

**Podatki**  
**2020**

Bądź na bieżąco ze zmianami!

Wolters Kluwer

## NSA: Excess VAT may be time-barred

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Source: iStock

**A taxpayer who for a period of more than five years has transferred the surplus of input VAT over the one due for subsequent tax periods is not entitled to a refund due to the limitation period. If, after this deadline, the tax office cannot verify the legitimacy of VAT refunds, then the taxpayer also loses his rights by analogy. This has recently been confirmed by the NSA**

The company was involved in real estate trading. It transferred the surplus of input VAT over the amount due in connection with the sale of real estate in August 2017, when the company sold one of the properties. VAT, however, was shown in the declaration.

### VAT surplus zeroed?

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According to the tax authorities, the company has been unable to reduce the input VAT on invoices received in the years 2008–2010 from December 2011 and transfer surpluses to subsequent settlement periods, as the surplus has expired, so it should be "zeroed".

The head of the tax office stated that the surplus contained in the declaration for April 2017 was created from July 2008 to October 2010 and concerned settlements for months for which the limitation periods have expired, pursuant to art. 70 par 1 of the Tax Code. The Director of the Tax Administration Chamber upheld the decision of the first instance authority. The company filed a complaint to the Provincial Administrative Court in Warsaw.

Read in LEX: [Limitation of tax liabilities and VAT](#)>

## Doubts in favor of the taxpayer

In the judgment of 4 December 2018, reference number Act. III SA / Wa 432/18 WSA agreed with the taxpayer. The court stated that the views of the tax authorities are not based on a specific provision of law, and even more so in the cited resolution of the Supreme Administrative Court of June 29, 2009. ref. act I FPS 9/08 . He also emphasized that all doubts as to the content of tax law provisions, pursuant to art. 2a of the Tax Code should be resolved in favor of the taxpayer.

The court indicated that pursuant to the content of art. 70 par 1 of the Tax Code, the tax liability expires after five years from the end of the calendar year in which the tax payment deadline expired. **He also stressed that doubts in the jurisprudence were raised as to whether this provision could be applied to the excess VAT input over VAT. NSA in the abovementioned the resolution resolved that art. 70 par 1 of the Tax Code shall apply to amounts due for undue VAT refunds.**

The WSA stated that the above view of the NSA shares and is associated with it. The court also recognizes the position presented in the jurisprudence that the resolution of the Supreme Administrative Court concerns not only VAT refunds to a bank account, but also the surplus carried over to the next accounting period (so-called indirect refund).

### See also: [Incorrect invoice rate does not block VAT deduction](#) >>

According to the court, the arguments made in the justification of the NSA resolution do not, however, lead to the conclusion, led by the tax authorities, that the company, by shifting its VAT settlements to subsequent accounting periods, until the time when the taxable sale was shown, closely related to the taxed transaction, it lost the right to deduct VAT , as the amount declared to be transferred expired due to the limitation period in 2011.

See the procedure in LEX: [Tax and insurance accounting judgment](#)>

The written motives of the resolution indicate **of the declared tax liability, may not, after the change the amount of the declared excess V**

## Are both sides losing their right?



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It had to be assumed that the authorities lost their right to issue decisions in which they could question the amount of surplus. Thus, it was impossible for the tax authorities to issue any decision regarding the abovementioned surpluses after the expiry of the limitation period for tax liabilities to which the surpluses concerned.

The lack of questioning before the expiry of the limitation period for tax settlements regarding primary VAT surpluses from 2008–2010 prevents tax authorities from questioning these settlements in later periods following the limitation period of tax liabilities to which the surpluses relate.

Read in LEX: VAT overpayment as a source of tax arrears in PIT – discussion of case law>

**Therefore, the tax authorities could not question the amount of the surplus determined in the VAT-7 tax declaration for November 2010 in 2017 and assume that it was PLN 0.**

The expiry of the limitation period for tax liabilities for the years 2008 – 2010 meant that the surplus VAT (tax liability) for that period became final and could not be verified.

This problem is unfortunately not the only one. January changes in documenting sales, issuing receipts and invoices or exercising due diligence still raise many doubts. However, this is not all. April and July also require solid preparation. Read more>

## Can the surplus be materialized?

According to the court, the key in the case is to answer the question: whether the taxpayer who included VAT from the cost invoice in the declaration for a specific month is limited in time in terms of actual recovery of the amounts declared in this way, in connection with the transfer of the excess VAT charged over due for subsequent settlement periods, in which it becomes the next surplus, and whether this new surplus can be effectively materialized in the settlement periods in which the taxable sale took place, also after the expiry of the limitation period for tax liabilities to which the surplus originally referred, if the authority in a timely manner (before the limitation period has not been questioned).

Check in LEX: Is the SKO decision for 2014 received by the taxpayer on 2/01/2020 binding on the taxpayer or has the liability expired? >

In the opinion of the Provincial Administrative Court, this question should be answered in the affirmative, although the legislator did not regulate these issues in the law.

The Provincial Administrative Court emphasized that **after the expiry of the limitation period' the taxpayer should be certain that it will be d months, pursuant to art. 87 paragraph 1 of the been questioned, will not be eliminated from t extension of the period, independent of the wi to sell taxable goods, which were related to e**

However, one of the judges of the Provincial Ad claiming that the taxpayer's law was time-barr

The Supreme Administrative Court quashed the



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The NSA, however, drew attention to the jurisprudence of the Court of Justice of the EU, which shows that individual member states may set a deadline for tax deduction. He explained that if after this deadline the tax office cannot verify the legitimacy of VAT refunds, then, according to the Supreme Administrative Court, the taxpayer likewise loses the right to exercise this right.

***Judgment of the Supreme Administrative Court of January 14, 2020, reference number act I FSK 685/10***

Check at LEX: How long does the debtor have the right to increase the amount of input VAT if the amount has been paid? >



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