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Internal procedures, Trojan horses, and the right to deduct input VAT. Remarks concerning the judgment of the Supreme Administrative Court of 25 July 2017 (I FSK 1798/15)[1]

Procedury wewnętrzne, konie trojańskie a prawo do odliczenia VAT. Uwagi dotyczące wyroku Naczelnego Sądu Administracyjnego z dnia 25 lipca 2017 r. (I FSK 1798/15)

Streszczenie. Zgodnie z wyrokiem Naczelnego Sądu Administracyjnego art. 86 ust. 1, art. 88 ust. 3a i art. 99 ust. 12 ustawy o podatku od towarów i usług należy interpretować w ten sposób, że wprowadzenie przez podatnika procedur służących weryfikacji dostawców oraz nabywców towarów i usług nie przesądza o tym, że podatnik działa w dobrej wierze i, w następstwie, nie pozwala na wykonanie prawa do odliczenia podatku naliczonego z faktur, które nie odzwiercie-

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dlają rzeczywistych wydarzeń gospodarczych, jeśli wspomniane procedury nie były przestrzegane w transakcji z danym dostawcą bądź nabywcą.

Słowa kluczowe: VAT; prawo do odliczenia; należy staranność; dobra wiara.

Abstract. According to the Supreme Administrative Court, Art. 86(1), Art. 88(3a) and Art. 99(12) of the Goods and Services Tax Act are to be interpreted as meaning that the introduction by the taxpayer of procedures for verifying suppliers and recipients of goods or services does not constitute good faith and, consequently, does not allow the right to deduct input tax on the basis of invoices which do not reflect actual economic events, if those procedures have not been followed in a transaction with a particular supplier or recipient.

Keywords: VAT; right to deduct; due diligence; good faith.

1. Introductory remarks

The concept of due diligence (in Polish: *należyta staranność*) is mentioned only in one article of the Goods and Services Tax Act of 11 March 2004 (the GST Act)[2], namely in its Art. 17(2a). The scope of its application is very limited as it covers only the reverse charge mechanism which is applied in domestic transactions regarding selected electronic equipment. Moreover, the concept of due diligence is not defined in any part of the GST Act.

Although the concept of due diligence is scarcely present in the GST Act, administrative courts referred to this concept in nearly 9,000 judgments in the field of VAT alone[3]. Courts usually referred to this concept in cases regarding the right to deduct input VAT and zero-rating of intra-Community supplies.

Under Art. 86(1) of the GST Act to the extent to which goods and services are used for carrying out taxable activities, the taxpayer referred to in Article 15 shall enjoy a right to reduce the amount of output tax by

[2] Ustawa z dnia 11 marca 2004 r. o podatku od towarów i usług, Dz.U. (Journal of Laws of) z 2017 r., poz. (item) 1221 ze zm. (as amended).

[3] www.nsa.gov.pl (access on-line: 6 November 2017).

the amount of an input tax, subject to Article 114, Article 119, paragraph 4, Article 120, paragraphs 17 and 19 and Article 124[4].

Article 88(3a) of the GST Act states:

"The reduction of the amount of output tax, and the refund of the difference of tax or refund of the input tax shall not be based on invoices and customs documents in the case where:

1. the sale was documented by invoices or corrective invoices:
   a. issued by a non-existent subject;
   b. repealed;
2. the transaction documented by the invoice is not taxable or is exempt from tax;
3. repealed;
4. the invoices, corrective invoices or customs documents issued:
   a. state actions which were not performed – in their part referring thereto;
   b. provide amounts inconsistent with facts – in their part referring to such items for which the said amounts were provided;
   c. confirm the acts to which the provisions of Articles 58 and 83 of the Civil Code apply – in their part referring thereto;
5. invoices, corrective invoices issued by the acquirer in accordance with separate provisions were not accepted by the seller;
6. repealed;
7. invoices were issued in which the amount of tax was shown in respect of the taxable acts for which no tax amount shall be shown in the invoice – in the part relating to such acts."

2. Due diligence in the EU VAT system

Article 168(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (the VAT Directive)[5] states that in so far as the goods and services are used for the purposes of the taxed

[4] Translation of the GST Act is based on Legalis by C.H. Beck.

[5] OJ L 347 of 11 December 2006, p. 1, as amended.

transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay: the VAT due or paid in that Member State in respect of supplies to him of goods or services carried out or to be carried out by another taxable person.

Articles 168–175 of the VAT Directive define substantive elements of a right to deduct input tax, while Article 178 et seq. are rather focused on the formal requirements of exercising a right to deduct. There are no mentions of a person's good faith in the above-mentioned provisions, nor in any other provisions of the VAT Directive[6].

Although, the concept of good faith (in Polish: *dobra wiara*) is not even mentioned in the VAT Directive, it appears quite often in the VAT case-law of the Court of Justice[7]. Initially, the Court used this concept without elaborating in-depth about its meaning, in cases connected with the principle of neutrality of VAT[8]. Later, the Court somehow contradicted the concepts of good faith and fraud. Nevertheless, it still did not define the former term[9]. The Court's more elaborate position of the concept of good faith was presented for the first time in the judgment of 12 January 2006 in joined cases C-354/03, C-355/03 and C-484/03 *Optigen*

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6 K. Lasiński-Sulecki, *Looking for Taxable Person's Good Faith – Stehcemp Case*, International VAT Monitor 2016, No. 2, p. 113.

7 K. Lasiński-Sulecki, *Looking for Taxable Person's Good Faith…*, p. 113.

8 See, for instance, the judgment of 13 December 1989 in the case C-342/87 *Genius Holding BV v. Staatssecretaris van Financiën*, ECLI:EU:C:1989:635, the judgment of 19 September 2000 in the case C-454/98 *Schmeink & Cofreth AG & Co. KG v. Finanzamt Borken and Manfred Strobel v. Finanzamt Esslingen*, ECLI:EU:C:2000:469, the judgment of 6 November 2003 in the joined cases C-78 to 80/02 *Elliniko Dimosio v. Maria Karageorgou*, *Katina Petrova and Loukas Vlachos*, ECLI:EU:C:2003:604 and later judgment of 18 June 2009 in the case C-566/07 *Staatssecretaris van Financiën v. Stadeco BV*, ECLI:EU:C:2009:380; K. Lasiński-Sulecki, *Looking for Taxable Person's Good Faith…*, p. 113.

9 See, for instance, the judgment of 29 February 1996 in the case C-110/94 *Intercommunale voor zeewaterontzilting (INZO) v. Belgian State*, ECLI:EU:C:1996:67, the judgment of 21 March 2000 in the joined cases C-110/98 to C-147/98 *Gabalfrisa SL and others v. Agencia Estatal de Administración Tributaria (AEAT)*, ECLI:EU:C:2000:145, the judgment of 8 June 2000 in the case C-396/98 *Grundstückgemeinschaft Schloßstraße GbR v. Finanzamt Paderborn*, ECLI:EU:C:2000:303, the judgment of 8 June 2000 in the case C-400/98 *Finanzamt Goslar v. Brigitte Breitsohl*, ECLI:EU:C:2000:304.

Ltd, Fulcrum Electronics Ltd and Bond House Systems Ltd v. Commissioners of Customs & Excise[10], which were focused on intra-Community supplies and in the judgment of 6 July 2006 in the joined cases C-439/04 and C-440/04 *Axel Kittel v. Belgian State and Belgian State v. Recolta Recycling SPRL*[11]. In those cases, a taxable person's knowledge test was created. According to the Court, a taxable person who knew or should have known that, by his purchase, he was taking part in a transaction connected with fraudulent evasion of VAT must, for the purposes of the Sixth Directive[12], be regarded as a participant in that fraud, irrespective of whether or not he profited by the resale of the goods[13]. The Court continued: "Therefore, it is for the referring court to refuse entitlement to the right to deduct where it is ascertained, having regard to objective factors, that the taxable person knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT, and to do so even where the transaction in question meets the objective criteria which form the basis of the concepts of «supply of goods effected by a taxable person acting as such» and «economic activity»[14].

The Court of Justice links concepts of good faith and due diligence. For instance, in the judgment of 21 December 2011 in the case C-499/10 *Vlaamse Oliemaatschappij NV* v. *FOD Financiën*[15] it held that the fact that the person other than the person liable to pay the tax acted in good faith, exhibiting all the due diligence of a circumspect trader, that he took every reasonable measure in his power, and that his participation in fraud is excluded are important points in deciding whether that person can be obliged to account for the VAT owed (para. 26).

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10 ECLI:EU:C:2006:16.

11 ECLI:EU:C:2006:446.

12 The Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment, OJ L 145 of 13 June 1977, p. 1, as amended.

13 Para. 56 of the judgment in the *Kittel* case.

14 Para. 59 of the judgment in the *Kittel* case; K. Lasiński-Sulecki, *Looking for Taxable Person's Good Faith*..., p. 113–114.

15 ECLI:EU:C:2011:871.

3. Facts of the case

According to tax authorities in 2008 and 2009, a company (the Complaining Company) deducted an input VAT, which was indicated in invoices connected with a purchase of scrap metals, but the documented transactions had not actually taken place. The tax authorities based their findings on witness evidence. They heard people involved in the functioning of entities that had issued the aforementioned invoices and came to a conclusion that, despite the introduction of procedures aiming at elimination of a tax abuse (*sic!*) and making sure that transactions are entered into only with reliable entities, these procedures had not been applied properly in certain cases. The Complaining Company did not check whether the suppliers had held decisions allowing them to collect and transport waste. Registration documents were not checked either. One of the employees of the Complaining Company co-operated with a crime group which issued invoices in question to the Complaining Company. As a result, the tax authorities adopted the position that the Complaining Company knew or at least should have known that its suppliers were unreliable.

The Complaining Company appealed against the decision to the second tier tax authority, but the initial decision was upheld.

The Complaining Company filed a complaint to the Regional Administrative Court in Cracow (in Polish: *Wojewódzki Sąd Administracyjny w Krakowie*). The Court in its judgment of 23 January 2015 (I SA/Kr 1738/14) agreed with the complaint of the taxpayer. According to the Regional Administrative Court in Cracow, the fact that the employee of the Complaining Company was an accomplice in crimes committed by issuers of the aforementioned invoices should result in considering that the Complaining Company acted in a bad faith only if this company (or its board members) actually had known about the usage of invoices which were issued by persons who were not real vatable persons or when no verification procedure had been introduced or such procedures had not been actually applied. The sole fact that the employee of the Complaining Company knew about the fictitious character of the invoices or even was among the guilty persons responsible for introducing such invoices was

not a determining factor for the situation of the Complaining Company. The Regional Administrative Court in Cracow held further that a claim made by the tax authorities (they claimed that verification procedures, which were voluntarily introduced by the taxpayer, had not been adhered to) was not sufficient to deprive the taxpayer of the right to deduct input VAT. They would also have to be prove that adherence to such procedures would allow the taxpayer to find out with high probability that a supplier was committing a tax fraud connected with its supply. The court of first instance paid attention to the fact that suppliers had been found to be unreliable in 26 cases, i.e. less than 2% of suppliers had not been reliable.

The second tier tax authority filed a cassation complaint to the Supreme Administrative Court (in Polish: *Naczelny Sąd Administracyjny*).

The Supreme Administrative Court revoked the judgment of the Regional Administrative Court in Cracow. The Supreme Administrative Court noticed that the regional court did not determine whether a lack of a knowledge (consciousness) of the board members of the Complaining Company regarding the criminal activities of its employee resulted from the board's negligence and lack of appropriate control. The second instance court held that the mere introduction of verification procedures was not sufficient. Similarly, the fact the such procedures were effective with regard to the majority of suppliers was not a decisive factor. The Supreme Administrative Court emphasized that due diligence should be reflected in individual relations between a taxpayer and its suppliers. The fact that verification procedures were introduced is, therefore, irrelevant if such procedures were not applied in a given transaction.

4. What do diligent taxpayers do?

Good faith is mentioned neither in the VAT Directive nor in the GST Law. Due diligence exists as a concept in a provision of the GST Law on reverse charge. Both concepts remain undefined, which can hardly be perceived as surprising, because they serve as general clauses which are adjusted to a legal "vacuum" and to the circumstances of each case. No

wonder that for tax authorities various actions or failures to act can be considered as proofs that a taxpayer has not acted with due diligence and, therefore, has not acted in good faith.

Lack of any legal definitions and assessments made by the tax authorities on a case by case basis are definitely problematic for vatable persons. They do not have a clear set of requirements, which – if met – will allow them to assume that their VAT settlements have finally been done properly.

On the other hand, precise definitions of good faith and due diligence could be counterproductive – as some might say. Those involved in VAT fraud could adjust their "businesses" and, especially, documentation to such precise definitions or requirements, in order not to attract the attention of the tax authorities.

However, it should be emphasized that due diligence has nothing to do with criminals committing VAT fraud. They are not protected by the case-law of the Court of Justice because they are themselves fraudsters. Those who are fully aware of their co-operation with fraudsters would also hardly be protected. The protection of duly diligent persons extends to those who were "framed into" – in the course of their business – fraudulent schemes organized by others.

The tax authorities and sometimes also, unfortunately, courts seem to treat all persons involved in the chain of supply as criminals or at least accomplices in criminal activities. They seem to analyse the behaviour of a vatable person looking for any actions or failures to act that allowed criminals to achieve their goal. If one of entities in a chain of supply was a fraudster and this was not detected by a vatable person audited by the tax authorities, they consider this as a proof that the vatable person was not diligent enough. Such requirements go well beyond what would be in line with the case-law of the Court of Justice.

It should also be mentioned that a value added tax is a general tax on turnover. Consequently, its scope of application is very broad. At the same time, modern technologies have led to significant "shrinking" of the world where transactions – even on a global scale – can be entered into by entities which have never actually met one another. Allowing tax authorities

to make buyers, in fact, jointly and severally liable for payment of VAT by their suppliers would mean that economic operators are liable for third persons' VAT in absolute terms. Such an absolute liability would be unsustainable and would lead to a collapse of trade due to the lack of trust towards other entities[16].

5. Internal procedures as means assuring due diligence

Due diligence is not a prerequisite of a right to deduct under the GST Act (see sections 1, 2 and 8 of this article). Still, an introduction of certain procedures aimed at the verification of suppliers can definitely be perceived as an effluence of due diligence. Therefore, it can save taxpayers numerous problems with tax authorities. Internal procedures should be adjusted to the field of activity when a vatable person carries out her/his economic activity.

One should only remember that, although the Court of Justice refers to the concepts of good faith and due diligence, it often emphasizes that a vatable person cannot be required to conduct thorough checks of its suppliers.

6. A methodology of an audit

The Supreme Administrative Court has expressed the view that good faith should be assessed on a transaction-by-transaction basis. This view is, as a matter of principle, a correct one. One should, however, bear in mind that the view may not necessarily be reasonable with respect to internal verification procedures. Such procedures can ensure that documents and data are gathered and verified. Verifying all data and documents gathered could definitely be effective, but it could hardly be viewed as an efficient means of auditing of any field of activity. The more valuable the transactions is, the more attention it should attract.

[16] See: *Trust busting*, "The Economist", September 17th–23rd 2016, p. 64.

Returning to the grounds of the judgment of the Supreme Administrative Court one should distinguish two entirely distinct situations:

- where internal verification procedures are not followed with respect to a given entity and
- where such procedures are followed, but, since they do not extend to holistic verification of all documents and data, they do not make it possible to find every single unreliable supplier and every single problematic supply.

If internal procedures are not followed at all with respect to certain entities and this failure to verify these entities is not part of the verification policy (where, for instance, the seat of entities with whom transactional amounts are negligible, is not verified), internal verification procedures can be treated as non-existent (though this does not necessarily mean that the vatable person will be deprived of the right to deduct).

7. A Trojan horse and due diligence

Due diligence procedures turn out to be more difficult to implement when many people are involved. The bigger the organisation is, the more likely it is that there will be a human error. It becomes more difficult to check the trustworthiness of all employees who may be involved in VAT fraud themselves.

One can notice two contrary views regarding the influence which an insider person accomplice in VAT fraud may have on an assessment of the good faith of an entity employing that person. Under the view of the Supreme Administrative Court the sole fact that such a person managed to be involved in VAT fraud without being noticed by his employer may mean that this employer was not a duly diligent one. The Regional Administrative Court in Cracow did not find such a direct link.

The case-law of the Court of Justice does not refer explicitly to the problem characterized above. Those standards, which were developed by the Court of Justice, should not be modified if one applies them to employees acting as Trojan horses. Therefore, their employer should be held liable (for VAT) only if s/he knew or should have known about his/her

employee's fraudulent activity. As always, it is difficult to assess whether the latter prerequisite, when it is connected with an expected knowledge, has been fulfilled.

As has been mentioned in the above, VAT is a general turnover tax and, therefore, the scope of this tax is very broad. The functioning of the tax, but also economic exchange, would be jeopardised if one were to impose on vatable persons requirements of thorough checks of their suppliers' tax settlements. Consequently, only requirements that are acceptable from a business perspective are sensible. A vatable person should act in compliance with normal business standards of diligence. If following such standards is not sufficient to detect the improper behaviour of other entities, it should not be treated as a bad faith[17].

One should also note that nowadays invoices in paper form, though they "carry" certain rights since they serve as formal bases of a right to deduct, do not have to be signed either by a supplier or by a recipient of a supply. This facilitates trade, but it also facilitates the introduction of invoices which are also connected with VAT fraud, on to a market. Finding individuals who are accomplices in VAT fraud is not that simple.

An example of a lack of due diligence of an employer can be found in a situation when an employee has a chance to be involved in a fraud because of the fact that he/she entirely lacks supervision and his/her actions are not checked by any superiors. If normal business procedures are in force, then depriving a vatable person of his/her rights because of activities of its employee would amount to an absolute liability, which can hardly be found acceptable.

It is worth mentioning that, according to the Constitutional Tribunal, making a taxpayer liable for a tax payment due to illegal activities, in which its employee was involved, can be contrary to the Constitution (a judgment of 12 February 2015, SK 14/12).

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[17] See, for instance, M. Borowski, A. Górniak, J. Warnieło, *Należyta staranność w VAT – praktyka organów podatkowych a najnowsze orzecznictwo sądów administracyjnych i Trybunału Sprawiedliwości*, „Przegląd Podatkowy" 2017, No. 10, p. 9.

8. Lack of due diligence and its impact on right to deduct

Under the GST Act due diligence is not among the prerequisites of a right to deduct. Therefore, even a proven lack of due diligence does not deprive a taxpayer of his/her right to deduct input VAT. One may wonder whether this view – based on the wording of the GST Act – is fully in line with the case-law of the Court of Justice.

The Court of Justice in its judgment of 18 December 2014 in the case C-131/13 *Staatssecretaris van Financiën v. Schoenimport 'Italmoda' Mariano Previti vof*[18] recalled its earlier judgments in which it held that prevention of a possible tax evasion, avoidance, and an abuse was an objective aim recognised and encouraged by the Sixth Directive[19] and that the EU law could not be relied on by individuals for abusive or fraudulent ends (paras. 42-43).[20] The Court continued that it was, in principle, the responsibility of national authorities and courts to refuse a benefit of rights laid down by the Sixth Directive when they are claimed fraudulently or abusively, irrespective of whether those rights are rights to a deduction, to an exemption, or to a VAT refund in respect of intra-Community supplies (paras. 44 and 49). That is the position not only where tax evasion has been carried out by the taxable person himself/herself, but also when a taxable person knew, or should have known that, by the transaction concerned, this person participated in a transaction involving evasion of VAT carried out by the supplier or by another trader acting upstream or downstream in a supply chain (para. 50).

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18 ECLI:EU:C:2014:2455.

19 Case C-255/02 *Halifax plc, Leeds Permanent Development Services Ltd and County Wide Property Investments Ltd* v. *Commissioners of Customs & Excise*, EU:C:2006:121, para. 71; *Kittel* case, para. 54; joined cases C-80/11 and C-142/11 *Mahagében Kft* v. *Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó Főigazgatósága* and *Péter Dávid* v. *Nemzeti Adó- és Vámhivatal Észak-alföldi Regionális Adó Főigazgatósága*, EU:C:2012:373, para. 41.

20 See, inter alia, judgments in *Kittel and Recolta Recycling*, para. 54; case C-32/03 *I/S Fini H* v. *Skatteministeriet*, EU:C:2005:128, para. 32; and C-18/13, *Maks Pen EOOD* v. *Direktor na Direktsia "Obzhalvane i danachno-osiguritelna praktika" Sofia*, EU:C:2014:69, para. 26.

The Court of Justice held that it was for the referring court to ascertain whether there are, in Dutch law, as the Dutch Government submits, rules of law, whether a provision or a general principle prohibiting an abuse of rights, or other provisions relating to tax evasion or tax avoidance which might be interpreted in accordance with the requirements of the EU law in regard to combating tax evasion (para. 53). However, should it transpire, in the second place, that, in this case, national law contains no such rules which may be interpreted in accordance with the requirements of the EU law, it cannot nevertheless be inferred from this that national authorities and courts would, in circumstances such as those at issue in the main proceedings, be prevented from satisfying those requirements and, accordingly, refusing a benefit derived from a right laid down by the Sixth Directive in the event of fraud (para. 54). The Court continued that even if a directive could not of itself impose obligations on an individual and could therefore be relied on as such, by the Member State, against that individual[21], the refusal of the benefit of a right as a result of fraud, as in this case, was not covered by the situation envisaged by that case-law (para. 55). On the contrary, that refusal addresses the principle that rules of the EU law cannot be relied on for abusive or fraudulent ends, as the application of those rules cannot be extended to cover abusive, let alone fraudulent, practices (para. 56). Accordingly, in so far as abusive or fraudulent acts cannot form the basis of a right under the EU law, the refusal of a benefit under, in this case, the Sixth Directive does not amount to imposing an obligation on the individual concerned under that directive, but is merely the consequence of finding that the objective conditions required for obtaining the advantage sought, under the directive as regards that right, have, in fact, not been satisfied (para. 57)[22].

The answer to the question posed by the national Court was that the Sixth Directive must be interpreted as meaning that it is for the national

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[21] See, inter alia, joined cases C-397/01 to C-403/01 *Bernhard Pfeiffer and Others* v. *Deutsches Rotes Kreuz, Kreisverband Waldshut eV*, EU:C:2004:584, para. 108, and case C-555/07 *Seda Kücükdeveci* v. *Swedex GmbH & Co. KG*, EU:C:2010:21, para. 46.

[22] K. Lasiński-Sulecki, *Italmoda: Does the EU VAT Directive Become the Source of Individual's Obligations?* International VAT Monitor 2015, No. 5, p. 301.

authorities and courts to refuse a taxable person, in the context of an intra-Community supply, the benefit of rights to deduction of, exemption from, or refund of VAT, even in the absence of provisions of national law providing for a such refusal, if it is established, in the light of objective factors, that that taxable person knew, or should have known, that, by the transaction relied on as a basis for the right concerned, it was participating in VAT evasion committed in the context of a chain of supplies (para. 62).

Depriving the taxpayer of his/her rights guaranteed in the GST Act solely under the case-law of the Court of Justice could hardly be aligned with the Constitution of the Republic of Poland of 2 April 1997[23] or even with the European Convention on Human Rights[24].

Currently, Polish tax authorities – at least in the majority of cases – do not refer to (the lack of) due diligence as a sole prerequisite of refusing a deduction of an input VAT. They analyse due diligence of vatable persons to strengthen proof that a documented transaction has not actually taken place, or that it has not taken place with the person who has issued a contested invoice. Lack of proofs of diligence makes it additionally probable that the transaction has not taken place.

Under the Polish constitutional system and the case-law of the Court of Justice, due diligence and, as a consequence, good faith, should also protect a vatable person, even if a transaction was not a real one or the supplier was different from the one shown as the issuer of a contested invoice.

9. Summary

The position of the Supreme Administrative Court presented in the beginning of this article is the correct one. Art. 88(3a)(4)(a) of the GST Act eliminates the possibility of deducting an input VAT once it has been

[23] Dz. U. Nr 78, poz. 483 ze zm.

[24] See, J. Sanders, *The ECJ Decision in Italmoda in the of the Settled Case Law of the European Court of Human Rights*, "International VAT Monitor" 2016, No. 6, p. 421 et seq.

proved by the tax authorities that a transaction documented by an invoice had not actually taken place.

A person could deduct input VAT contrary to the wording of Art. 88(3a)(4)(a) of the GST Law when he/she acted in good faith. In such a case, good faith would have to mean that a duly diligent vatable persons had no chance to find out that the documented transaction was not a real one.

Part of the grounds of the judgment of the Supreme Administrative Court seems, however, to be going too far as it may suggest that due diligence requires thorough checks of all suppliers going beyond normal business procedures.

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