I SA / Sz 64/22 - Judgment of the Provincial Administrative Court in Szczecin

Date of the judgment	2022-04-06 *invalid judgment*
Date of receipt	2022-01-27
Court	Provincial Administrative Court in Szczecin
Judges	Bolesław Stachura Elżbieta Dziel / chairman rapporteur / Ewa Wojtysiak
Symbol with description	6110 Tax on goods and services
Thematic slogans	Tax on goods and services
The appealed authority	Director of the Tax Administration Chamber
Result content	The decisions of first and second instance have been repealed
Cited regulations	Journal of Laws 2011 No 177, Item 1054 Art. 5 sec. 1, art. 14 sec. 6, art. 15 sec. 1 and 2, section 6, art. 17 sec. 1 point 4, art. 19 sections 1 and 4, art. 20 and art. 21 paragraph 1, art. 28a-28o, art. 97 sec. 4. *Act of March 11, 2004 on tax on goods and services - consolidated text* , Journal of Laws of the EU , No. 347, item 1, Articles 44, 45, Article 192a, *Council Directive of November 28, 2006. 2006/112 / EC on the common system of value added tax* , Journal of Laws EU L 2011 No. 77 item 1 Article 53 *Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112 / EC on the common system of value added tax,* O.J. 2021 item 450 art. 73 section 5 *Act of June 20, 1997, Road Traffic Law - i.e.*

SENTENCE

Provincial Administrative Court in Szczecin composed of the following composition: President Judge WSA Elżbieta Dziel (spoken), Judges Judge WSA Bolesław Stachura, Judge Judge Ewa Wojtysiak, Records clerk senior court secretary Anna Kalisiak, after hearing in Division I at the hearing on April 6, 2022 case from the complaint of E. [...] based in S. against the decision of the Director of the Tax Administration Chamber in S. of [...] No. [...] regarding the tax on goods and services for August and December 2016 and January 2017. I. repeals the challenged decision and the preceding decision of the Head [...] of the Tax Office in Sz on [...], No. [...], II. orders the Director of the Tax Administration Chamber in S. to pay the applicant E. [...] with its seat in S. the amount of PLN [...] for reimbursement of the costs of court proceedings.

JUSTIFICATION

E.-L. GmbH (hereinafter: "the party", "the complainant"), filed a complaint with the Provincial Administrative Court in Szczecin against the decision of the Director of the Tax Administration Chamber in S. (hereinafter: the "appeal body") of [...] December 2021, no. [...], [...], upholding the decision of the Head [...] of the Tax Office in S. (hereinafter: "first instance authority")

of [...] July 2021, No. [...] on value added tax for August and December 2016 and January 2017

The status of the case is as follows.

E.-L. GmbH is a German trading company headquartered in N.

in S. at ul. [...], registered under the VAT number [...], established on the basis of the articles of association of [...] April 1997. According to the excerpt

from the German Commercial Register No. [...] drawn up on [...] November 2016, the subject of business activity was the leasing of commercial vehicles and all types of trailers, as well as their rental and trade, both

in Germany and abroad, in Europe.

In the course of the tax audit and tax proceedings conducted, the authority

Of the first instance established that the party had filed an identification application in Poland. She indicated the place of business at the address of K. At the same time, it stated, with the description of a descriptive atypical address, that it was the place of the service only

in the field of real estate rental.

Subsequently, the first instance authority established that [...] in January 2006, between the party, i.e. E.-L. GmbH with its seat in S., [...], [...] S. (the Owner) and K.- P. Sp. z o. o. (currently EL Spółka

z o. o., hereinafter also as a limited liability company) with its seat in S. at ul. [...] (the Lessee) was concluded for an indefinite period of time, the subject of which was an office building, located on ha plot No. [...] with an area of [...] m2, located in the commune of K. (address: K .).

In connection with the above-mentioned Under the agreement (using the NIP [...]), the party issued a VAT invoice No. [...] of [...] of January [...] of [...] for the net amount of EUR [...] ([. ...] PLN), tax due [...] EUR ([...] PLN), gross [...] EUR ([...] PLN) for the lease of real estate located

in K., for the period from [...] January 2017 to [...] June 2017, the party taxed the rental services of the above-mentioned real estate in Poland,

ie in the country where the property is located.

The authority of first instance also indicated that the party in the period in question purchased from AF Spółka z oo [...] pieces of tractor units, from MT & BP Spółka z oo [...] pieces of tractor units and one vehicle from RPU Spółka z o. these were rented to EL Spółka z oo (NIP [...]), K., which then rented them to other Polish contractors.

Further, in the justification of the decision, the authority determined that the purchased vehicles in the periods covered by the tax proceedings, as well as in the earlier periods, were rented to EL Spółka z oo, on the basis of rental agreements concluded with this company. invoices for the lease of vehicles purchased in Poland and Germany, as well as other services provided, such as: maintenance services, car repairs, inspections were not included by the website in the sales registers for August 2016, December 2016 and January 2017, nor in declarations for tax on goods and services (VAT-7) for the above-mentioned months. However, they were included in her tax settlements both on the side of output tax and input tax.

The authority of first instance, based on the evidence collected in the case, i.e .:

1. explanations and testimonies of the party,

2. arrangements for the business activities carried out by EL

Limited liability companies and the explanations provided by them,

3. testimonies made by the employees of EL Spółka z oo,

4.decisions made on the basis of an analysis of lease agreements,

5. explanations submitted by the Poviat Starosty in P.,

6. analysis of the bank account number [...] kept

w R. B. P. S.A.,

7. findings made in the course of customs and tax inspections towards E.-L. GmbH, by employees of the Z. Customs and Tax Office

in S., in terms of the accuracy of the declared tax bases and the correctness of calculating and paying the tax on goods and services for the periods from [...] [...]. and for the period [...],

stated that the party had a permanent place of business in the territory of the country, as referred to in Art. 28b paragraph. 2 of the Act of March 11, 2004 on tax on goods and services (Journal of Laws of 2011 No. 177, item 1054 as amended, hereinafter)

In the opinion of the authority, this fact was supported by, among others:

- acquisition of real estate in Poland, renting it for a several-year period to a subsidiary company, i.e. EL Spółka z oo, equipping the limited liability company with competences authorizing it to exercise supervision over this back-up, which ruled out the need for the party to have the staff necessary to maintain the property in proper condition technical and systematic use of real estate for the purposes of the lease services provided by the Website,

- registering for tax purposes in the territory of Poland, indicating the address of the real estate rented for a limited liability company as the business address,

- action, determination of extended vehicle rental periods for the benefit of the limited liability company (periods of twelve months longer (up to 48 months),

- drawing up lease agreements and shaping the terms of cooperation in such a way that the limited liability company, acting on its behalf, automatically replaces the company E.-L. Gmbh.

As a consequence, the first instance authority found that, as part of its business, the party purchased tractor units from foreign entities and from Polish entities on the territory of the country, using the Polish NIP (tax identification number). Therefore

in VAT-7 tax declarations, she declared the purchase of goods and services included

for the taxpayer to fixed assets, and consequently also the surplus of input tax over the due tax to be returned to the bank account. The party then rented tractor units to EL Company

z o. o. with its seat in K., in which it owned 100% of shares. The subject of the lease were both fixed assets purchased in Poland and in Germany. The party used the German identification number on the invoices documenting the sale of these services.

In the opinion of the authority, the party's action consisting in the purchase of fixed assets, which were then rented to EL Spółka z oo, was the basis for the party to reduce the output tax by input tax resulting from

with the above-mentioned acquire. At the same time, the rental services for EL Spółka z oo of previously purchased vehicles were recognized by both parties to the transaction as import of services, which was subject to disclosure in the EL Spółka z oo tax settlement.

in the reverse charge procedure on the side of input and output tax,

By decision of [...] July 2021, the first instance authority determined the party as [...]. the amount of the surplus of input tax over the due tax to be returned to the bank account in the amount of PLN [...], for December 2016 tax liability

in the amount of PLN [...], for [...]. tax liability in the amount of [...] PLN.

The party filed an appeal against the above decision, requesting that it be completely annulled and that a decision on the merits of the case is made, or possibly that the decision be annulled and the proceedings discontinued.

The appeal body, having examined the appeal, by decision of [...] December 2021.

No. [...], [...], upheld the decision of the first instance authority.

In the complaint against the above decision of the appeal body of

[...] in July 2021, the applicant requested that the contested decision and the decision of the first-instance authority that preceded it be repealed in full and that the costs of the trial and legal representation be awarded to her in accordance with the prescribed standards.

The contested decision alleged an infringement of:

1.the provisions of substantive law, i.e .:

1) art. 11 and art. 53 paragraph 1 and sec. 2 of Regulation 282/20111 through their incorrect interpretation manifested in an unacceptable broad interpretation of the concept of "fixed place of business", resulting in an unjustified statement that the applicant has a permanent place of business in Poland and, consequently, their incorrect application, while

in the present case, not a single condition for the establishment of a permanent place of business has been met,

2) art. 5 section 1 point 1, art. 8 sec. 1, art. 19a paragraph. 1, art. 29a paragraph. 1, art. 41 paragraph. 1 in conjunction

joke. 146a paragraph. 1 of the act on tax on goods and services through their inappropriate application in the present case, which resulted in incorrect recognition,

that the applicant is a taxpayer for the provision of vehicle rental services and associated services, while the taxpayer for the purchase of the services in question is EL Spółka z oo, which is the recipient of the service,

3) art. 2 point 9, art. 17 sec. 1 point 4 and art. 17 sec. 2 of the VAT Act

and services related to joke. 192a of the VAT Directive by:

- failure to apply these provisions in the present case, although these provisions should be applied, as the applicant does not have a permanent place of business in Poland, and consequently it is not the applicant and EL Spółka z oo that is a taxpayer for the provision of vehicle rental services and services accompanying

- failure to apply those provisions and charging the applicant with the cost of the VAT and interest due as a result of breach of the principle of neutrality and proportionality of VAT in a situation where the VAT due on the vehicle rental services provided by the applicant was correctly settled by the buyer,

- Art. 28b paragraph. 2 of the act on tax on goods and services through their inappropriate application in the present case, which led to the recognition that the complainant provides services to her own permanent place of business in Poland, which, in the opinion of the second instance authority, is her daughter company EL Spółka z oo,

2.the procedural regulations having a significant impact on the result of the case, i.e .:

1) art. 122, art. 191 in connection with joke. 187 § 1 of the Tax Ordinance by the second instance authority assessing the collected evidence in a way that goes beyond the limits of freedom permitted by law and in a manner that contradicts all the rules of logic and life experience, which led to an unauthorized thesis that the applicant had a permanent place of business in Poland ,

2) art. 180 § 1, art. 181, art. 187 § 1 in connection with joke. 121 § 1, art. 122 of the Tax Code, through:

- failure to take into account extensive explanations and all evidence provided by the applicant, which the second-instance authority did not refuse to believe, and which it rejected without justification and without justification when assessing the facts,

- a selective, selective distortion of the facts underlying the present case

and biased evaluation of the evidence, omission of factual elements of fundamental importance for the correct assessment of the disputed issue,

- manipulating the evidence gathered in the case in such a way as to confirm the erroneous thesis about the use by the applicant

from the technical and personnel facilities of EL Spółka z oo,

- formulating your position based on unreliable evidence

and based on own insinuations and presumptions, unsupported by any evidence, which violations led to an arbitrary and erroneous decision based on the recognition that the applicant has a permanent place of business in Poland,

3) art. 199a § 1 of the Tax Ordinance by interpreting the declarations of will of the parties to the vehicle rental agreement in a manner completely inconsistent with the unanimous declarations of both parties to this agreement and the unjustified assumption that the concerted intention of the parties concluding the rental agreement was completely different than the one precisely indicated by both parties,

4) art. 120 and art. 121 of the Tax Ordinance by upholding the decision of the first-instance authority and issuing the decision in violation of the provisions of substantive law referred to at the beginning, as well as without taking into account the recent judgments of the CJEU and Polish administrative courts, which provide important interpretative guidance on the interpretation of the concept of "fixed place of business" ".

In support of the complaint, the complainant emphasized that there was no doubt that no condition for establishing the complainant's permanent place of business in Poland had been met, and that there was no abuse or depletion of VAT in the settlement of vehicle rental services between the complainant and EL Spółka z o. O

In response to the complaint, the authority appealed for its dismissal, maintaining its previous argumentation.

In a letter of [...] March 2022, the complainant supplemented her position expressed in the complaint, first of all, about the failure to demonstrate in the evidence proceedings the theses put forward in the decision of the second-instance authority, which were to support her activity in the country.

The Provincial Administrative Court in Szczecin considered the following:

The essence of the dispute in the present case boils down to assessing the correctness of the tax authorities' acceptance that the services provided by the applicant company to EL spółka z oo should be taxed at the tax rate of 23% by the applicant due to the existence of grounds for accepting the applicant's place of business in Poland.

When delimiting the legal framework of the case, it should be indicated that both national and EU regulations apply in the case under examination.

Pursuant to Art. 5 sec. 1 point 1 of the UPT, tax on goods and services is subject to the paid delivery of goods and the paid provision of services within the territory of the country.

However, pursuant to the provisions of Art. 15 sec. 1 and 2 of the taxpayers, the taxpayers are legal persons, organizational units without legal personality and natural persons who independently perform the economic activity referred to in paragraph 2, regardless of the purpose or result of such activity. Economic activity includes any activity of producers, traders or service providers.

Pursuant to the provisions of art. 19 (1) and (4) of the Tax Act, the tax obligation arises upon the release of the goods or performance of the service, subject to para. 2-21, art. 14 sec. 6, art. 20 and art. 21 paragraph 1 if the delivery of goods or the performance of a service should be confirmed by an invoice, the tax obligation arises upon issuing the invoice, but not later than on the 7th day from the date of delivery of the goods or performance of the service.

In Chapter V, Chapter 3 of the Act, the legislator included provisions on determining the place of performance when providing services, i.e. the provisions of Art. 28a-28o uptu And so: in accordance with Art. 28a uptu, for the purposes of the application of this chapter:

1) whenever a taxpayer is mentioned - it shall be understood as:

a) entities that independently perform the economic activity in question

in art. 15 sec. 2, or economic activity corresponding to this activity, regardless of the purpose or result of such activity, taking into account art. 15 sec. 6,

b) a non-taxable legal person pursuant to point (a) and, which is identified or required to be identified for the purposes of tax or value added tax;

2) a taxpayer who also conducts business or performs transactions not recognized as taxable supplies of goods or services in accordance with art. 5 sec. 1, shall be considered a taxable person in respect of all services provided to him.

However, pursuant to Art. 28b paragraph. 1 uptu, place of service provision

for the supply of services to a taxable person, it is the place where the taxable person who is the recipient of the service has his establishment, subject to (...). According to Art. 28b paragraph. 2 uptu, if the services are provided for the taxpayer's permanent place of business, which is located in a place other than the place of business, the place of supply of these services is the permanent place of business.

However, according to Art. 28c paragraph. 1 uptu, the place of supply of services to non-taxable entities is the place where the service provider has his registered office, subject to (...).

It follows from the provisions cited above that if the taxpayer who is the service provider provides services to another taxpayer who is the recipient of the service, the place where the service is provided is, as a rule, the place where that taxpayer-recipient of the service has its registered office. Consequently, in a situation where the recipient does not have a registered office in the territory of the Republic of Poland, the place of service provision is outside the territory of the country - and therefore, a contrario to the content of Art. 5 sec. 1 point 1 of the tax law - not subject to tax on goods and services in the country.

Art. 28b of the Uptu is an implementation of Art. 44 of Directive 2006/112 / EC.

The concept of a taxpayer's place of business has been defined in Art. 10 of the Council Implementing Regulation (EU) No 282/2011. According to this provision, this is the place where the functions of the company's management board are performed (paragraph 1). As provided in paragraph 2 of this provision: in order to determine this place, account is taken of the place where the important decisions relating to the general management of the enterprise are taken, the address of the registered office of the enterprise and the place where the management board of the enterprise meets.

Where these criteria do not allow the taxpayer's place of business to be determined with certainty, the decisive criterion is the place,

in which important decisions regarding the overall management of the enterprise are made. Moreover, pursuant to par. 3 Art. 10ww. of the act, the postal address itself cannot be considered as the place of business of the taxpayer. Pursuant to the judgment of the CJEU C-73/06, the seat for the purposes of conducting business activities of a given company is the place where important decisions concerning the general management of the company are taken and where its central administrative tasks are performed.

The aforementioned regulation also includes in Art. 11 sec. 1 the legal definition of "fixed establishment". According to that provision, "for the purposes of applying Article 44 of Directive 2006/112 / EC, a fixed place of business shall mean any place, other than the place of business of a taxable person as referred to in Article 10 of this Regulation, which is characterized by a sufficient degree of stability and an appropriate structure in terms of human and technical resources to enable it to be picked up

and the use of services provided for the own needs of this permanent place of business. "This provision is extended by Article 53 of the Council (EU) No. 282/2011, pursuant to which:" For the purposes of applying Art. 192a of Directive 2006/112 / EC, the taxpayer's fixed place of business is taken into account only if it is characterized by sufficient stability and an adequate structure in terms of human and technical resources to enable it to supply the goods or services in which it participates (paragraph 1). Where the taxable person has his fixed establishment in the territory of the Member State where VAT is due, it is considered that that this fixed place of business does not participate in the supply of goods or services within the meaning of Art. 192a lit. (b) of Directive 2006/112 / EC, unless the technical facilities and staff of that fixed establishment are used by that taxable person for the purposes of carrying out the taxable supply of these goods or services in that Member State, prior to the delivery of the goods or provision of services or during them. Where the resources of the fixed establishment are only used for administrative tasks such as accounting, invoicing and recovery, they are considered not to be used for the delivery of goods or services. unless the technical facilities and staff of that fixed establishment are used by that taxable person for the purposes necessary for the taxable supply of those goods or services in that Member State, before or during the supply of goods or services. Where the resources of the fixed establishment are only used for administrative tasks such as accounting, invoicing and recovery, they are considered not to be used for the delivery of goods or services. unless the technical facilities and staff of that fixed establishment are used by that taxable person for the purposes necessary for the taxable supply of those goods or services in that Member State, before or during the supply of goods or services. Where the resources of the fixed establishment are only used for administrative tasks such as accounting, invoicing and recovery, they are considered not to be used for the delivery of goods or services.

However, where the taxable person issues an invoice using the VAT identification number assigned to him by the Member State where he has his fixed establishment, that place shall be deemed to participate in the performance of that supply of goods or services in that Member State,

unless it is proven otherwise. "

As already indicated above, in accordance with Art. 5 sec. 1 point 1 of the Tax Act, the national tax regime covers only the paid provision of services by the taxpayer within the territory of the country.

On the other hand, in the case of purchasing services from a taxpayer without a registered office or place of business in the territory of the country, Art. 17 sec. 1 point 4 of the Act, according to which the taxpayers are also legal persons (...) purchasing services, if the following conditions are jointly met:

a) the service provider is a taxpayer who has no registered office and no fixed place of business in the territory of the country (...),

b) the service recipient is (...) the taxpayer referred to in art. 15, having a registered office or a permanent place of business in the territory of the country or a non-taxable legal person

referred to in art. 15, established in the territory of the country

and registered or obliged to register in accordance with art. 97 sec. 4.

Thus, in order to correctly determine whether the taxpayer is obliged to tax a service on the basis of the taxpayer, it is necessary to determine the place of supply of the service - which depends on whether the customer is a taxpayer or not. For if the customer is a taxpayer and has a seat in the territory of the Republic of Poland, the service is subject to taxation in the country, while if the customer is not a taxpayer, the service is subject to taxation.

at the place of establishment of the service provider, the service will also be taxable

in the country, also in a situation where the conditions for the application of Art. 28b paragraph. 2 uptu, i.e. in a situation where the services will be provided to a fixed place of business other than the taxpayer's seat, in this case, however, the taxpayer will be the service provider, who will be obliged to charge and show the tax amount on the invoice.

When interpreting the above provisions and applying them, one should take into account the extensive jurisprudence of the CJEU, which also influenced their current wording.

In the judgment of 3 June 2021, case C-931/19, in the dispute between Titanium Ltd. and Finanzamt Österreich, formerly Finanzamt Wien, the Court stated that real estate rented in a Member State does not constitute a permanent establishment within the meaning of Art. . 43 of the Directive 2006 on the common system of value added tax and Art. 44 and 45 of Directive 2006/112 as amended by Directive 2008/8, in a situation where the owner of the property does not have his own staff for the provision of rental services.

On the other hand, in the judgment of 16.10.2014 in case C-605/12 **Welmory** sp. Z oo against the Director of the Tax Chamber in Gdańsk, the Tribunal explained that a taxpayer established in one Member State and

from the services provided by a second taxable person established in another Member State should be considered as having a "fixed establishment" in that other Member State. However, this permanent place must be characterized by sufficient stability and an appropriate structure

in terms of personnel and technical facilities to enable them to receive services

and using them for the purposes of his business. In order to recognize the existence of a fixed establishment in a given country, it is not necessary for the taxpayer to have at his disposal the staff that he employs and the technical facilities that he owns. Own personnel background

and is not technically necessary, as long as the availability of other facilities is comparable to the availability of the in-house facilities. However, this entity should exercise control over both personnel and technical facilities. Moreover, according to the CJEU, it is also decisive that a given place of business should be able to receive and use the services purchased for its own needs. In this judgment, the Court also recalled that, in view of the multiplicity and diversity of the facts of the cases, the assessment of whether we are dealing with a permanent place of economic activity belongs rather to the sphere of facts, and therefore this assessment should be undertaken mainly by national authorities and national courts, and not by Tribunal.

However, in the judgment of 2 May 1996 in case C-231/94, between Faaborg-Gefting Linien A / S and Finanzamt Flensburg (Germany), the Court ruled that one

from the premises of a permanent place of business, a minimum scale of activity is determined, i.e. when there are both material resources and

and personnel that can independently perform certain activities.

Similarly, in the judgment of June 28, 2007, file ref. C-73/06, the Court stated that, in line with the settled case law in the field of VAT, the concept of a permanent establishment requires a minimum of durability through the accumulation of permanent human resources necessary for the provision of certain services. That minimum durability therefore implies a sufficient degree of sustainability and a structure that, from the point of view of human and technical resources, is capable of enabling the services in question to be provided.

independently. technical.

In judgment C-190/95 in the case ARO Lease TUE, it indicated that an enterprise that has neither its own staff in a Member State nor an organizational structure characterized by a sufficient degree of durability to provide a framework in which the contracts could be concluded and taken management decisions cannot be considered as having a permanent place of business in that country.

In the case under examination, both the complainant and the authorities, especially the appeal body, extensively cite the above case law of the CJEU, indicating how to interpret the norms defining a permanent place of business.

At the same time, however, the applicant and the authorities differently assess the existence of the conditions for recognizing the applicant's permanent establishment in the country.

In the opinion of the tax authorities, the following arguments determined the recognition that the applicant had a permanent place of business in Poland:

1. the applicant holds 100% of shares in the share capital of EL spółka z oo, in [...] 2016 [...] 2016 and in [...] 2017 in the two-person management board of EL spółka z oo one of the three members of the applicant's management board was involved, the Polish company was therefore a subsidiary (daughter company)

o the applicant who had unlimited power to govern its operational policy

and financial, as well as the right to appoint and dismiss management bodies of a Polish company and to decide on the directions of operation and development;

2. the applicant owned real estate in Poland - an office building and an urbanized and urbanized undeveloped area on a plot [...] with an area of [...] m2 located in K., the real estate was used under a lease agreement for the company run by EL z o. o. business activity, the lease agreement was concluded in [...] for an indefinite period, the tenant was granted the authority to conclude contracts for the supply of utilities, to sub-let the subject of the lease or to use it free of charge without the consent of the landlord, the tenant was responsible for obligation to ensure the proper technical as well as aesthetic and sanitary condition of the subject of the lease and to make repairs at their own expense resulting from the normal operation of the property;

3.The applicant indicated Germany as the place of business in the identification application (NIP-2), at the same time indicated K. as the place of business, settlements for tax on goods and services were made by the applicant at the Z. Tax Office in S., and from January 2011 at the Tax Office in S .;

4.The name of AH was placed on the complainant's website as a contact person, in the period from [...] April 2010 to [...] October 2020, this person acted as a proxy in a limited liability company, and from [...] October 2020, until [...] March 2021, she was a member of the company's management board, this person also had access to the applicant's bank account, this account was used only for the purposes of settlements with the tax authority,

5. The applicant granted the accounting officer of the limited liability company - AD a power of attorney to sign the declarations submitted by electronic means of communication.

Therefore, in the opinion of the authorities, the complainant created a permanent structure in Poland for its economic activity by:

- acquisition of real estate in Poland, letting it for a period of several years to a subsidiary and equipping that company with competences authorizing it to exercise supervision over this back-up, which ruled out the applicant's need to have the staff necessary to maintain the real estate in a proper technical condition and its systematic use for the needs of the services provided by the applicant,

- registration for tax purposes in the territory of Poland, indicating as the address of the business - the address of the rented property,

- rental of previously purchased vehicles in Poland only to a subsidiary,

- the occurrence of contractual continuity in the form of adopting a permanent operating model, unchanged over the years, establishing extended periods of vehicle rental for the limited liability company (12, 48 months),

- drawing up lease agreements and shaping cooperation in such a way that the limited liability company, acting on its behalf, automatically replaces the complainant,

- using the capital and management structure to guarantee direct real influence on the activities undertaken by the employees of the limited liability company

As substitute activities of the limited liability company for the complainant, the authority mentioned:

- indication on the complainant's website as the contact person for the employee of EL of the limited liability company - AH,

- looking for the final customer on the territory of Poland,

- collecting information about the preferences of the final customer, completed with a complex request for the purchase of a specific vehicle,

- the fact that the assessment whether the object of purchase and rental is compatible with the one purchased and rented by the landlord was made by the limited liability company,

- collecting the object of purchase and at the same time the object of rent, along with the necessary equipment and documentation,

- giving the purchased vehicles the value of a fixed asset by registering it in Poland,

- vehicle insurance,

- performing necessary activities, such as: submitting declarations for tax on goods and services, maintaining a bank account, responding to activities undertaken by the tax authority.

When assessing the arguments of the tax authorities, it should be indicated, first of all, from the theses cited by both the authorities and the applicant in the judgments of the CJEU relating to the assessment of a fixed place of business, it follows that this place should be assessed each time in relation to the taxpayer's specific economic reality.

Thus, first of all, the authorities should examine what are the actual manifestations of the activity conducted by a specific taxpayer, and then relate this activity to the activity conducted in the territory of the country.

At the outset, it should also be noted that the assessment of the permanent place of business may not lead to a situation in which, by adopting a place of business other than the taxpayer's seat, the civil law contracts concluded between separate entities will be questioned, without the authorities showing any abuse of law in this regard.

Also, the adoption of a fixed place of business may not lead to questioning the separateness of a specific economic entity as a taxpayer.

In the opinion of the court, in the case under examination, the above-mentioned authorities did not perform the analysis

and consequently accepted, on the basis of insufficient evidence that the applicant's place of business was in the country.

It is beyond dispute that the object of the applicant's activity is the purchase and then renting of heavy goods vehicles. In Poland, the applicant rents vehicles to the limited liability company EL. The tax authorities did not question the economic separateness of the limited liability company from the applicant, nor did they question the possibility of concluding agreements between these entities. The authorities also did not question the provisions of individual vehicle rental contracts.

Since the subject of activity in the country is the provision of vehicle rental services, the assessment of the place of business should be related to this aspect of economic activity.

Therefore, on the basis of these assumptions and the circumstances identified, it should be pointed out that the arguments raised by the authorities in favor of adopting a permanent place of business by the applicant in the country are insufficient.

The fact that the applicant owns real estate in Poland cannot speak in favor of the applicant's running a business in Poland. In itself, the rental of real estate does not constitute a place of business other than renting this real estate in the country. The landlord carries out business activity on the rented property and, for this purpose, he rents it from the owner. It is obvious that, since the applicant hires vehicles for a limited liability company, it supplies those vehicles to that company. The vehicles located on the property located in K. are therefore the property of the applicant, but at the same time they are the subject of lease to the limited liability company, thus the limited liability company

It should be recalled here that from the above-mentioned Art. 11 sec. 3 of the Council Implementing Regulation 282/2011, it follows that the fact of having a VAT identification number in itself is not sufficient to recognize that a taxpayer has a permanent place of business. In other words, the mere fact of having a given VAT identification number cannot infer that a given entity has a permanent place of business in that country. In the case under examination, the complainant applied in Poland for a VAT identification number, stating at the same time that it was an unusual place of business and concerned the rental of real estate.

in the country, one cannot agree with the authorities that the above circumstances prove or decide about such a place.

The fact that the applicant was renting real estate located in Poland resulted not only in the necessity to have a tax identification number in the country, but also the necessity to submit a VAT declaration in this respect and the obligation to pay this tax. In carrying out these activities, the complainant availed of the assistance provided by the employees of a limited liability company Składanie

and signing declarations and paying VAT in the above-mentioned also, it cannot be a factor that would determine the applicant's continued pursuit of economic activity in the country. These activities related to the rented real estate, and not to the conclusion of vehicle rental contracts. The applicant could perform the above-mentioned activities by her employees or by other authorized persons. The circumstance that she used the services of an accountant to the extent indicated above

and the proxy of the limited liability company cannot prejudge the fact that its other activity, ie vehicle rental, is conducted in the country, the more so as the justification for using this service, as argued by the complainant, was the language barrier. It is also not without significance that the applicant could trust the persons employed in the subsidiary company more than foreign entities.

At this point, it should be noted the judgment of the CJEU of 7 May 2020 in the case

C-547/18, from which it clearly follows that from the very fact that the company owns

a subsidiary in a Member State cannot be inferred to have a fixed establishment in the territory of that Member State. Thus, the fact that the applicant has a permanent place of business in the country cannot be proved by the circumstances which show that the limited liability company is a subsidiary of the applicant, such as 100% of the share capital or the presence of the same person on the management board of both entities. It does not follow from such circumstances that the applicant's vehicle rental activity was carried out domestically. Even ignoring the question of the validity of the contracts on the basis of which the questioned services were provided, it should be noted that the authorities did not prove that the company

z o. o. negotiated and concluded in the country instead of the applicant.

It should be emphasized once again that the assessment of the permanent place of business should be carried out in relation to the subject and objectives of the business activity, while the permanence and appropriate structure of the human resources indicated by the authorities with reference to the judgments of the CJEU

technical and technical activities should relate to the business activity conducted by the audited entity, in the present case it is the rental of vehicles and services accompanying these activities, while the arguments raised by the authorities

in fact, they relate to other scopes of the applicant's business, i.e. the circumstances of having a subsidiary, the circumstances of being the owner of the real estate leased, individual actions of the limited liability company taken against sellers of vehicles purchased by the applicant in the country, or taking actions as a tenant of vehicles, but not relate to specific services questioned by the authorities.

According to the court, the existence of the conditions for the applicant to accept a permanent place of business in the country cannot be determined either by the fact that the applicant rented vehicles in the country only to a subsidiary or the vehicle rental period, as the party to the rental contract or the duration of the contract do not prove the place of conducting business by the owner renting vehicles. In addition, as regards the duration of the lease, it should be noted that the authorities did not prove that the periods for which the applicant rented vehicles to a limited liability company in relation to contracts concluded by other entities were of exceptional length.

The authorities also questioned the model of cooperation adopted by the complainant and the limited liability company, claiming that the lease agreements and cooperation were shaped in such a way that "the limited liability company acting on its behalf automatically replaced the complainant". By operating on the Polish market and being a Polish entity, the limited liability company obviously had easier access to the final customer in Poland. Having access to such a customer, she could obtain knowledge about the technical parameters of the vehicle, which she was then supposed to rent to that customer. There is no doubt, however,

that the activities of the limited liability company were aimed at looking for their own contractor. The authorities did not challenge the vehicle purchase agreements, neither as to the parties to them, nor as to the price. In the opinion of the court, the fact that the applicant's permanent activity in the country was not determined by the fact that it was the employees of the limited liability company who collected the vehicles purchased by the applicant from the sellers and assessed the compliance of the selected vehicle with the subject of the contract. The limited liability company chose vehicles as a tenant of these vehicles and its specification, equipment and necessary documents were also well known to its future lessor. This course of action does not undermine either the provisions of the contracts for the purchase of vehicles by the applicant or the provisions of vehicle rental contracts for the benefit of the limited liability company. because she chose vehicles as a tenant of these vehicles and she, as the future lessor, was also well-known to the specification, equipment and necessary documents. This course of action does not undermine either the provisions of the contracts for the purchase of vehicles by the applicant or the provisions of vehicle rental contracts for the benefit of the limited liability company. because she chose vehicles as a tenant of these vehicles and she, as the future lessor, was also well-known to the specification, equipment and necessary documents. This course of action does not undermine either the provisions of the contracts for the purchase of vehicles by the applicant or the provisions of vehicle rental contracts for the benefit of the limited liability company.

The existence of grounds for accepting that the applicant continuously conducted business activity in the country is also not evidenced by the fact that a limited liability company is registered and insured in the country. Since the vehicles were rented in the country and used in the country, they should meet the requirements for the use of vehicles from Poland resulting from the relevant regulations, which was confirmed by their registration in the country carried out pursuant to § 1 para. 2 point 3 of the Regulation of the Minister of Infrastructure of July 22, 2002 on vehicle registration and marking (Journal of Laws of 2016, item 1038) and art. 73 sec. 5 of the Road Traffic Act of June 20, 1997 (Journal of Laws of 2021, item 450). The limited liability company, as the entity renting the vehicle, was obliged to provide its tenant with a vehicle that is fit for use, i.e. a registered and insured vehicle.

On the other hand, referring to the circumstances raised by the authorities related to the selection by a representative of a limited liability company of one of the vehicles purchased from AF before signing the rental agreement, it should be noted that

during the period under examination, the complainant in Poland purchased [...] vehicles and in only one case there was a situation where a rental contract was signed one day after the vehicle was collected. However, bearing in mind: the complainant's explanations regarding the knowledge of the limited liability company

on concluding such a contract, but only signing it later due to the absence of the authorized person, the number of purchased and collected by the limited liability company, the fact that the vehicle was collected by the applicant's subsidiary and the fact that it was an individual case, in no way it may be argued that the receipt of the vehicle on [...] 08.2016, in the event of the signing of the lease agreement on [...] 08.2016, proves that the applicant is constantly pursuing a business in the country.

Likewise, the applicant's permanent activity in the country cannot be proved by the fact that one of the vehicles has been picked up before the full price has been paid for it, since it is completely irrelevant to the determination of the applicant's place of business.

Taking into account the above arguments, the court concluded that

in the case at hand, the tax authorities did not show that the applicant had

in the country, a permanent place of business within the meaning of art. 28b paragraph. 2 of uptu The evidence gathered by the authorities and its analysis lead to the conclusion that the institution referred to in Art. 28b paragraph. 2 uptu

In support of the above position, it should be pointed out that the Supreme Administrative Court accepting the assessment expressed in the justification of the judgment of the court of first instance, i.e. in the judgment of the Provincial Court in Warsaw of December 20, 2018, file ref. no. III SA / Wa 154/16, in the judgment of 22 October 2021 in case I FSK 1519/19 it should be indicated that: "when determining the place of taxation, the main point of reference is the seat of economic activity. Another place is taken into account only when the reference to the seat leads to unreasonable results or creates a conflict with regard to another Member State (CJEU judgments

of: July 4, 1984, Birkholz, EU: C: 1985: 299, point 17, of May 2, 1996, Faaborg-Gelting Linien, C-231/94, EU: C: 1996: 184, point 16, with October 16, 2014 **Welmory** sp. Z oo, C - 605/12, EU: C: 2014: 2298, point 53). This alternate position should only be established in exceptional circumstances and cannot be presumed. The purpose of the rules governing the place of taxation of services is to avoid, on the one hand, confluence of properties which may lead to double taxation and, on the other hand, non-taxation of revenues (see in particular judgment C-218/10, EU: C: 2012: 35, paragraph 27 and the case-law cited there). The analysis in this regard must respect the principle of taxation once again, proportionality and VAT neutrality. "

The authorities in the case under examination did not demonstrate that such an exceptional situation occurred that would lead to the non-taxation of the disputed transactions, on the contrary, the authorities admitted that the purchase of services was taxed by the customer. On the other hand, acceptance of the position of the authorities could lead to double taxation of services, e.g. in the event of the expiry of the limitation period for a specific tax liability.

In addition, it should be noted that in the judgment of 7 April 2022 in the case C-333/20, the CJEU confirmed that the facilities owned by the taxpayer in the country should be sufficient to receive services, but these services should be provided by another entity, because it is the back office itself cannot provide services to itself.

Bearing in mind the above, the Provincial Administrative Court in Szczecin, pursuant to Art. 145 § 1 point 1 lit. a) in connection with pursuant to Article 134 § 1 of the Law on Proceedings before Administrative Courts (Journal of Laws of 2022, item 329, hereinafter referred to as "ppsa"), repealed the challenged decision and the decision of the first instance authority that preceded it, finding that the authorities defective subsumption of the norms of substantive law i.e. Art. 28b paragraph. 2 uptu

and as a consequence of further provisions of the Value Added Tax Act, i.e. Art. 17 sec. 1 point 4 and sec. 2 and art. 41 paragraph. 1 in conjunction joke. 146a paragraph 1.

When re-examining the case, the authorities will assess the complainant's permanent place of business on the basis of the above premises, and when deciding, first of all, they will take into account the position of the CJEU expressed in the judgment of

April 7, 2022 in case C-333/20 CJEU. Although this verdict was issued after the court ruled on the case under examination, the economic situation was

and the legal regulations of the entities it concerned is similar.

The decision on costs was based on the content of Art. 200 ppsa, which establishes the principle of the authority's responsibility for the result of an administrative court case. The costs awarded to the complainant consisted of: fee for the complaint - PLN [...], the attorney's fee determined pursuant to § 2 sec. 1 point 1 letter g) of the Regulation of the Minister of Justice of 16 August 2018 on remuneration for the activities of tax advisors in proceedings before administrative courts (Journal of Laws, item 1687)