which art. 28b uptu and will make or make intra-Community supply of goods or services, including supplies or services to which Art. 100 paragraph 1 point 3 or 4 point respectively, as well as will purchase or provide services to which art. 28b uptu and will make or make intra-Community supply of goods or services, including supplies or services to which Art. 100 paragraph 1 point 3 or 4 point respectively, as well as will purchase or provide services to which art. 28b uptu

The Company was registered as a VAT and EU VAT taxpayer under the Tax Identification Number [...] [NIP] [...] took place on March 21, 2012. According to the registration application, the Company began performing taxable activities from March 20, 2012. In the course of the proceedings, the UKS Director determined that before March 2012 Polish entities indicated by the Company were its contractors and on its behalf transport and forwarding services were provided by Polish companies. On September 30, 2015, the Company ceased to perform activities subject to VAT, which resulted from the notification of the Company filed on October 16, 2015.

On 9 July 2014, the UKS Director initiated an audit procedure against the Company, which he covered by VAT settlement for the periods of October, November and December 2012. In the course of it, he found that the applicant was taxable, but not permanently place of business within the meaning of Council Implementing Regulation (EU) No 282/2011 of 15 March 2011. In addition, it determined that the Company purchased goods, but the entity that according to the invoice was to be their supplier turned out to be only a figure whose role was to extend supply chain from the disappearing taxpayer to the final recipient.

These findings were reflected in the decision of [...] January 2016. The first of these findings was the result of an analysis of the Company's documentation and evidence taken from the hearing of the President of the Company and witnesses. According to the applicant's registration documents, in Poland she conducts business in W. in premises rented for business purposes from company C under the lease agreement of 12 March 2012. In the light of this contract, the premises rented had an area of 15 m2, the equipment of which was a desk , bookcase and chair. The monthly rent was set at 400 PLN net per month, which also included a fee for electricity, running water and central heating. The company did not use a landline telephone. It was further established that on March 12, 2012 the Company also concluded with H - DM contract for the provision of accounting services, consisting in keeping a register of VAT purchase and sale and drawing up tax declarations. Under this agreement, the company undertook to provide documents enabling settlement with the tax office. An employee of the LM accounting office was authorized to represent the Company before the tax authority on March 12, 2012. The power of attorney included: arranging and signing all formalities regarding the notification, correction and updating of NIP-2 and NIP-R data; submitting, correcting and signing VAT-7

tax declarations, submitting and receiving certificates of non-payment of taxes; representing and participating in checking and checking activities; receiving and sending all correspondence and official documentation. According to LM's testimony, that the accounting office's services consisted of settling the value added tax. The documentation was imported by the President of the Company or one of its employees, or imported by courier, but most often it was sent by e-mail. The originals were at the Company's headquarters in Slovakia, and the copies were at the accounting office in Poland. In practice, no records other than VAT purchase and sale registers were kept by the accounting office. LM was once in an office declared as a place of business in Poland, i.e. before the start of operations, when the Tax Office W. wanted to see them. Fuel bills, hotels and parking lots were handed over to the company headquarters in Slovakia - VAT on such invoices was not settled in Poland. The office did not settle salaries, social security contributions, nor personal income tax as a payer. LM also testified that the President of the Company came to Poland once every two weeks, and "in 2012 he was probably more often than once every two weeks". In addition, it was established that it was only on October 14, 2014 (in the third year of conducting business in Poland and after 3 months from the initiation of the inspection procedure) that the Company established a postal power of attorney for two C employees to receive correspondence and confirm the receipt of correspondence on behalf of the applicant.

These findings the UKS Director referred to the provision of art. 17 clause 1 point 5 and para. 1a and par. 2 uptu in connection with art. 11 and art. 53 of Council Implementing Regulation No. 282/2011 of Council (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 No. 77 p. .1; hereinafter: Implementing Regulation No. 282/2011) in the context of the term "permanent place of business". Referring to these provisions and the jurisprudence of the CJEU, it stated that two factors determine the permanent place of business: the human factor in the form of employees present on the spot and the material factor in the form of an appropriate technical structure. Their existence determines the place of business for the purposes of VAT.

The authority of the first instance decided that in the fourth quarter of 2012 the Company did not have any personnel resources in Poland, i.e. it did not employ any own employees or employ people from an external company. The only employees of the Company were the IT president, MJ technical director and assistant KK. The President of the Company during 2012 was in Poland in business matters 20 times, including 10 business trips took place together with an employee of MJ's technical director. In the fourth quarter 2012, 4 business trips of the President of the Company to Poland are documented, including 3 together with MJ The duration of stay on business trips did not exceed two days each time, which the first instance authority determined on the basis of invoices for accommodation in hotels and settlement of per diems for remaining outside the Company's registered office in Slovakia). In addition, it was established that a total of 130 deliveries to final recipients in K., B., O., W. and C. were carried out in the period covered by the audit, so on average there were 2 deliveries on each day. The UKS Director considered that due to these arrangements during the stay of the President of the Company and Technical Director in Poland it was not possible to perform and supervise taxable activities in Poland, i.e. concluding contracts, supervising delivery, organizing transport, settling deliveries, and receiving correspondence. He did not believe that 70-80% of activities related to the purchase and sale of metals were carried out in Poland. He stated, however, that these activities were carried out in Slovakia, and not at the place or place indicated by the Company as a permanent place of business in Poland. Referring to the evidence regarding business travel, he considered the statements of MJ in this part unreliable (checking and collecting goods during their stay in Poland). The UKS Director also emphasized the change in the course of the inspection proceedings of the applicant's position regarding participation in the collection of goods. In the reservations to the tax book audit protocol, the Company stated that the receipt of goods, both on its own behalf and on behalf of the Company, was made by the final recipients of copper, zinc and lead based on the authorizations granted to them by the Company. Then, she stated that the deliveries were carried out in accordance with art. 7 item 8 uptu Referring to the evidence regarding business travel, he considered the statements of MJ in this part unreliable (checking and collecting goods during their stay in Poland). The UKS Director also emphasized the change in the course of the inspection proceedings of the applicant's position

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In the field of accounting services, the first instance authority decided that in fact the activities of the accounting office were limited to preparing a VAT purchase register in Polish on the basis of the list entitled "prijaté invoices") and the VAT sales register in Polish on the basis of the list entitled "vydané invoices", transmitted electronically from Slovakia every month. They also included the preparation of VAT-7 declarations. However, the bureau did not keep records of the Company's settlements with suppliers and recipients, in part related to activities carried out in Poland, which is why - as the UKS Director determined - before settling VAT and preparing a VAT-7 declaration, the company from the head office confirmed that the VAT invoices included in the registers are paid. He also found that LM she was not authorized to receive all correspondence addressed to the Company and its representation, but this authorization and representation concerned only relations with the Tax Office W. In addition, the first instance authority stated that VAT invoices were issued in Slovakia. Similarly, management decisions, including placing orders or managing a bank account, were taken by the President of the Company and its employees outside the territory of the Republic of Poland. He also emphasized the authority of the first instance that sporadic transport services provided to the Company by the Polish carrier (I - FB based in G.) were ordered and settled from the headquarters and by the headquarters of the Company in Slovakia (by an employee of the Company - KK). that VAT invoices were issued in Slovakia. Similarly, management decisions, including placing orders or managing a bank account, were taken by the President of the Company and its employees outside the territory of the Republic of Poland. He also emphasized the authority of the first instance that sporadic transport services provided to the Company by the Polish carrier (I - FB based in G.) were ordered and settled from the headquarters and by the headquarters of the Company in Slovakia (by an employee of the Company - KK). that VAT invoices were issued in Slovakia. Similarly, management decisions, including placing orders or managing a bank account, were taken by the President of the Company and its employees outside the territory of the Republic of Poland. He also emphasized the authority of the first instance that sporadic transport services provided to the Company by the Polish carrier (I - FB based in G.) were ordered and settled from the headquarters and by the headquarters of the Company in Slovakia (by an employee of the Company - KK).

As regards the second necessary condition for the existence of a permanent place of business, the UKS Director stated that the Company did not have any technical facilities in Poland enabling commercial activities and did not purchase any goods and services for such activities. The rented commercial premises served only for registration purposes and was not used to conduct any business activity. Such activity was also not served by the hydraulic press included in the Company's records (kept at the headquarters) as a fixed asset, because it was brought to Poland for repair, and after repair it was transported to area C as intended for sale. The company also did not have a website with information about the company and its activities in Polish, and documentation for 2012. has not demonstrated any advertising, marketing, information and economic activities in the field of trade in metals. In terms of supplies, the Company maintained business contacts with a closed circle of recipients known for years. The applicant arranged the course of her interests in Poland in a completely different way than she had declared when applying for NIP, therefore - according to the UKS Director - the fact that it was granted to the Company was irrelevant for the case. Similarly, the certificate of June 12, 2013 confirming the registration of the entity as a VAT taxpayer in Poland did not matter, as it only confirms that in March 2012 the Company met the formal registration permits. closed audience. The applicant arranged the course of her interests in Poland in a completely different way than she had declared when applying for NIP, therefore - according to the UKS Director - the fact that it was granted to the Company was irrelevant for the case. Similarly, the certificate of June 12, 2013 confirming the registration of the entity as a VAT taxpayer in Poland did not matter, as it only confirms that in March 2012 the Company met the formal registration permits. closed audience. The applicant arranged the course of her interests in Poland in a completely different way than she had declared when applying for NIP, therefore - according to the UKS Director - the fact that it was granted to the Company was irrelevant for the case. Similarly, the certificate of June 12, 2013 confirming the registration of the entity as a VAT taxpayer in Poland did not matter, as it only confirms that in March 2012 the Company met the formal registration permits.

Consequently, the first instance authority decided that the Company - as making deliveries within the meaning of art. 17 clause 1 point 5 of the Act - should not show and settle the tax due in the issued sales invoices, because in these cases VAT are the buyers of the goods. Therefore, he corrected the amount of tax due indicated by the Company in VAT-7 declarations to the amount of PLN 0 for the months of October, November and December 2012, without questioning the value of goods deliveries declared for these periods. As a result, pursuant to art. 108 section 1 of the Act defined the applicant the tax to be paid indicated in the invoices issued to recipients of non-ferrous metals (C, D, B, E).

In this regard, the UKS Director also referred to the testimony of the President of the Company made in the investigation under reference number act [...], resulting in at least two variants of activities aimed at tax fraud in value added tax in 2012. In the first option in the period: February-April 2012, the Company using the Slovak NIP purchased from J sc with its registered office in B. zinc and lead, which after being exported to Slovakia returned back to Poland to B and D SA The cooperation ended after the tax authorities questioned the export of goods abroad and thus the legitimacy of VAT refund for J for deliveries intra-Community (WDT). During this period, the Company applied for Polish NIP, declaring its will to operate in Poland through the so-called permanent place of business. The credibility of such activity was organizing the transport of copper, zinc and lead from abroad to Poland, which is why the President of the Company, in consultation with WG, imposed on transport companies the so-called neutralization of CMR documents (CMR documents that had the final recipients of the goods indicated the Company as the supplier and not the actual supplier under WNT). In the second option of fraud, the Company was interested in simulating its operations in Poland in sizes and in a form enabling issuing sales invoices with VAT. not the actual WNT provider). In the second option of fraud, the Company was interested in simulating its operations in Poland in sizes and in a form enabling issuing sales invoices with VAT. not the actual WNT provider). In the second option of fraud, the Company was interested in simulating its operations in Poland in sizes and in a form enabling issuing sales invoices with VAT.

On the basis of the Company's documentation, the first instance authority also determined that the applicant had purchased copper in the form of cathodes, zinc and lead (3 167 333 kg) from two entities of the limited liability company K in W. and G limited liability company in K. in the audited period, and then the goods were sold to entities: B SA in K., D SA in K., C SA in W. and E SA in C. Payments for goods were made from Tatra Banka as in B., where the Company had an account in EURO and PLN . The UKS Director questioned the accuracy of invoices documenting the purchase of non-ferrous metals from K limited liability company in W., considering them to be fictitious. He submitted that K did not, in fact, deliver to the applicant, she was a figure and her role was to re-invoice supplies from entities from the previous trading phase to the applicant, while the applicant was aware of this practice. He considered that these invoices concerned actual turnover, but K as their exhibitor only traded in transactions, concealing the true trader. Based on the evidence gathered, the UKS Director stated that the goods invoiced to the Company were not purchased by K within WNT, nor was it the organizer of the transport of these goods to final recipients (C, B, D, E). The actual supplier was L limited company, and in the previous trading phase the buyer of this product as part of intra-Community acquisition of goods (WNT) was M Spółka z oo, which is a "disappearing taxpayer". Companies K, L and M were related in terms of capital and personnel by a person WG, whom the President of the Company knew very well. The first instance authority established a scheme for the non-ferrous metal supply chain in which the applicant participated. According to this scheme, non-ferrous metals were imported mainly from Germany as part of the WNT by M. Then they went to company L, then to company K, which made deliveries to the applicant. The applicant was supposed to sell to C, B, D and E. This course of the transaction was questioned by the UKS Director. This authority indicated that M (the buyer of goods under WNT) did not pay in 2012, min. corporate income tax and value added tax. Her president MC was a person substituted by WG (who had previously resigned as president of companies M and L, but decided about their cases and had their bank accounts), he is not listed in any tax office as a taxpayer of personal income tax, and purchases by his shares (in M and L) were fictitious. All transport and forwarding costs invoiced to M were paid by WG from company L's account, because M's bank accounts in 2012 were taken by a bailiff. The address of Kancelaria Tax [...] in W. indicated as the company's headquarters was not active and the bookkeeping contract was terminated in November 2011. The result of these findings was that M appears in the fraud mechanism as a "disappearing taxpayer" i.e. a business entity registered for VAT purposes which, with the potential intention of fraud, purchases goods as WNT and sells them including VAT, without paying the tax difference to the competent state authorities. In turn, L and K in the fraud mechanism act as buffers - intermediaries between the disappearing taxpayer and the applicant as a leading company,

Consequently, the first instance authority stated that VAT invoices issued by K for the Company document activities that were not carried out between these entities and pursuant to art. 86 section 1 and item 2 and art. 88 clause 3a point 4 lit. a) uptu deprived the Company of the right to reduce the tax due by the input tax contained in the contested invoices. As a result, he reduced the amounts of input tax declared for October, November and December 2012 by the amounts of input tax resulting from invoices issued by K. The authority of the first instance did not question transactions and their tax consequences in terms of VAT, made with the company G. Za he also correctly recognized the Company's settlement regarding the purchase of transport, accounting, training and conference services,

On this basis, by decision of [...] January 2016 he defined the Company

- excess of input tax

o for October 2012 in the amount of PLN 31 176 instead of the declared tax liability in the amount of PLN 138 539

o for November 2012 in the amount of PLN 72,449 in place of the declared tax difference to be carried forward to the next tax period in the amount of PLN 81,906;

o for December 2012 in the amount of PLN 105,635 in place of the declared tax liability in the amount of PLN 132,024;

- tax to be paid pursuant to art. 108 section 1 upset for issuing invoices with demonstrated value added tax:

o for October 2012 in the total amount of PLN 2,663,047,

o for November 2012 in the total amount of PLN 1 508 104,

o for December 2012 in the total amount of PLN 1 991 640.

In the appeal against this decision, the Company filed for reversal of the UKS Director's decision for reconsideration due to the need to conduct evidentiary proceedings in part or in whole, or - for annulment of this decision and discontinuation of proceedings in the case. She also requested that the decision of the UKS Director of 25 January 2016 be set aside to refuse to take evidence from the testimonies of witnesses regarding the conclusion and implementation of transactions in Poland and to take evidence from the hearing of the IT president and from the testimonies of witnesses MJ and former and current employees of goods receivers (C : JZ, MJ, JS, TW; B: PP; E: JW, BB; D: MK, SC) for concluding transactions with the Company in Poland, determining the terms of transactions in Poland (including at the Company's headquarters),

The IAS Director was in doubt as to his jurisdiction to conduct an appeal against the UKS Director's decision. Pointing to the notification of the Company from October 16, 2016 about the cessation of activities subject to tax on goods and services on September 30, 2015 due to liquidation, the appeal body decided that pursuant to art. 26 section 1 of the Act on fiscal control (Journal of Laws of 2016, item 720 as amended), the competent authority is the Director of the Tax Administration Chamber in W. Ministry of Finance on January 25, 2017, after examining the IAS Director's request for resolution of the dispute over territorial jurisdiction regarding the examination of the appeal, it considered that there were no grounds for the dispute in this respect. indicated that the issue of determining the authority competent to conduct an appeal against the UKS Director's decision of 26 January 2016 was an element of the facts of the case and the Minister of Finance and Development cannot make it the subject of his decision without violating Art. 127 of the Tax Code. However, it indicated that in the case art. 26 section 1 sentence 2 of the Tax Control Act, according to which, if the competent director of the tax chamber or the customs chamber cannot be determined, the appeal shall be directed to the director of the tax chamber or the director of the customs chamber competent for the seat of the tax control office, whose director issued the decision. was an element of the facts of the case and the Minister of Finance and Development cannot make it the subject of his resolution without violating art. 127 of the Tax Code. However, it indicated that in the case art. 26 section 1 sentence 2 of the Tax Control Act, according to which, if the competent director of the tax chamber or the customs chamber cannot be determined, the appeal shall be directed to the director of the tax chamber or the director of the customs chamber competent for the seat of the tax control office, whose director issued the decision. was an element of the facts of the case and the Minister of Finance and Development cannot make it the subject of his resolution without violating art. 127 of the Tax Code. However, it indicated that in the case art. 26 section 1 sentence 2 of the Tax Control Act, according to which, if the competent director of the tax chamber or the customs chamber cannot be determined, the appeal shall be directed to the director of the tax chamber or the director of the customs chamber competent for the seat of the tax control office, whose director issued the decision.

Guided by this position, the appeal body undertook activities related to the examination of the appeal and applications submitted by the Company.

By decision of December 7, 2017, the IAS Director refused - after examining the Company's application - to exclude from conducting appeal proceedings by the deputy director of the Tax Administration Chamber at WSM, who undertook activities related to the above. dispute over local jurisdiction. In the justification, he stated that he did not see the employee's bias in the activities undertaken so far, or further activities related to

the continuation of the appeal proceedings after the IAS Director was appointed as the competent authority in the case. In addition, he explained that after January 30, 2017, i.e. the delivery of a letter from the Ministry of Finance regarding the jurisdiction of the appeal body), no letter was signed by SM and the case was entrusted to other employees (as confirmed by the record of the case).

In turn, by decision of March 26, 2018, the IAS Director refused to take evidence requested by the Company on appeal. Citing the content of art. 188 of the Tax Code indicated that the files of the case contain sufficient evidence gathered to prove the supply of goods. The first instance authority carried out checks on contractors (C, B, D), including comprehensive written explanations and submitted documents. E also submitted explanations and provided documents. The President of the Company (10 November 2015) and MJ were also questioned, as well as the authority of the first instance included in the case file the IT hearing reports as a witness forwarded by the Provincial Police Headquarters in K. As a consequence, the appeal body considered that the circumstances indicated by the Company have already been sufficiently explained to make the decision and that further evidentiary proceedings cannot be justified. The Company's request regarding an interrogation of the Company's supplementary president in the field of CMR documents, interrogation of the CC with the use of a stamp and proof of documents to confirm due diligence in the selection of the supplier of goods K - the appeal body deemed irrelevant to the settlement of the case against the determination, that the Company did not perform taxable activities from its permanent place of business in Poland, was not in fact a VAT payer and was not entitled to submit VAT-7 declarations and settle VAT.

By the contested decision, the IAS Director annulled the decision of the authority of the first instance in the part specifying the surplus of input tax over due to be carried forward to the next accounting period and for October and December 2012 determined a tax liability of PLN 0, and for November 2012 - the excess of input tax on it will be due to be carried over to the next accounting period in the amount of PLN 0. As the basis for the resolution in this regard he gave Art. 233 § 1 point 2 lit. a) in connection with art. 234 op and art. 5 section 1, art. 7 item 1, art. 15 paragraph 1 and item 2, art. 17 clause 1 point 5 and para. 1a, art. 28b paragraph 1. Article 86 para. 1 and art. 106 section 1a uptu, however, upheld the decision of the UKS Director in the part concerning the determination of the amounts of tax to be paid for issuing invoices with VAT shown.

of the Company's attorney about the suspension of the limitation period, and on October 18, 2017, he notified the Company to the address of its registered office in Slovakia. The Head of the Tax Office W. - as the relevant tax authority also notified the Company about the suspension of the limitation period. The notification was delivered to the Company's attorney on October 23, 2017, and the Company (to the address in Slovakia) on October 11, 2017.

In resolving the case again, the appeal body shared the correctness of the position of the UKS Director that the Company did not actually have a permanent place of business in Poland, despite the formal notification of such a place (W., ul. G. [...]) during registration as a VAT taxpayer for the purposes of settling this tax. Citing Art. 17 clause 1 point 5, paragraph 1a and para. 2 of the Act (in the wording in force from April 1, 2011 to April 1, 2013) interpreted the concept of "permanent place of business", which was used in these provisions and not defined in the Act. To this end, he reached for the legal definition of this concept , contained in art. 11 of Executive Regulation No. 282/2011, indicating that it is an EU concept (not defined in Council Directive 2006/112 / EC of November 28, 2006. on the common system of value added tax - OJ Office. The EU. from December 11, 2006 No. L 347 p. 1; hereinafter: Directive 112). In this context, he also analyzed the case law of the CJEU and administrative courts. As a result, he concluded that there were three criteria for assessing the existence of a permanent establishment: stability, independence, the existence of sufficient human and technical resources. These criteria must appear together. On this basis, he conducted an analysis of the criteria in relation to the actual findings in the case. Firstly, the lease agreement for premises from C was concluded only to provide an address in the country for the purposes of registration and settlement of VAT in Poland, which, as a result of the extension of the supply chain documented by purchase and sale invoices, would give the possibility of reducing the tax due to final recipients of the goods. Secondly, management activities were

undertaken by the President of the Company with the possible participation of the Technical Director. LM (accounting office employees) was of a reproductive nature in relation to the activities carried out at the Company's headquarters in Slovakia by the assistant to the president of KK. Permanent residence of LM in Poland was not related to the Company's operations, but employment in the accounting office. LM cannot be assigned the status of the Company's main accounting officer, she was not authorized to receive correspondence, she did not take any management or strategic actions. Nor can it be attributed to the characteristics of "staff" with adequate stability and to fit in with the appropriate structure in terms of the Company's personnel base. Thirdly, the Company did not have personnel base in Poland, because it did not employ its own employees or employees from external companies. Also commissioning of transport services took place from the Company's headquarters in Slovakia. Fourthly, the Company did not have (apart from an office with an area of 15 m2 equipped with a desk, chair and bookcase) technical facilities enabling it to conduct commercial activities. The hydraulic press (fixed asset) was not used to operate in the country. The company did not rent a warehouse or storage space in the audited period (a device with large dimensions and weight of 4-5 tons). chair and bookcase) technical facilities enabling commercial operations. The hydraulic press (fixed asset) was not used to operate in the country. The company did not rent a warehouse or storage space in the audited period (a device with large dimensions and a weight of 4-5 tons). chair and bookcase) technical facilities enabling commercial operations. The hydraulic press (fixed asset) was not used to operate in the country. The company did not rent a warehouse or storage space in the audited period (a device with large dimensions and weight of 4-5 tons).

The appeal body further stated that the activity regarding the purchase and sale of goods was not carried out and serviced from a permanent place of business in Poland. Logistic activities related to handling and issuing invoices for deliveries of goods to individual recipients were carried out from Slovakia on the basis of telephone or e-mail information forwarded to the accounting office in Poland. Management activities in the Company were undertaken by the President of the Company on a one-man basis, and the documents were prepared by the President and Technical Director, if they were on trips, e.g. in Poland, the Czech Republic or Slovakia. The appeal body assessed that the entire economic activity of the Company was focused at its headquarters in Slovakia, while activities related to technical supervision of the delivered goods to buyers were carried out post factum,

The IAS director also concluded that it was not possible to constantly perform and supervise taxable activities in Poland (concluding contracts, supervising the implementation and regularity of deliveries to individual recipients, supervising transport, settling deliveries, receiving correspondence) during the presence of the President of the Company and the Technical Director in Poland. . On the basis of invoices documenting accommodation, he indicated that in the fourth quarter of 2012 the President of the Company went to Poland 4 times, with 3 trips documented as joint with the Technical Director, and the duration of stay each time did not exceed 2 days. In comparing these data with the number of deliveries made in the fourth quarter (130) to final recipients,

He further carried out an analysis of the company's operations in the field of transactions in relation K → Company → final recipients. In this respect, he shared the conclusions of the first instance authority. He considered that the Company did not perform activities related to the supply of goods, which it documented with VAT invoices, in the period under consideration in the country. He presented the invoice scheme of the transaction with the participation of the Company, which shows that trading in non-ferrous metals began with WNT (Germany, Belgium), which was performed by M (disappearing taxpayer), then the goods were to go to L (disappearing taxpayer), then to K - direct Company suppliers. The company was to sell this product to four Polish entities (C, B, D and E). C also carried out intra-Community supply (Czech Republic, Slovakia) of this product. The appeal body considered that the Company had participated in this procedure. He pointed out that in March 2012 she established cooperation with WG, i.e. the previous president of companies M and L (and N, which was the recipient of aluminum from the Company in 2005-2007) with which she cooperated before

registering in Poland. After cooperation with them, from September 2012, the Company established cooperation with K (whose president was also WG). The appeal body did not believe the applicant as to the lack of knowledge about the reasons for establishing the company K. He pointed out that the applicant's lack of interest in the sources of the goods (suppliers for K) was not credible in the face of competition on the metal trade market and the related commercial risk. In addition, the association of companies M, L, K with a person WG (who was their president and shareholder successively, and after resignation - it was introduced by people who did not know the industry before, did not run a business, dealing with the collection of secondary raw materials) is important for assessing the credibility of unreliable invoices. As a result, the IAS Director decided that the Company did not actually conduct business activity in Poland, but only extended the chain in invoicing the supply of goods, which is not an economic activity. In these circumstances, the appeal body stated that due to the fact that the Company did not operate in Poland from a place registered as a permanent place of business in the country and in relation to all the circumstances regarding the Company's supplier - the Company did not conduct business activity in Poland. Consequently, she was not a VAT taxpayer within the meaning of Art. 15 paragraph 1 of the Act, the IAS Director stated that the Company had neither the obligation to declare, nor the right to settle the tax due on sales invoices. Submission of a VAT-7 declaration for disputed settlement periods has no legal effects. However, the appeal body could not discontinue the proceedings in the case, as the VAT-7 declarations submitted by the Company were in circulation - in accordance with art. 99 clause 12 uptu - could give rise to accept the amounts resulting from the settlement contained therein. He also pointed out that it was only as a result of the proceedings that it was possible to determine the facts, in particular whether the Company met the criteria of VAT payer specified in art. 15 paragraph 1 point, it was necessary, therefore, to repeal the decision of the first instance authority and change the decision of the UKS Director in order to eliminate settlements contained in the declarations. Pointing to the content of art. 86 section 1 uptu, the appeal body stated that the Company also has no right to settle input tax on invoices documenting the purchase of commercial goods (issued by K, G) and the purchase of services (transport, repair of the hydraulic press, rental of premises, training services and accounting services). First and foremost, this right is vested in taxpayers, and secondly - to the extent that goods and services are used to perform taxable activities. Justifying the decision against the applicant, he pointed to art. 234 op and a gross violation by the authority of the first instance of Art. 86 section 1 in connection with art. 15 paragraph 1 uptu training and accounting services). First and foremost, this right is vested in taxpayers, and secondly - to the extent that goods and services are used to perform taxable activities. Justifying the decision against the applicant, he pointed to art. 234 op and a gross violation by the authority of the first instance of Art. 86 section 1 in connection with art. 15 paragraph 1 uptu training and accounting services). First and foremost, this right is vested in taxpayers, and secondly - to the extent that goods and services are used to perform taxable activities. Justifying the decision against the applicant, he pointed to art. 234 op and a gross violation by the authority of the first instance of Art. 86 section 1 in connection with art. 15 paragraph 1 uptu

In the complaint to the Provincial Administrative Court in Wrocław, the Company requested the annulment of the decision of the IAS Director of [...] March 2018 refusing to take evidence from the testimony of a witness and explanations of the party regarding the conclusion and implementation of the transaction, including the participation of the applicant's employees in Poland - as contrary to the circumstances that the evidence was to demonstrate, i.e. not only to demonstrate actual delivery, but to conclude contracts and to execute transactions in Poland, and thus to show the applicant's permanent place of business in Poland, which were contested in the contested decision. She also requested that the contested decision be set aside in its entirety and that the case be referred back to the authority, or that the decision of the first instance authority be set aside. She also requested reimbursement of the costs of the proceedings,

The company alleged both a violation of substantive law and procedural law. In the group of pleas in law, she pointed out the infringement:

- Art. 120, art. 121 § 1, art. 122 in connection with art. 125 § 1 op due to violation of the rules of tax proceedings, i.e. the rule of law, trust in tax authorities, objective truth and the lack of striving for a comprehensive and thorough explanation of all the relevant circumstances of the case and, consequently, the lack of striving for the correct application of tax regulations

- Article 187 § 1 op by evading the appeal body from comprehensive action in order to clarify the facts, which does not satisfy the requirement of its comprehensive consideration - including by establishing that the applicant did not conduct any business activity, registration for VAT purposes did not serve this activity in Poland, the applicant did not act as a VAT taxpayer and did not perform taxable activities,

- Article 191 op consisting in violation of the principle of free assessment of evidence by assessing the collected evidence in a free and non-free manner - including by an unreasonable refusal of credibility of the evidence provided by the applicant; one-way interpretation and assessment of evidence leading to any determination that the applicant did not act as a VAT taxable person in Poland and did not have a permanent establishment in Poland; assuming contrary to the principles of logical thinking that the supplier did not perform contracts with the Company and that the applicant knowingly participated in the tax fraud and issued double CMR documents for this purpose.

- Article 234 in conjunction with Article 233 § 1 point 2 lit. a) op by issuing a decision to the detriment of the party, i.e. in violation of the prohibition of reformationis in peius, while not showing that the authority of the first instance grossly violated the law or the public interest,

- Article 121 § 1 Article 122, art. 123 § 1 in connection with art. 180 § 1, art. 188 op by unjustifiably dismissing the evidence: from the hearing of the President of the Company on the fact that he did not affect the fulfillment of CMRs and confirmation of the delivery procedure and the order of performing the activities associated with the delivery; from KK's interrogation on the way of using the stamp; from documents, i.e. copies of invoices and e-mail correspondence on the grounds of complaint proceedings regarding goods delivered on behalf of the Company by K.

In the group of alleged violations of substantive law, the applicant stated the violation:

- Article 15 para. 1 uptu in connection with art. 9 of Directive 112 by misinterpreting them and assuming that this interpretation does not allow the applicant to be included in the definition of taxable person within the meaning of art. 15 paragraph 1 uptu

- Article 15 para. 2 in connection with art. 96 section 1 and item 4 in connection with art. 5 paragraph 1 point 1 of the Act in connection with art. 9 of Directive 112 through their erroneous interpretation consisting in the adoption by the appeal body - after more than 6 years from the date of registration of the Company for the purposes of VAT in Poland - that the Company did not have the material legal status of a taxpayer within the meaning of Art. 15 paragraph 1, did not conduct any economic activity in Poland, including it did not perform taxable activities on Polish territory, and registration for the purposes of this tax was only of a formal nature, i.e. it did not serve the purposes of actual performance of taxable activities in Poland, and only to the possibility of reducing the tax due to final recipients as a result of extending the supply chain with documented invoices, despite the effective notification of the registration of the Company as an active VAT taxpayer and not questioning the effectiveness of this notification, either at the time of registration proceedings or as a result of verification activities - which, as a consequence, violated the principle of trust in tax authorities under Art. 123 op, because the applicant, acting in confidence in them as a result of the registration application in the fourth quarter, having a permanent place of business, made deliveries of goods to Polish recipients subject to VAT and submitted declarations and settled the tax indicated therein, or as a result of verification activities - which in consequence led to a breach of the principle of trust in tax authorities under Art. 123 op, because the applicant, acting in confidence in them as a result of the registration application in the fourth quarter, having a permanent place of business, supplied goods to Polish recipients subject to VAT and submitted declarations

and settled the tax indicated therein, or as a result of verification activities - which in consequence led to a breach of the principle of trust in tax authorities under Art. 123 op, because the applicant, acting in confidence in them as a result of the registration application in the fourth quarter, having a permanent place of business, made deliveries of goods to Polish recipients subject to VAT and submitted declarations and settled the tax indicated therein,

- Article 15 para. 1 and item 2 in connection with Article 5 para. 1 in connection with art. 17 clause 1 point 5 of the law by their misinterpretation and assuming that the condition for recognizing the applicant within the meaning of the law is the requirement of having a permanent place of business while art. 15 of the Act does not refer to this concept, and the permanent place of business is relevant to the taxpayer within the meaning of Art. 17 clause 1 point 5 of the Act, which provision implements the provisions of Art. 194 of Directive 112 concerning the obligation of this settlement and not the status of a taxpayer within the meaning of art. 9 of Directive 112. Therefore, the fact that the applicant had a permanent place of business in Poland is of key importance for establishing VAT taxpayer status,

According to the applicant, the authority should first examine whether the applicant had the status of a taxpayer and then analyze whether she performed taxable activities on the territory of the country, and not make the status of the applicant as a VAT taxpayer dependent on whether she had a permanent establishment in Poland and whether its contractors had taxpayer status.

- Article 17 para. 1 point 5 and para. 1a in connection from art. 17 clause Sett. 2 and paragraph 5 in from art. 15 paragraph 1 and item 2 uptu and in from art. 11 and art. 53 of Implementing Regulation No. 282/2011, by their erroneous interpretation, that in the case the applicant did not have a permanent place of business in Poland necessary to carry out activities subject to VAT in a situation where she had a rented premises in which she concluded contracts on the spot with her contractor C SA, owned a warehouse that was rented, had people in Poland who performed the necessary activities for the implementation of taxable activities, cooperated with the accountant in Poland in the field of VAT settlements, issued and delivered invoices in Poland, had a place of receipt of correspondence, which the president of IT

- Article 86 para. 1 in relation from art. 15 paragraph 1 uptu by its unjustified application in the case and the unauthorized recognition that the applicant is not entitled to a reduction in the tax due shown in the invoices documenting the purchase of commercial goods issued by suppliers (K, G) and the purchase of services, because she did not have the status of a VAT taxpayer in Poland, despite submitting an effective registration application for the purpose of this tax and performing activities taxed within the territory of the Republic of Poland, which constituted a violation of the principle of VAT neutrality,

- Article 108 1 in relation from art. 99 clause 12 in connection from art. 15 paragraph 1 and item 2 uptu by misapplication and recognition that the applicant is the entity that issued invoices during the period in question, without having the status of a taxable person within the meaning of the upholding and not being entitled to calculate the tax due on domestic supply and to show the amounts of this tax in submitted VAT declarations -7

- Article 2 1 point in relation from art. 168 of Directive 112 by violating the principle of VAT neutrality and violating the applicant's right to deduct input VAT, despite the fact that the Company acted as a VAT taxpayer performing taxable transactions in Poland, which transactions took place and the goods previously purchased from suppliers were released on to the applicant's recipients, which led to the determination by the tax authorities of the first and second instance of the tax to be paid pursuant to art. 108 section 1 up to transactions listed in the sales registers for the fourth quarter of 2012 and which in fact were subject to taxation in accordance with Art. 5 paragraph 1 point 1 of the Act

In its broad written statement of objections, the applicant set out detailed arguments referring to the case law of the Court of Justice of the European Union, case law of administrative courts and views of legal literature.

In its defense, the appeal body requested that the complaint be dismissed and upheld the position expressed in the contested decision.

In the pleadings of November 13, 2018, the applicant supplemented her complaint regarding the justification of the allegations regarding the authority's recognition that the applicant's supplier company K was a figure and did not conduct actual business activity and the Company knowingly participated in the tax fraud. She pointed out in this regard guidelines on how to properly conduct tax proceedings in matters related to tax fraud that result from the judgment of the Provincial Administrative Court in Wrocław of July 10, 2018, reference number file I SA / Wr 351/18, which were not observed by the tax authorities in the case. Especially in the area of conducting a taxable transaction and issuing an invoice documenting them, the taxpayer's conscious participation in fraud, criterion of good faith in VAT transactions and information available to the taxpayer and information available to tax authorities in the context of the possibility of verification of contractors. In the summary, the applicant stated that at no stage of the proceedings the tax authorities had shown that the applicant had knowingly participated in the tax fraud and had not shown that the Company had not exercised due diligence to detect the fraud in relation to its supplier - K. She stressed that the verification K was made by the Company in a particularly meticulous manner, going beyond the standards adopted for this type of transaction.

At the hearing, both parties maintained their conclusions in the case.

The Provincial Administrative Court in Wrocław considered the following.

Based on Article. 1 § 1 and § 2 of the Act of July 25, 2002 Law on the structure of administrative courts (Journal of Laws of 2018, item 2107, as amended), the administrative court exercises the administration of justice by monitoring the activity of public administration. This control is exercised in terms of legality, unless acts provide otherwise. Legal grounds for granting a complaint - Art. 145 § 1 item 1 of the Act of 30 August 2002 - Law on proceedings before administrative courts (consolidated text, Journal of Laws of 2018, item 1302, as amended; hereinafter: ppsa) limits to the finding of a violation of substantive law that was influence on the outcome of the case, violation of the law giving rise to the resumption of administrative proceedings and other violation of the provisions of the procedure, if it could have had a significant impact on the outcome of the case. Administrative court based on art. 134 § 1 ppsa decides within the limits of the case without being bound by the allegations and motions of the complaint and the legal basis invoked, subject to art. 57a ppsa, which is not applicable in the present case. In addition, pursuant to Art. 135 ppsa, the court applies the measures provided for by the Act to remove the violation of law in relation to acts or actions issued or taken in all proceedings within the scope of the case, if it is necessary for its final settlement.

The complaint is subject to consideration due to the violation by the tax authorities of both instances of procedural law, which could have had a significant impact on the outcome of the case.

The subject of the dispute is the applicant's status as a taxpayer of value added tax within the meaning of art. 15 paragraph 1 of the Act, being a consequence of the findings of the tax authorities leading to the conclusion that the applicant did not perform any activity in Poland, i.e. arrangements regarding the permanent place of business - within the meaning of art. 17 clause 1 point 5 and para. 1a uptu - and in the scope of performing activities taxed with goods and services tax in Poland in the non-ferrous metal supply chain.

According to the appeal body (unlike the body of the first instance) the applicant was not a taxpayer at all within the meaning of art. 15 paragraph 1 uptu In October, November and December 2012, she did not conduct any business activity in Poland. This was evidenced by the fact that he did not conduct business from a registered as a permanent place of business in W. at G. (business premises rented from C SA). And also, in fact, not performing activities related to the supply of goods in Poland, which the applicant documented with VAT invoices. This conclusion was drawn by the IAS Director from the findings regarding the permanent place of business in Poland (within the meaning of Article 17 paragraph 1 item 5, paragraph 1a of the Act and

Article 11 and 53 of Implementing Regulation No. 282/2011) and an informed participation in a chain transaction regarding trade in non-ferrous metals, where the direct supplier company K and the complainant herself did not purchase and sell the goods, but only "invoiced" its sale while settling its purchase in to make the transaction probable. The IAS director presented the invoice scheme of the transaction: WNT (Germany, Belgium) → M sp. Z o. O. (Disappearing taxpayer) → L sp. Z o. O. → K sp. Z o. O. → Complainant (A sro). Subsequently, the applicant was to sell goods to four entities in Poland: C SA, B SA, D SA and E. C SA made intra-Community supplies of goods (WDT) to Slovakia and the Czech Republic. The applicant was involved in the extension of the supply chain. IAS Director based on art. 234 op changed the decision of the first instance body to the detriment of the applicant, finding that the first instance body grossly violated Art. 86 section 1 in connection with art. 15 paragraph 1 uptu As a consequence, the tax settlement for the indicated periods "reset". On the basis of art. 108 section 1 of the Act stated that since the applicant had issued the sales invoices, she had the duty of VAT listed therein.

The applicant claims that she had the status of a VAT taxpayer in Poland by submitting the relevant registration application, which has not yet been contested and verified by the relevant tax authority. It also had a permanent place of business in Poland. She also carried out activities subject to VAT throughout the country. The tax authorities did not show that the applicant knowingly took part in the tax fraud and did not show that she did not exercise due diligence in the selection and verification of the supplier. She submitted that the contested decision had been issued against the applicant in an unlawful and unjustified manner, in breach of Article 234 op

First, the Court finds that the appeal body was entitled to examine the appeal as the competent authority in the area. Infringement of the jurisdiction of the tax authority is the basis for annulment of the decision (Article 247 § 1 item 1 of the Op), therefore this fact influences the substantive control of the legality of the contested decision. The court decided that pursuant to art. 269 § 1 ppsa is bound by the resolution of the Supreme Administrative Court (NSA) of February 26, 2018 with reference number act I FPS 6/17. Pursuant to this resolution, in the light of art. 26 section 1 of the Act of 28 September 1991 on fiscal control (Journal of Laws of 2011 No. 41, item 214, as amended), in the legal status in force in 2014, for an entity having no registered office in Poland, who on the day of the commencement of the inspection proceedings was a registered taxpayer of the value added tax in Poland, and who ceased to be the taxpayer before the end of this proceeding, to examine his appeal against the decision of the director of the tax inspection office, the competent director of the tax chamber competent for the taxpayer's seat. The provision of art. 26 section 1 of the Act on fiscal control, both in 2016 (year of the decision issued by the UKS Director) and in 2014, had the same wording. In the matter, the competence of the IAS Director was justified by the content of art. 26 section 1 second sentence of the Tax Control Act. It was alleged that the determination of the applicant's permanent place of business in Poland was the subject of the findings during the proceedings and was disputed. And if so, it is impossible to clearly determine the competent tax control authority. This is a situation regulated by the provision of Art. 26 section 1 second sentence of the Tax Control Act. In the case, however, the fact (though noticed) of the notification of October 10, 2015 on the cessation of the Company's taxable activities in Poland as of September 30, 2015 due to liquidation was not taken into account. However, both cases lead to a joint decision that the IAS Director was competent to hear the appeal against the contested decision.

Limitation of tax liability is another issue that must be considered before proceeding to deciding the substance of the case. Basically, the appeal body correctly refers to the content of art. 70 § 1 item 6 of the Act, according to which the limitation period for a tax liability does not start, and it commences, it is suspended on the day of initiating proceedings in a case of tax offense or tax offense, if the suspicion of committing a crime or offense is related to the non-performance of this obligation. In the case, the Company declared a tax liability for October 2012, for November 2012 - the amount of excess input tax over VAT due to be carried forward to the next accounting period, and for December 2012 - a tax liability. Actually, the authority also referred to the resolution of the Supreme Administrative Court of June 29, 2009 with reference number I FPS Act 9/08 in

support of the view that the amount of the refund of the difference in value added tax on the taxpayer's account (direct refund) is subject to the same limitation rules as the tax liability, and this is due to the transformation of the tax liability into the amount of direct refund. He also correctly referred to the view resulting, among others, from from the judgment of the Supreme Administrative Court of March 14, 2013, reference number act I FSK 437/13, of 5 December 2013, reference number no. I FSK 1716/12 (available in the Central Database of Judgments of Administrative Courts https://orzeczenia.nsa.gov.pl - hereinafter CBOSA), according to which, when the resolution of June 9, 2009 refers to the "date of tax refund ", this statement also applies to an indirect refund. The date of indirect return is the date on which the surplus was settled regardless of the result of this settlement. Consequently, the limitation period of five years (Article 70 § 1 op) in relation to the excess of input tax to be transferred (indirect reimbursement) should be calculated from the end of the year taking into account the month in which the surplus was settled, regardless of this settlement. In this situation, the tax liability for October 2012 expired on December 31, 2017. The indirect refund for November 2012 and the tax liability for December 2012 should be barred on December 31, 2018. Indirect refund for November 2012 was settled in December 2012. The tax settlement date for December 2012 was on January 25, 2013, therefore from the end of 2013.

However, the files of the case show that on September 15, 2017 proceedings for tax offenses were initiated and the limitation period for the months from October to December 2012 was suspended on that day. According to the wording of Art. 70 § 6 item 1 amended on October 15, 2013, both the Head of the Tax Office W. (as the tax authority competent for the taxpayer) and the Head of D. Customs and Tax Office in W. (as the legal successor of the UKS Director) notified - pursuant to art. 70c op - the applicant and her representative on suspending the limitation period. According to the case file, the Head of the Tax Office W. served the applicant's notification on 11 October 2017, and the Agent on 23 October 2017. In turn, the Head of D. Customs and Tax Office in W.

Due to the implementation of the conditions of suspension of the limitation period for tax liabilities and the amount of indirect reimbursement for the audited settlement periods, the court stated that they did not expire at the end of 2017.

Turning to the merits of the case, the Court finds that the contested decision was adopted in breach of procedural law.

It is grounded in case-law that when conducting proceedings, tax authorities are required to take measures to clarify the facts (art. 122 op), and pursuant to art. 187 § 1 above Acts are obliged to comprehensively collect and examine all evidence, and then - in accordance with art. 191 op - assess, on the basis of all evidence gathered, whether a given circumstance has been proved. It should be emphasized that the assessment of evidence was reserved to the authorities as part of the free assessment of evidence, including the assessment of facts of legal significance, rules of logic, life experience, rules of logical inference. In this assessment, the authority is not bound by any formal rules. The authority as evidence can allow anything which may contribute to the clarification of the case and is not contrary to the law (Article 180 § 1 op). However, according to art. 188 Op. a party's request for the taking of evidence should be taken into account if the subject of the evidence are circumstances relevant to the case, unless these circumstances are found in sufficiently different evidence (e.g. judgment of the Supreme Administrative Court of 31 January 2019, reference number II FSK 288/17, CBOSA). Failure to take into account the applicant's evidentiary motions contained in the appeal against the UKS Director's decision should be reviewed through the prism of Article 188 op In this regard, the Court in its adjudicating bench shares the view that in the light of art. 188 op, the tax authority may not grant the application if the request concerns an evidence thesis already established in favor of a party; however, if the party indicates evidence that is relevant to the outcome of the case,

In accordance with the views of the doctrine of law that the Court shares (Piotr Pietrasz in: Etel Leonard, ed., Tax Code, updated commentary, Lex / el 2019), another condition of not accepting a party's request appears when the subject of the evidence are circumstances not relevant to cases. Whether the evidence requested by a

party is relevant to the resolution of a case is determined by the content of the substantive law norm determining the scope of factual findings necessary for its application (judgment of the Supreme Administrative Court of 27 September 2007, reference number II FSK 1032/06, CBOSA). A refusal to take evidence requested by a party will be admissible only if there is no possibility of the evidentiary action contributing to the investigation or the given circumstance has clearly been proven. Therefore, refusal to perform a given evidentiary act must be certain that this act is completely unnecessary (judgment of the Provincial Administrative Court in Białystok of 24 October 2007, reference number I SA / Bk 388/07, CBOSA). It is not a negative premise that the requested evidence was taken, assuming that the testimony of witnesses in the case is unusable in advance. The tax authority may not believe the witnesses, but he must not disavow them without being questioned. The tax authority may not disqualify the truthfulness of a witness before he testifies. It is not a negative premise that the requested evidence was taken, assuming that the testimony of witnesses in the case is unusable in advance. The tax authority may not believe the witnesses but may not disavow them without being questioned. The tax authority may not disqualify the truthfulness of a witness before he testifies. It is not a negative premise that the requested evidence was taken, assuming that the testimony of witnesses in the case is unusable in advance. The tax authority may not believe the witnesses, but he must not disavow them without being questioned. The tax authority may not disqualify the truthfulness of a witness before he testifies.

This interpretation of art. 188 op leads to the conclusion that the appeal body violated not only this provision but also the principle of the party's active participation in the proceedings by limiting its statutory guaranteed initiative of evidence. From the application contained in the appeal against the decision of the UKS Director (and earlier, i.e. in the first instance proceedings - in a letter of 23 September 2015) for the taking of evidence from the hearing of witnesses - employees C, B, D SA and E - and the hearing of the party, i.e. the President of the Company clearly show the circumstances to be the subject of command. The arguments were intended to prove that the applicant had a permanent place of business in Poland and used this place for taxable activities. Appeal body in a decision of March 26, 2018. of the refusal to take this evidence, he unacceptably modified the purposes indicated, for which the means of proof were to be served. He assessed this application solely from the perspective of deliveries of goods to final recipients, contractual arrangements regarding the receipt of goods (including the place and time and persons performing these activities) and the presence of the Company's employees (IT and MJ) in Poland and considered that the evidence collected in the case so far (including IT statements made in the course of proceedings before the authority of the first instance, as well as submitted as a witness in criminal proceedings and included in the file by the letter of the Provincial Police Commander in K.) will be taken into account when assessing the actual conduct of business (consisting in the supply of documented goods questioned sales invoices) from a permanent place of business in Poland, and the result of this assessment will include an appeal decision. As regards the arguments contained in the applicant's letter of 23 September 2015, the Director of the IAS decided that they were sufficiently established by other evidence. Meanwhile, the applicant pointed to other evidence theses, i.e. the establishment of the Company having a permanent place of business in Poland and using it for taxable activities, which she intended to prove by establishing concluding transactions with customers and suppliers in Poland, determining the terms of transactions in Poland, the frequency of contacts with employees of the Company in individual years 2012-2014. In this state of affairs, the appeal body unreasonably refused to take evidence from the interrogation of the employees (former and current) of the final recipients of the goods requested by the applicant, and also failed to assess the significance of that evidence at all in determining the existence of a permanent place of business in Poland. He discredited this evidence in advance, pointing to the findings of the case file. However, the evidence requested was to show circumstances that were undoubtedly favorable to the applicant. The tax authority did not have such evidence, therefore it could not without breach of Art. 188 and art. 123 § 1 op refuse to carry out the requested evidence. It should be clearly emphasized here that from the IT interview reports both before the UKS Director and in the course of criminal proceedings (as a witness) there are no unequivocal findings in this respect. The same applies to testimonies given by MJ. The scope of the proof resulting from these documents does not coincide with the one requested by the applicant, which also affects

their limited and ambiguous evidential value in the context of Art. 188 and art. 187 § 1, art. 191 op and rules of conduct expressed in art. 121 § 1, art. 122, art. 123 § 1 op and rules of conduct expressed in art. 121 § 1, art. 122, art. 123 § 1 op and rules of conduct expressed in art. 121 § 1, art. 122, art. 123 § 1 op

Taking the requested evidence and its assessment together with other evidence and in accordance with the principle expressed in art. 191 op (free assessment of evidence) will only allow it to be considered that the tax authorities comprehensively collected evidence in the case, enabling an assessment whether the applicant had a permanent establishment and used it in taxable activities in the period under consideration.

The court emphasizes that in order to establish a permanent place of business, it is necessary to take into account the specificity of the applicant's business activities. The files of the case show that these activities were carried out in Poland, Slovakia and the Czech Republic, as well as in Russia (the applicant's letter of February 15, 2012 constituting an annex to the protocol on the audit of tax books of July 21, 2015, p. 149 of administrative files ; IT interrogation report of 18 February 2015, volume VI administrative files, p. 191; IT interrogation report of 10 November 2015, volume VI administrative files, p. 182, p. 6). The tax authority cannot suggest a business model to which the Applicant should comply (as regards, e.g. time spent in Poland, arranging cooperation with contractors, using modern remote management techniques).

He should also take into account the circumstances surrounding the transactions with company G, which was the applicant's second supplier, in this assessment. In that regard, the contested decision makes no statement regarding the use of a permanent establishment. On the other hand, the first instance authority does not question them in any way. The findings and conclusions of the appeal body relate to the use of a permanent place of business in transactions with K and final recipients.

The court further emphasizes that in the case the appeal body stated that the Company did not conduct any business activity in Poland. As a justification for this application, he stated that the Company did not operate from a place registered as a permanent place of business in the country and did not perform taxable activities in the form of supplies, documented by invoices issued by the Company for C, B, D and E. He indicated that the receipt and issue of invoices in to extend the transaction chain is not an economic activity. Consequently, he submitted that the applicant could not be considered a VAT taxpayer in Poland.

Therefore, if the results of the evidentiary proceedings again lead to the conclusion that the Company did not have a permanent place of business or did not operate from a registered permanent place of business, the tax authority will be obliged to consider whether it is the basis for questioning the status of the Complainant as a VAT taxpayer in Poland and how widely the tax authority may conduct proceedings against the Company in the scope of its tax activity in Poland.

In this context, it should be recalled that, according to the settled case-law of the Court, the purpose of the provisions determining the place of taxation of the provision of services is to avoid, on the one hand, a confluence of properties which may lead to double taxation and, on the other, no taxation of income (see, likewise, judgment ADV Allround, EU: C : 2012: 35, paragraph 27 and case-law cited). A provision such as art. 44 of Directive 2006/112 is a rule determining the place of taxation of the provision of services by designating the place of taxation, and thus delimiting the competence of the Member States (judgment of the CJEU of 16 October 2014, **Welmory**sp. z oo, C - 605/12, EU: C: 2014: 2298). In the Court's opinion, the statement by the authority that a taxpayer registered in Poland for VAT purposes does not conduct business using a permanent place of business (this place does not meet the criteria for being regarded as a permanent place of business) is the limit of the authorized action of a national tax authority towards such an entity. The principle of territoriality, expressed in art. 5 paragraph 1 uptu, art. 10 and art. 53 Implementing Regulation No. 282/2011 and art. 8 of the Council Decision of 29 September 2000 on the system of own resources of the European Communities (Official Journal of the EU of 2000 No. L 253, p. 42), as well as the principle of loyalty, expressed in art. 4 clause 3 of the Treaty on European Union (Journal of Laws 2004 No. 90 item 864/30) constitute the basis for such an assessment.

At the time of such determination, the national tax authority loses competence to conduct arrangements regarding the correctness of settlements of such a taxpayer.

It is worth recalling that the tax on goods and services is a harmonized public law tribute. This means that the provisions relating to this tax must be interpreted and applied uniformly in each Member State. The interpretation of national rules must not lead to results contrary to the basic principle of value added tax, namely the principle of universality of taxation. In the case of value added tax, the rule is that the legal burden of the tax liability falls on the entity that supplies the goods or provides the services. This correctness is also expressed in art. 193 of Directive 112. This provision stipulates that every taxpayer making a taxable supply of goods or services is obliged to pay VAT, except when another person is obliged to pay VAT in cases where referred to in art. 194-199b and art. 202. The EU legislator introduced an exception to this rule, inter alia, in art. 194 paragraph 1 of Directive 112, which provides that where the taxable supply of goods or services is carried out by a taxable person not established in the Member State in which the VAT is due, Member States may provide that the recipient of the VAT is the recipient of the goods or the recipient . In paragraph 2 of this provision, Member States were authorized to determine the conditions of use. Poland has made use of the option granted in art. 194 of Directive 112. The provision of art. 17 of the law contains the implementation of EU regulations. The so-called reverse tax collection mechanism. The purpose of these regulations is to facilitate the collection of tax. It is much simpler to collect claims from a taxpayer with a registered office or permanent establishment in the territory of the country. Nevertheless, the provision of art. 17 of the VAT Act contains an exception to the general principle of bearing the burden of this public tax (judgment of the Supreme Administrative Court of 20 September 2017, reference number I FSK 460/17, CBOSA). Therefore, in a situation where it turns out that the taxpayer does not actually have a permanent place of business or that place does not participate in the transactions carried out, the tax on the performance of such taxpayer's activities is charged to the buyer and it is the buyer who becomes the taxpayer on that account, obliged to pay tax. On the other hand, the supplier of goods does not settle the tax due.

In the opinion of the Court, therefore, determining that the applicant is not a VAT taxpayer in Poland should result in the de-registration of the Company from the tax records of the national tax authority, the closure of its tax obligations in the national tax authority and a change in the VAT settlement declared by the applicant by "zeroing" (determination settlements for October, November and December 2012 in the amount of PLN 0). The end of this procedure should be referring the case to the tax authorities of the country in which the applicant conducts business activity and possible cooperation between state tax administrations in determining the course of the transaction involving the applicant in Poland. In such a determination, of course, the application of Art. 108 demand by the tax authority.

In turn, if the result of the re-findings of the tax authority will be the existence of a permanent place of business (or its use in this activity), the authority should re-assess the case taking into account, however, the strict qualification of the activities documented by the disputed invoices, i.e. as abuse of law or tax fraud and rules of proving in the case of taxpayer's participation in these practices, derived from EU law and the case law of the CJEU. In this state of affairs, the Court considered premature the allegations made by the applicant in this regard.

As to the applicant's request for the annulment of the IAS Director's decision refusing to take evidence, the Court finds that it cannot be accepted. Such a provision is not subject to judicial review in ppsa mode. However, this does not mean that the issue regulated by it remains outside the control of the Court. The court assesses the completeness of evidence and the rights of parties in proceedings before the tax authority.

For these reasons, the court overruled the contested decision and the preceding decision of the UKS Director on the basis of art. 145 § 1 point 1 lit. a) and c) and art. 135 ppsa An audit of the legality of these decisions showed that there had been a violation of Art. 188, art. 121 § 1, art. 123 § 1, art. 187 § 1 and art. 191 op and art. 17 clause 1 point 5 and 1a of the Act

Reconsidering the case, the tax authority will be required to take the evidence indicated above. Depending on the outcome of the evidence, it will follow the Court's instructions.

The court ruled on the costs of proceedings based on the provisions of art. 200 and art. 205 § 2 ppsa and § 14 para. 1 point 1 letter a) and § 2 point 9) of the Regulation of the Minister of Justice of 22 October 2015 on fees for legal advisers (i.e. Journal of Laws of 2018, item 265). The awarded costs include the agent's remuneration in the amount of PLN 25,000 and the power of attorney fee in the amount of PLN 17.00. The applicant was granted legal aid in the form of an exemption from paying the court fee in the case