

09/2009

TAX ALERT – POSSIBILITY OF REFUND OF TRANSACTION TAX PAID ON THE SHAREHOLDER'S LOANS GRANTED IN 2007-2008

We would like to draw your attention to the judgment of the District Administrative Court (DAC) in Warsaw of 11 September 2009 (case ref. III SA/Wa 619/09), in which the court stated that taxation of shareholder's loans granted to corporate entities in 2007-2008 was incompatible with the European Union Regulations.

According to the Polish Transaction Tax Act, shareholder's loans granted to corporate entities were taxed at 0.5% rate. This kind of loans were exempted from taxation before the year 2007. The exemption was restored on 1 January 2009.

In the aforesaid judgment, DAC presented a standpoint that Polish regulations in force in 2007 and 2008 regarding the taxation of shareholder's loans were incompatible with Council Directive 69/335/EEC concerning indirect taxes on the raising of capital. According to said Directive, Member States shall exempt from capital duty transactions, which were, as at 1 July 1984, exempted or taxed at a rate of 0.5% or less, whereas shareholder's loans in Poland in the year 1984 were exempted from taxation. The court also drew attention to the standstill clause, according to which, the taxpayer's situation shall not deteriorate after the Directive coming into force. Therefore, if Poland decided to exempt those transactions from taxation on 1 May 2004, it had no right to cancel this exemption as at 1 January 2007.

The judgment offers new possibilities for corporate entities to apply to Polish tax authorities for a refund of tax paid on shareholder's loans granted in 2007-2008. If you would like to obtain more detailed information on possible refund of Polish Transaction Tax and relevant procedure, please do not hesitate to contact us.

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We hope the above information proves useful. The information is not a legal opinion or advice. Should you wish to obtain full information or legal advice, please contact us.

Kontakt w biurze katowickim: / Contact in the Katowice office:

Magdalena Patryas, Partner

T: +48 32 731 68 53

E: magdalena.patryas@ksplegal.pl

Krupa Srokosz Patryas Sp.k.

ul. Chorzowska 50

40-121 Katowice

Poland

T: +48 32 731 68 52

F: +48 32 731 68 51

www.ksplegal.pl