I SA / Sz 915/19 - Judgment of the Provincial Administrative Court in Szczecin

Date of judgment	2020-03-05 *the judgment is not final*
Date of receipt	2019-11-25
Court	Provincial Administrative Court in Szczecin
referees	Alicja Polańska Bolesław Stachura Nadzieja Karczmarczyk-Gawęcka / chairman rapporteur /
Symbol with description	6110 Tax on goods and services 6560
Thematic entries	Tax Interpretations
The complained body	Director of the National Treasury Information
Content of the result	Complaint dismissed
Regulations cited	OJ 2018 item 800 Article 121 paragraph 1 in connection from art. 14 c par. 1 and 2 and 14 h *Act of 29 August 1997 - Tax Code - i.e.*

SENTENCE

The Provincial Administrative Court in Szczecin, composed of the following: Chairman Judge of the Provincial Administrative Court Nadzieja Karczmarczyk-Gawęcka (judge) Judges Judge of the Provincial Administrative Court Alicja Polańska, Judge of the Provincial Administrative Court Bolesław Stachura Protocol clerk Senior Court Inspector Edyta Wójtowicz after the examination in Department I at the hearing on March 5, 2020 cases from the complaint [...] on the individual interpretation of the Director of National Tax Information of [...] September 2019 No. [...] regarding the application of tax law dismisses the complaint.

SUBSTANTIATION

On [...] AAS limited liability with its registered office in S. submitted a joint application (supplemented by

on [...]) for an individual tax ruling

on goods and services in the absence of a permanent place of business in Poland and the right to deduct input tax in connection with

with the purchase of services provided by the abovementioned Company. In the application and its supplement submitted by the Company, which is a party to the proceedings - AAS z oo (hereinafter referred to as: the Applicant, the Company, the Applicant) and the interested party who is not a party to the proceedings - AG (hereinafter referred to as: A. or the Interested) the Applicant, presenting the facts and future event , indicated that on [...] it concluded with the German entity AG - also being an active VAT taxable person registered for VAT purposes in Poland - a storage contract regulating the storage of goods by the company for A.

The conclusion of the contract was related to the business profile of both entities. The company conducts, inter alia, activities in the field of warehousing and storage of goods, while the interested party sells spare parts

for cars and motorbikes in the e-commerce formula, directly

to the customer. Pursuant to § 1 of the contract, its subject is the permanent receipt and storage of goods, preparation of goods for dispatch, dispatch and receipt of returns in the warehouse rented by the applicant. The remuneration due to the Company is payable by A. on the basis of a statement prepared by the Company on the last day of each month and a VAT invoice prepared.

As part of preparing the goods for shipment, the Company constantly monitors the warehouse assortment. After receiving the order, the computer system checks

whether the part is in stock or you have to order it from the supplier. If it is necessary to order goods from an external supplier, the relevant information generated by the system is directed to it automatically. Upon arrival

the goods are taken to the warehouse and stored on shelves. After completing the order, the parts are collected, packed and sent to the customer.

In the concluded contract, the Interested Party reserves the right to check the quantity and condition of the goods stored, the conditions of their storage, sampling and all other necessary operations

to keep the goods in good condition. According to the agreement

has access to stored goods at the time he chooses. The contract has been concluded for an indefinite period, however, both parties may terminate the contract by giving 90 days written notice.

In connection with the cooperation entered into with the Persons concerned, the Company intends to make significant capital expenditures in warehouse space in order to ensure the best possible service tailored to the requirements of the person concerned.

As part of these outlays, the Applicant plans to build a fully automated warehouse. Funds for this purpose are to come primarily from external sources, with some of them being covered by a loan obtained from the Interested Party.

As part of its business operations, the Company plans to conclude contracts of a similar nature also with other contractors (domestic as well as

and foreign). At the time of submitting the application, an agreement on the conclusion of such an agreement was reached with a German limited company.

The company emphasized that the vast majority of recipients of goods sold by the Interested Party are foreign persons. Polish recipients constitute less than [...]% of the total stakeholder's clients. In addition, the interested party concludes only sporadic transactions on Polish territory - primarily the purchase of packaging. In addition to the services covered by the contract, the Interested Party only participated in one-off transactions with the Company. In particular, under the contract of [...], the Applicant rented IT equipment to the Applicant. In turn, in accordance with the contract concluded on [...], the person concerned transferred ownership of storage shelves to the Applicant.

The interested party does not employ employees in Poland, and all key decisions regarding operations in Poland are made at the registered office of the interested party, which is located in N. In particular, the interested party's headquarters in N. reserves the exclusive right to develop, conclude and accept orders, prices,

contracts, delivery terms and invoicing customers. Only the President of the Company's Management Board is also an employee of the Interested Party, however, he stays in Poland only incidentally. The applicant has indicated that the Applicant is currently in possession of the applicant's shares.

In addition to the application, the Applicant provided the following answers to the body's questions:

- The applicant uses an IT system owned by the Interested Party to provide the warehouse service (an IT system written by the interested party for his own needs). The person concerned also provides the applicant with packaging used for packing goods sent to customers. The applicant uses storage racks and IT equipment owned by the Interested Party on the basis of a rental agreement (IT equipment) and a sales contract (ownership of storage racks will be transferred by the Interested Party

to the Applicant only after the court dispute pending concerning those shelves is over).

- Currently, the applicant provides services only to the Interested Party.

- the Applicant does not provide and does not plan to provide the Interested Party with other services than those mentioned in the storage contract.

- The remuneration due to the person concerned is the sum of the following factors: the number of items received at the warehouse multiplied by a specific rate; the number of items placed on shelves multiplied by the specified rate; the number of packages sent to the customer multiplied by the specified rate. The rate is set on the basis of the costs incurred by the applicant to provide the service plus a margin. The rate can be changed if the cost level changes. The applicant assumes profitability at market level on the basis of an analysis carried out by an independent advisory body from [...] per year.

- The applicant has granted a loan to the Applicant of up to EUR [...]. EUR [...] was allocated for the construction of the automated warehouse.

- Interested in the owner of an IT system for order processing. The system contains all data about customers, suppliers, quantity of goods and others. The interested party provides the IT system to the Company for the proper performance of the storage service.

- Only the Stakeholder decides to choose external suppliers to replenish inventory.

- As of today, the [...] owner of the Applicant's shares is the President of the Management Board of the Applicant RD.

- The above-mentioned President is employed in A. as the Purchasing Director.

- The interested party does not make a paid supply of goods or paid services on Polish territory.

- The interested party acquires commercial goods (car parts) and packaging materials in Poland.

- The interested party does not have the exclusive right to use a specific warehouse space.

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

1. In connection with the conclusion of the contract described in the actual state (future event), will there be a permanent place of business for the person concerned in Poland for the purposes of applying

Art. 28b paragraph 2 of the Act of 11 March 2004 on tax on goods and services

(Journal of Laws of 2018, item 2174, as amended - hereinafter referred to as: "uptu"), therefore, services rendered to him by the company will be taxed in Poland?

2. If the Company's positions regarding question 1 are considered incorrect, i.e. it is assumed that the Interested Party has a permanent place of business in Poland, and therefore the services rendered to him are subject to VAT in Poland - does the Interested Party

based on Article. 86 section 1 upshot will be entitled to deduct VAT for the purchase of these services?

According to the Applicant:

Ad. 1. In connection with the conclusion of the contract, there will be no interest for the person concerned

in Poland, a permanent place of business for the purposes of applying Article 28b paragraph 2 uptu, therefore the place of taxation of these services will not be located on Polish territory.

Ad. 2. In the event of deemed incorrect positions in question 1, the person concerned, pursuant to art. 86 section 1 upt, there will be a right

to deduct VAT for the purchase of services provided by the Applicant.

In extensive justification, the Company justified its position, indicating, among others, that the Interested Party does not have a permanent place of business in Poland due to the lack of an appropriate structure in terms of personnel, lack of an appropriate structure in terms of technical support and lack of decision-making independence.

The Director of the National Tax Information [...] issued an individual interpretation No. [...] in which he stated

that, in the light of the applicable legal status, the position of the Applicant regarding the legal assessment of the presented facts / future events is:

- incorrect - in the absence of a permanent place of business in Poland,

- correct - as regards the right to deduct input tax on the relationship

with the purchase of services provided by the applicant.

In substantiating its view, the authority, citing the content of the relevant provisions of the Act on tax on goods and services, pointed out that the definition of "permanent establishment" was included in Council Implementing Regulation (EU) No. 282/2011 of 15 March 2011 establishing implementing measures for Directive 2006/112 / EC on the common system of value added tax, applicable in this field from 1 July 2011, hereinafter referred to as "the Regulation". ABOUT

Referring to the CJEU rulings, the authority indicated that the place can be said if there is an appropriate structure in terms of personnel and technical facilities necessary to conduct business activity and there is a certain minimum scale of business activity that allows it to be considered that the taxpayer's activity in this place is not carried out periodically, as well as activities from this the place is run independently of the business headquarters.

The authority indicated that in order to recognize that a given place of business is permanent, it is necessary to have technical infrastructure and human staff at that place, which alone may perform specific activities. Such a personal and business structure in a permanent place of business should occur in a permanent way, i.e. repeatable and lasting.

Due to the criteria indicated in art. 15 paragraph 2 of the Act, the authority then indicated that the entity has a permanent place of business in the territory of the 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. At the same time, it is not necessary to have your own personal and technical base to adopt a permanent place of business in a given country, but the taxpayer must have - based on the requirement of sufficient stability of the place of business - comparable control over the personnel and technical base.

Regarding the right to deduct input tax, the authority indicated

that the right to reduce the amount of tax due by the amount of input tax is granted when certain conditions are met, i.e. the taxpayer makes a tax deduction of goods and services and when the goods and services from which the tax has been calculated are used to perform taxable activities , i.e. those which have the consequence of determining the tax due (incurring a tax liability).

According to the circumstances of the present case, according to the authority, the person concerned has / will have actual power over the technical and personnel base, because he is and will be able to properly use them in the distribution of goods. The content of the application shows that the company uses an IT system owned by the person concerned. In addition, the Interested Party provides the Company with packaging used for packing goods sent to customers. The company also uses storage racks owned by the person concerned.

In the analyzed case, in the opinion of the authority, the fact that all key decisions regarding operations in Poland are made at the registered office of the person concerned, which is located in N., is irrelevant, as the stability of the place of business cannot be equated with the intensity and frequency of actions taken in as part of business operations, as well as with management decisions that do not take place in the country. At the same time, the authority indicated that the functions of the main management board of enterprises do not determine a permanent place of business.

In the light of the above, the authority stated that the case would meet the criteria for having a minimum size of activity characterized by a certain level of stability in which the presence of human resources would take place

and technical, necessary to conduct the taxpayer's business. Thus, the use of technical infrastructure and personnel possessed in Poland

to conduct business in an organized and continuous manner, qualifies the activity of the person concerned on the territory of the country as a permanent place of business in Poland within the meaning of art. 28b paragraph 2 uptu. In connection with the above, the place of providing warehouse services to the person

concerned by the company, in accordance with art. 28b paragraph 2 uptu is the territory of Poland (the place of permanent business activity of the entity [...]). Therefore, the position regarding question 1 should have been considered incorrect.

Therefore, in a situation where the technical infrastructure and personal involvement of the company, used by the person concerned, will remain in a close relationship

with the performance of his taxable activities, the conditions for the deduction of input tax referred to in

in art. 86 section Therefore, the position regarding question 2 should be considered correct.

The company disagreed with the interpretation, which it fully appealed to the Provincial Administrative Court in Szczecin.

The contested interpretation was accused of:

I. infringement of substantive law, i.e.

1) incorrect interpretation of art. 11 paragraph 1 of the Implementing Regulation through recognition,

that in the circumstances presented there are grounds for a decision on a permanent place of business in Poland for the person concerned, while all the necessary conditions for the establishment of such a permanent place of business were not met, which led to the incorrect application of Art. 28b paragraph 2 uptake through acceptance,

that this provision should specify the place of supply of the services described

in the application;

2) incorrect application of art. 86 section 1 and 88 paragraph 3a point 2 of the Act

in connection from art. 28b paragraph 2 uptu and art. 11 paragraph 1 of the Implementing Regulation by assuming that the Interested Party is entitled to deduct the input tax shown on the invoices issued by the applicant, although the correct application of the above provisions should be

to the conclusion that the services described in the application should be taxed in the country of establishment of the person concerned, i.e. in N., as a result of which they should not give the right to deduct input tax.

II. Formal and legal defect resulting from the violation of the provisions of the procedure, which could have had a significant impact on the result of the case, i.e. the violation

Art. 121 § 1 in connection from art. 14c § 1 and 2 and 14h of the Act of August 29

1997 Tax Code (Journal of Laws of 2019, item 900 as amended - hereinafter referred to as: "op"), by failing to properly duly justify the negative assessment of the applicant's position, and not taking into account individual interpretations favorable to the company in the issued interpretation and the case law of administrative courts cited by the company.

In connection with the above allegations, the applicant requested that the contested interpretation be set aside in its entirety and the costs be awarded to it, together with the costs of legal representation in accordance with prescribed norms.

In support of the complaint, the party referred more extensively to the pleas raised.

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

At the hearing on 5 March 2020, the applicant's lawyer supported the complaint and asked for legal costs. In addition, he pointed to the opinion of the CJEU's Advocate General of November 14, 2019 presented in the case

reference number **C-547/18** , as well as the judgment of the Provincial Administrative Court in Gliwice of November 22, 2019, reference number act I SA / Gl 737/19.

The Provincial Administrative Court in Szczecin considered:

The complaint is unfounded.

In accordance with the general principle expressed in art. 28b paragraph 1 point, the place of providing services in the case of services rendered to the taxpayer is the place where

in which the taxpayer, being a customer, has his registered office of economic activity,

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. As stated in art. 28b paragraph 2 uptu 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 a permanent place of business.

The cited provisions of the Act show that, in principle, the service provided to the taxpayer within the meaning of art. 28a uptu other than indicated in art. 28e, art. 28f paragraph 1 and 1a, art. 28g paragraph 1, art. 28i, art. 28j paragraph 1 and 2 and art. 28nuptu is subject to taxation at the place of business of the service recipient, unless it is provided for a permanent place of business of the service recipient, which is located in a different place from his place of business, then the place of service is the permanent place of business for which service is provided.

To harmonize the applicable rules regarding the place of taxation of taxable transactions, the definition of "permanent establishment" is contained in Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112 / EC on common system of value added tax, applied in this respect from 1 July 2011.

According to art. 11 paragraph 1 of the Regulation, for the purposes of applying Art. 44 of Directive 2006/112 / EC "permanent place of business" means any place other than the place of business of the taxpayer referred to in Art. 10 of the Regulation - which is characterized by sufficient stability and appropriate structure in terms of personnel and technical resources to enable it to receive and use services provided for its own needs in this permanent place of business.

In accordance with art. 11 paragraph 2 of the Regulation, for the purposes of applying the following articles, a permanent place of business means any place other than the place of business of the taxpayer referred to in art. 10 of the Regulation - which is characterized by sufficient stability and an appropriate structure in terms of personnel and technical resources to enable it to provide services that it performs:

a) art. 45 of Directive 2006/112 / WK;

b) from January 1, 2013 - art. 56 section 2, second paragraph, of Directive 2006/112 / EC;

c) until December 31, 2014 - art. 58 of Directive 2006/112 / EC;

d) art. 192a of Directive 2006/112 / EC.

Based on Article. 53 section 1 of the Regulation, for the purposes of applying Art. 192a of Directive 2006/112 / EC 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 to enable him to deliver goods or provide services,

in which he participates.

A permanent place of business can be said if there is an appropriate structure in terms of personnel

and technical, necessary to run a business, and there is a certain minimum scale of business that allows recognition,

that the taxpayer's activity at this place is not carried out in a periodic manner, as well as the activity from this place is carried out independently of the business of the registered office of the enterprise. In this regard, the case law of the CJEU is valid, including judgment C- 168/84 Gunter Berkholz, C-231/94 Faaborg - Gelting Linien A / S, C-190/95 ARO Lease By, C- 260/95 Commissioners of Customs and Excise v. DFDS A / S, C- 390/96 Lease Plan Luxembourg SA, as well as C-605/12 Welmory Sp. z o. o

A permanent place of business must have a certain degree of commitment that allows it to be considered that the business is carried out here not in a transient or temporary manner. Therefore, a certain minimum scale of activity is necessary, which is an external sign that the activity in this place is carried out constantly. The commitment should also take on a specific personal and material dimension, allowing the provision of services in an independent manner. Therefore, in order to recognize that a particular place of business is permanent, it is necessary to have technical infrastructure and staff who can perform specific activities on their own. Such a personal - business structure in a permanent place of business should occur in a permanent way, i.e.

The term of permanent establishment, also cannot be considered in isolation from the definition of economic activity referred to in art. 15 paragraph 2 uptu

An entity has a permanent place of business in the territory of the 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. Technical infrastructure

and personal involvement must be closely related to the conduct of taxable activities. Therefore, it is necessary for the permanent establishment that this place does not only use the goods

and services, but also could itself carry out taxable activities in accordance with Article 5 paragraph 1u.ptu However, it is not necessary for the entity's activity to be considered a permanent place of business in Poland for the entity itself to provide services or provide goods using sufficient funds. It is also important that the created business structure of the entity should be able to receive and use services provided for its own needs. At the same time, it is not necessary to have your own personal and technical base to adopt a permanent place of business in a given country, but the taxpayer must have - based on the requirement of sufficient stability of the place of business - comparable control over the personnel and technical base.

On the basis of the above-mentioned premises, the authority reasonably concluded that if a given entity has its staff in a given country and its structure (including technical infrastructure), characterized by adequate stability, it has a permanent place of business in that country. It does not matter, however, whether they are employees employed directly by this entity or whether it is "own" infrastructure.

It follows from the case law of the CJEU that also the use of human resources

and technical entity can lead to the establishment of a permanent place of business in another country.

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

In view of the above, the authority was right to disagree with the applicant,

that the person concerned does not have any personnel on Polish territory

or technical infrastructure that the activity on the national territory is not independent, which means that it is not possible to act independently

that the activity of the person concerned in Poland is not characterized by stability,

i.e. it does not occur in a repetitive and timeless manner. It follows from the circumstances set out in the application that the applicant concluded a contract for an indefinite period

with those interested in the sale of spare parts for passenger cars and motorcycles. The subject of the contract is the applicant's provision of services consisting in the continuous receipt and storage of goods, preparation of goods for dispatch, dispatch and acceptance of returns.

Although in the complaint, the Party pointed out that the Interested Party does not have and does not rent in Poland any commercial office through which he could sell goods, nor does he have personnel authorized in Poland to conclude

and negotiating contracts, however, the factual state presented in the application shows that the person concerned has sufficient technical and personnel resources to conduct business activity on the national territory.

The person concerned is the owner of certain movable assets used in the applicant's business. The applicant provides logistics services using an IT system owned by the person concerned. In addition, the Party concerned provides the applicant with packaging used for packing goods sent to customers. The applicant also uses storage shelves, used for the storage of goods, owned by the person concerned. As regards the Person concerned's personal resources, the authority aptly noted that the President of the Complainant's Management Board (holding [...] shares in the Complainant) is a person who is also an employee of the Interested in the position of Purchasing Director. It is also an important circumstance that the [...] applicant has shares in the Applicant himself.

The authority also reasonably took into account that the applicant, in order to provide the storage service, operates under the close supervision of the interested party, who reserved the right to check the quantity and condition of the goods stored, conditions

their storage, sampling and all other operations necessary to maintain the goods in good condition. Pursuant to the contract, the Interested Party has access to stored goods at the time chosen by them.

In the opinion of the Court, the authority correctly concluded that the presented circumstances indicate that the person concerned has actual power over technical and personnel base, because he is able to properly use them in their activities in the field of storage, handling and sale of goods. The own resources and services purchased, as well as the personal involvement and infrastructure of the Complainant (entity related by capital) used by the Interested Party are closely related to the act of selling goods on Polish territory. Range of commissioned

and the benefits used by the person concerned allows him to recognize that he creates

in Poland, a permanent place of business.

The applicant submitted that all decision-making (management) activities related to the activity of the person concerned would be taken by the management board and employees subordinate to him in N., which also precludes the possibility that the person concerned will have a permanent place of business in Poland.

Bearing this position in mind, the view expressed in the judgment of the Provincial Administrative Court in Warsaw should be cited, reference number No. III SA / Wa 1033/16 (available on the website: www.orzeczenia.nsa.gov.pl), in which it was stated that, in accordance with the case law of the CJEU, the stability of the place of business cannot be identified

with the intensity and frequency of actions taken as part of business operations, as well as with management decisions that will not be taken by a person present in the country. Key to recognizing that the company

on the territory of Poland it will have a permanent place of business, it is necessary to provide professional staff necessary for the needs of its operations as part of the delivery of goods and to have in Poland the minimum technical resources necessary to conduct business.

Contrary to the applicant's opinion, it is not relevant for the resolution of the issue at issue that the conclusion of contracts, placing orders and taking orders from customers will be made from the applicant's headquarters in N ..

The applicant's claim that the activity of the person concerned in Poland will not be characterized by the stability and intention of doing business from that place is also unfounded. As the authority rightly pointed out, the applicant, by providing services through the employees she employs, ensures that the activity of the person concerned, together with the available warehouse and the exclusive provision of services, is properly organized so that the person concerned can

continuously carry out activities in the scope of selling spare parts

for motorcycles and cars. It is significant that the applicant's cooperation

with interested parties is valid on the basis of a contract concluded for an indefinite period.

The applicant intends to make significant capital expenditure

in warehouse space, and funds for this purpose are to come partly from a loan obtained from the Interested Party. Considering the above, it is impossible to agree with the applicant that her relationship with the Interested Party is no different from the typical relationship between the service provider and the service recipient.

Therefore, the conclusion of a specific contract for an indefinite period, providing the applicant with support services, e.g. in the form of access to an IT system,

whether the granting of a loan to the applicant in order to provide the applicant with due service constitutes an intention to conduct long-term and consistent business in the sale of goods serviced by the applicant's employees.

In the light of the above-mentioned observations, the authority should be right that the use of technical infrastructure and personnel in Poland to carry out business activity by the Interested Party in an organized and continuous manner qualifies the planned activity on the territory of the country as a permanent place of business in Poland, in within the meaning of the provisions of art. 28b paragraph 2 upt. In view of the above, the place of rendering warehouse services for the applicant concerned, in accordance with art. 28b paragraph 2 uptu is the territory of Poland (the place of permanent business activity of the entity [...]).

It cannot be agreed that the services purchased by the person concerned will be taxed in the country in which he has his registered office, i.e.

if the technical infrastructure and personal involvement of the company used by the person concerned are closely related to the performance of his taxable activities, the conditions for entitlement will be met

for deduction of input tax referred to in art. 86 section 1 uptu

The above means that the allegation of violation of both Art. 11 paragraph 1 of Council Implementing Regulation (EU) No. 282/2011, art. 28b paragraph 2, as well as art. 86 section 1 and art. 88 clause 3a point 2 of the Act should be considered unfounded.

Regarding the allegations of violation of the provisions of procedural law, it should be noted that pursuant to art. 14b § 1 op, the Director of the National Tax Information Office, at the request of the person concerned, issues, in his individual case, an interpretation of the provisions of tax law (individual interpretation). An application for individual interpretation may relate to actual facts or future events (Article 14b § 2 op). Pursuant to art. 14c § 1 op individual interpretation contains a comprehensive description of the factual or future event presented in the application, as well as an assessment of the applicant's position together with legal justification

this assessment. Legal justification may be waived if the applicant's position is fully correct. Based on Article. 14c § 1 and 2 op in the event of a negative assessment of the applicant's position, the individual interpretation shall contain an indication of the correct position together with legal justification.

Pursuant to art. 14h op in matters concerning individual interpretation, the provisions of Art. 120, art. 121 § 1, art. 125, art. 126, art. 129, art. 130, art. 135, art. 140, art. 143, art. 165 § 3b, art. 165a, art. 168, art. 169 § 1-2 and 4, art. 170, art. 171, art. 208, art. 213 as regards supplementing or rectifying the complaint to the administrative court, Art. 214, art. 215 § 1 and 3 and the provisions of Chapters 3a, 5, 6, 7, 10, 14, 16 and 23 of Section IV. However, according to art. 120 op, tax authorities operate on the basis of legal provisions. According to art. 121 § 1 op tax proceedings should be conducted in a way that raises trust in tax authorities.

In the complaint, the party claimed that the authority violated Art. 121 § 1 in connection from art. 14c § 1 and 2 and 14h op by breach of the obligation to duly justify the negative assessment of the applicant's position and failure to take into account in the interpretation given favorable interpretations for her and individual judgments of the administrative courts cited by her. According to the applicant, the authority violated the rules of conduct of the procedure in a way that trusted the tax authorities.

From the cited legal regulation it follows that the authority is obliged

to assess the applicant's position by stating that it is correct or incorrect and the legal justification for that assessment. The legal justification for this position should clarify the legal basis

with reference to the legal provisions applicable in a given case.

According to the Court, the allegation of faulty preparation of justification for individual interpretation is unfounded, by failing to comply with the interpretation of art. 11 paragraph 1 of Council Implementing Regulation (EU) No. 282/2011 and Art. 28b paragraph 2 uptu In the contested individual interpretation, the authority cited all the provisions of tax law applicable in the case

and discussed them. The interpretative body responded to all the applicant's arguments contained in the request for interpretation. In addition, he appealed

to the provisions of national law, Community legislation and resulting claims

from the case law of the CJEU. He also assessed the position of the party by detailed indication to what extent and why it is incorrect. The explanations of the authority were clear and understandable.

The authority's reply containing the applicable tax law provisions and the justification being the analysis of the description provided in the context of these provisions is, in the Court's view, complete and exhaustive. Interpretation issued

meets the statutory requirements specified in art. 14c § 1 and § 2 op The fact that the applicant was not convinced of the decision adopted in the case does not constitute a violation of these provisions. A party has the right to its own subjective conviction of the legitimacy of its allegations, but this conviction does not have to be reflected in applicable law and their interpretation.

The presented facts / future event were thoroughly analyzed by the authority and then assessed in the context of the applicable law in this respect, which was expressed in properly prepared justification of the interpretation. A different legal assessment of the applicant's position does not prove that the authority breached the principle of trust set out in Art. 121 § 1 op

Therefore, fully sharing the arguments presented by the authority in the contested interpretation, the Provincial Administrative Court in Szczecin concluded that it did not violate the law and for these reasons, pursuant to the provision of art. 151 of the Act of 30 August 2002 Law on proceedings before administrative courts (Journal of Laws of 2019, item 2325 as amended), ruled as in the operative part of the judgment