



January 2009

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VAT on Passenger Cars and Fuel Ruled Recoverable

On 22 December the European Court of Justice (ECJ) handed down a ruling (Case File C-414/07) stating that Polish legal provisions placing restrictions on the deduction of VAT on the purchase of diesel fuel are contrary to European Community law.

Infringement by the Polish Legislature of the "Standstill" Clause

The ECJ concluded that Polish law is in breach of the "standstill" principle, according to which, following accession, a new Member State may retain only those restrictions in place prior to accession. Poland has introduced two amendments to its regulations since joining the European Union narrowing the scope of the right of businesses to deduct VAT.

The ECJ questioned the exclusion of the right to deduct input VAT when purchasing fuel for so-called "convertible delivery" vehicles (as of 1 May 2004) and those complying with the Lisak formula (as of 22 August 2005). The ruling applies to VAT on fuel but also applies, indirectly, to deduction of VAT with respect to the purchase or leasing of passenger cars.

Entitlement to Deduct VAT

The consequences, in practical terms, of the ECJ ruling remain to be seen in the near future. It appears that the ECJ ruling provides for the entitlement to deduct VAT on all passenger cars used for commercial activity after 1 May 2004, as well as the fuel for these cars, and not only on "convertible delivery vehicles."

This interpretation means that a filing can be made for a refund of VAT paid on the price of fuel or passenger cars purchased since 1 May 2004. It is expected, however, that tax authorities will challenge this interpretation,

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Contacts:

[Eligiusz J. Krzesniak](mailto:Eligiusz.J.Krzesniak@ssd.com)
+48.22.395.55.24

[Tomasz Hatylak](mailto:Tomasz.Hatylak@ssd.com)
+48.22.395.55.58

[Aneta T. Kowalska](mailto:Aneta.T.Kowalska@ssd.com)
+48.22.395.55.57

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which will mean that the case will have to be heard before an administrative court.

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January 2009

Squire Sanders Świącicki Krześniak sp. k., Rondo ONZ 1, 00-124 Warsaw, Poland