

Judgment of 25<sup>th</sup> October 2004, [SK 33/03](#)  
**EFFECT OF EXCEEDING DEADLINES FOR OFFSETTING  
 VALUE ADDED TAX**

<b>Type of proceedings:</b> <a href="#">Constitutional complaint</a> <b>Initiator:</b> A limited liability company	<b>Composition of Tribunal:</b> 5-judge panel	<b>Dissenting opinions:</b> 0
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Legal provisions under review	Basis of review
Loss of the right to offset input tax against output tax, as a result of exceeding deadlines stipulated for exercising this right [VAT and Excise Duty Act 1993: Article 19(3b) (inserted in 1999)]	Rule of law Principle of proportionality Protection of ownership [Constitution: Articles 2, 21(1), 31(3), 64(1) and (3)]

The construction of Value Added Tax allows a taxpayer-entrepreneur to offset the amount of the tax included in the price of purchasing goods and services (the so-called input tax) from the tax amount due on the basis of the value of goods sold or services provided (the so-called output tax).

In the present case, a constitutional complaint was lodged by company M., the legal successor of a company operating under a similar name. In 2001 a fiscal control organ, an appellate organ and, subsequently, an administrative court, found that the original company M. had prematurely offset output tax against input tax paid in respect of imported goods, since the company had not yet acquired the required customs documentation entitling them to offset this amount. As a consequence, the company was required to repay the tax difference, and interest thereon, for the month in which the inflation of input tax occurred, together with a penal fine amounting to the value of 30% of the inflated amount.

Article 19(3b) of the VAT Act 1993 was challenged before the Constitutional Tribunal in its wording in force at the time of its application in the complainant company's case. Pursuant to this provision, a taxpayer lost the right to offset input tax against output tax following the expiry of statutory deadlines for exercising this right. In respect of imported goods, offset was not possible at any time prior to the tax settlement for the month when the taxpayer "received an invoice or the appropriate customs document" and not later than within the tax settlement for the following month. In the constitutional complaint it was alleged that the severity of the sanction for premature offset of input tax, namely the permanent loss of the right to benefit from this offset, does not conform to the VAT construction and, therefore, does not conform to the constitutional guarantees of ownership (Articles 21(1) and 64(1) and (3)) and the principle of proportionality (Article 31(3)). The complainant also referred to the principle of protecting trust in the State and its laws, as derived from the constitutional principle of the rule of law (Article 2).

A considerable part of the reasoning for the judgment consists in the Tribunal's deliberations concerning the varying interpretations given in practice to the statutory provisions applied in the complainant's case. In its deliberations concerning the nature of VAT, the Tribunal refers to the *acquis communautaire*.

## RULING

**Article 19(3b) of the VAT and Excise Duty Act 1993, in its wording operative until 26<sup>th</sup> March 2002, does not conform to Article 64(1) and (3), read in conjunction with Articles 21(1), 31(3) and 2, of the Constitution, insofar as it deprives a taxpayer of the right to offset the amount of input tax when such offset is calculated earlier than within the tax settlement for the month in which they received the appropriate customs document.**

## PRINCIPAL REASONS FOR THE RULING

1. The legislator is bound by the principle of proportionality, not only when introducing limitations on the exercise of constitutional rights or freedoms, but also when imposing obligations upon citizens or other entities remaining under his authority.
2. The legislator acts in accordance with the principle of proportionality when, from the permissible means of acting, he chooses those which are possibly least burdensome for the entities in respect of whom they will be applied, or are severe to no greater degree than is necessary to achieve the assumed and constitutionally justified goal.
3. The provisions of the Constitution guaranteeing or granting certain rights and freedoms may also constitute an adequate basis of review for provisions imposing obligations, provided that a genuine link exists between the realisation of a given obligation and the legislator's interference into the sphere of specified individual rights or freedoms proclaimed in the Constitution (in this case: ownership and other property rights).
4. Since Article 84 of the Constitution envisages the possibility to issue acts imposing a tax obligation, this obligation does not *per se* constitute a limitation of constitutional rights and freedoms. The means serving to realise this obligation may, however, be assessed from the perspective of the proportionality requirement regarding the limitation of constitutional rights and freedoms (Article 31(3) of the Constitution).
5. The essence of VAT construction is based on the "taxation – deductions" principle, according to which a taxpayer is, on the one hand, obliged to specify the amount of output tax on the basis of VAT-taxable sales made by them and is, on the other hand, entitled to offset the level of input tax paid on the basis of purchases made by them. In each case when a statute deprives a taxpayer of the right to offset input tax, that taxpayer is encumbered by the output tax and simultaneously bears the economic burden of the input tax. Meanwhile, one of the fundamental characteristics of VAT is the principle of the economic neutrality of this tax in respect of taxpayers.
6. The application, in respect of the complainant company, of the reviewed provision of the VAT Act (as indicated in the ruling), entailing loss of the right to offset input tax against output tax in the event that statutory deadlines are exceeded, leads to a diminution of the financial means remaining at its disposal. It is unjustified to claim that the effect of exceeding such deadlines was detrimental to State finances, since, as a result of the premature offset of the tax, the complainant company was required to repay the difference, and interest thereon, together with an additional tax liability amounting to the value of 30% of the inflated amount. In spite of such detriments, the challenged provision of the Act denied the complainant company the right to offset the tax for the given month by submitting a correction of its tax declaration. To this extent, the chal-

lenged provision does not fulfil the prerequisite of necessity – a component of the principle of proportionality (Article 31(3) of the Constitution), since the tax obligation envisaged by the Act was capable of effective realisation even in the absence of the challenged provision. The subsequent alteration to the wording of the reviewed provision, introduced by the VAT Amendment Act 2002, as well as the currently operative Article 86(13) of the VAT Act 2004, also prove that the restrictive solution adopted in the reviewed provision was unnecessary.

7. The enactment of unclear and ambiguous provisions amounts to an infringement of the Constitution, as a result of a failure to conform to the principle of the rule of law (Article 2 of the Constitution) or the principle requiring statutory regulation of a certain field (e.g. imposing burdens and public levies – Article 84 of the Constitution) or statutory stipulation of limitations on the exercise of constitutional rights and freedoms (Article 31(3) of the Constitution). The ambiguity of a provision may justify a finding that it does not conform to the Constitution where it reaches such an extent that the resulting divergences may not be removed by using the ordinary means for eliminating inconsistency within the application of law and where the effects of these divergences are significant for the addressees, stem from the inconsistent application of a provision or from uncertainty regarding the manner of its application, affect the legally-protected interests of the norms' addressees and appear with considerable intensity.
8. The absence of a clear goal of the reviewed provision also justifies the allegation that it fails to conform to the principles of correct legislation and protecting trust in the State and its laws, as derived from Article 2 of the Constitution (cf. point 7).

#### Provisions of the Constitution

**Art. 2.** The Republic of Poland shall be a democratic state governed by the rule of law and implementing the principles of social justice.

**Art. 21.** 1. The Republic of Poland shall protect ownership and the right of succession.

**Art. 31.** [...] 3. Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.

**Art. 64.** 1. Everyone shall have the right to ownership, other property rights and the right of succession.

2. Everyone, on an equal basis, shall receive legal protection regarding ownership, other property rights and the right of succession.

3. The right of ownership may only be limited by means of a statute and only to the extent that it does not violate the substance of such right.

**Art. 84.** Everyone shall comply with his responsibilities and public duties, including the payment of taxes, as specified by statute.