

RETAIL SECTOR TAX SUSPENDED IN POLAND

At the press conference held on Tuesday, September 20th, Poland's Minister of Finance, Mr. Paweł Szałamacha, announced that the application of a retail sector tax will be suspended following the European Commission's decision on opening an in-depth investigation and issuance of an interim injunction. The tax in question was adopted by Poland in July 2016 and entered into force on 1 September 2016. The first payments were due in October 2016.

COMMISSION'S CONCERNS

The Commission raised concerns that the progressive turnover-based tax on the retail sector could give companies with a low turnover a selective advantage over their competitors in breach of the European Union state aid rules and issued an injunction requiring Poland to suspend the tax until its assessment has been concluded.

POLAND'S RETAIL TAX

The newly introduced tax was to be applied on a monthly basis to companies operating in Poland that are active in the retail sale of goods. The tax base is turnover from retail sales. The progressive tax rates are: 0.8% on the company's monthly turnover between PLN 17 million and PLN 170 million, and 1.4% on turnover in excess of PLN 170 million. Turnover below PLN 17 million is tax exempt.

PRELIMINARY ASSESMENT

This progressive rate structure could have, according to the Commission, result in companies with a low turnover either paying no retail tax or paying substantially lower average rates than companies with a higher turnover. Pursuant to the Commission's preliminary assessment, such differential treatment of retailers is not justified.

COMMISSION'S FORMER DECISIONS

In July 2016 the Commission issued a decision on a similar tax introduced by Hungary, which was found to infringe the EU state aid rules as it granted a selective advantage to companies with a low turnover over their competitors. In Poland's case, the Commission will now investigate further to determine whether its initial concerns are confirmed. Although it is not yet determined whether this tax will be deemed incompatible with EU laws, taking into account the similarities between Poland and Hungary's tax on the retail sector, it is highly probable that such incompatibility will be found by the Commission.

POLAND'S FURTHER STEPS

Mr. Szałamacha stated at the press conference that the Ministry of Finance will now commence work to prepare a new draft of legislation introducing a tax on the retail

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sector based on a different formula. The Ministry might return to the idea of linking the taxation of retailers with the physical size of retail shops rather than turnover. The new tax is planned to come into force on 1 January 2017. At the same time, the Minister announced that any negative ruling of the Commission taken as to the existing law will be appealed against.

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For more information about our services, please contact:

**Anna Sekowska**

Tax Advisor

anna.sekowska@wolftheiss.com

T: +48 22 3788 900

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Ron GivenCo-Managing Partner
Wolf TheissAttorneys-at-Law
ul. Mokotowska 49
00-542 Warsaw
Polandronald.given@wolftheiss.comwww.wolftheiss.com